

MASTER AGREEMENT

by and between

CITY OF SIDNEY

and

B & B Builders Inc.

Dated as of _____, 2025

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MASTER AGREEMENT

Notice: This Agreement contains provisions relating to indemnification, release of liability and allocation of risk. By executing this Agreement, Contractor agrees to be bound by all of those provisions.

Effective Date: _____, 2025

BETWEEN:

City of Sidney, a municipal corporation of the State of Montana, whose address is 115 2nd Street SE, Sidney, Montana, 59270,

(“Owner”)

- and -

B & B Builders Inc., whose address is 108 2nd St NE, Sidney, Montana, 59270

(“Contractor”)

Owner and Contractor may hereinafter sometimes be referred to individually as a “Party” and collectively as the “Parties”.

WHEREAS the Parties wish to provide the general terms and conditions under which Contractor will provide Services to Owner from time to time;

NOW THEREFORE the Parties agree as follows:

ARTICLE 1 MASTER AGREEMENT TERM AND PARTY REPRESENTATIVES

§ 1.1 Owner issued a Request for Qualifications to contract with multiple construction firms under continuing services contracts as defined therein. Contractor agrees to provide professional services to Owner for Projects as determined by and selected by Owner, upon terms and conditions set forth herein and upon mutual agreement and execution of Task Orders for each Project. Each Task Order for each Project, upon execution, shall automatically be incorporated fully herein in this Master Agreement. All the terms and conditions of this Master Agreement shall fully apply to each Task Order. Each Project budget for each Task Order will vary and will be stated in each Task Order. Contractor recognizes that this Master Agreement is not exclusive, and that Owner has and/or may contract with more than one construction firm under the terms of similar continuing contracts and will equitably rotate and divide the Projects based upon Owner's current volume of work assigned, the dollar value of work assigned, the particular specialties of the contractors and their subcontractors, and the ability of the contractors to perform the services within Owner's needed schedule and other requirements.

The Scope of Work and Services are generally described in **Exhibit B**.

The ability to perform a Task Order for each Project under this Agreement is limited by HB 355. If the Task Order is related to a Project that exceeds \$_____ in estimated construction costs, then those construction services will be advertised and procured separately under HB 355 and not performed under this or any other continuing services contract.

If a Task Order includes as an attachment a proposal from Contractor, only the scope of services portions of such proposal shall be part of the Task Order and any terms and conditions included in such proposal shall not be part of the Task Order or this Master Agreement and such proposal terms and conditions shall be considered null and void.

Owner retains the right to reduce the scope of any portion of the Scope of Services of any Task Order. In such event, Owner shall be entitled to proportionally reduce the Contractor's compensation.

Contractor has represented, upon which Owner has relied, that Contractor is properly qualified, licensed, and competent to perform such construction services.

Contractor recognizes that this Master Agreement is not exclusive, and that Owner has and/or may contract with more than one construction firm under the terms of similar continuing contracts, and Contractor does not object.

§ 1.2 Term. This Master Agreement shall be effective for five (5) years after the date first written above ("Date of this Master Agreement") and may be extended upon mutual written agreement of both parties for two (2) additional one (1) year terms ("Term"). This Master Agreement shall terminate at the expiration of the five (5) year initial Term and at the end of each one (1) year extension Term if not extended. In the event the Term expires and is not renewed, or is terminated as provided herein, if Contractor has not completed the services under a Work Order, then the Term will remain in effect through the date of completion of the services in the Work Order, but no new requests for proposals and no new Work Orders shall be issued.

§ 1.3 This Master Agreement shall apply to all Work Orders agreed to by the parties within the term of this Master Agreement until completion of the Work Order. In the event of a conflict between terms and conditions of this Master Agreement and a Work Order, the terms of the Work Order shall take precedence for the Work provided pursuant to the Work Order.

§ 1.4 The Owner identifies the following representative authorized to act on the Owner's behalf with respect to this Master Agreement:

Jeff Hintz
(406) 433-2809

§ 1.4.1 In each Work Order, the Owner will identify a representative authorized to act on the Owner's behalf with respect to the Work Order.

§ 1.5 The Contractor identifies the following representative authorized to act on the Contractor's behalf with respect to this Master Agreement:

Sean Suisse, President
(406) 482-4401

§ 1.5.1 In each Work Order, the Contractor will identify a representative authorized to act on behalf of the Contractor with respect to the Work Order.

ARTICLE 2 WORK ORDERS

§ 2.1 The Owner is not required to issue any Work Orders under this Master Agreement.

§ 2.2 The Contractor may decline to accept any Work Order issued by the Owner.

§ 2.3 The Contractor shall execute the Work set forth in each agreed upon Work Order, attached as **Exhibit C**, or such other document as the Owner and Contractor may mutually agree upon. Each Work Order shall state the name, location, and detailed description of the Project; identify the Architect; state the Contract Time; state the Contract Sum; describe the Work; and enumerate the Contract Documents.

§ 2.4 The Owner shall make the Contract Documents available to the Contractor prior to execution of the Work Order, and thereafter, upon request. The Owner may charge the Contractor for the reasonable cost to reproduce the Contract Documents provided to the Contractor.

ARTICLE 3 PAYMENTS

§ 3.1 Contract Sum and Progress Payments

§ 3.1.1 Each Work Order shall include a Contract Sum. The Owner shall pay the Contractor the Contract Sum in current funds in accordance with each individual Contract. Where the Contract Sum is based on the Cost of the Work under Section 3.3 or 3.4 of the Work Order, the Cost of the Work is defined in **Exhibit A**, Determination of the Cost of the Work.

§ 3.1.2 Applications for Payment will be submitted individually for each Contract. Travel and per diem charges shall not exceed the limits as set forth in Montana Code Annotated.

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

§ 3.1.4 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as set forth in the Work Order.

§ 3.1.5 Provided that an Application for Payment is received by the Architect not later than the 25th day of the month, the Owner shall make payment of the certified amount to the Contractor not later than the 20th day of the next month. If an Application for Payment is received by the Architect after the date fixed above, payment shall be made by the Owner not later than twenty-

five (25) days after the Architect receives the Application for Payment.

§ 3.1.6 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold retainage from the payment otherwise due as follows:

5% retainage shall be withheld. Upon Substantial Completion of the entire Work of each Work Order, all retainage shall be released except 150% of the value of punch list Work, incomplete Work, and defective Work shall be withheld.

§ 3.1.7 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 3.2 Final Payment

§ 3.2.1 Contractor shall submit its final pay request within 45 days of Final Completion of each Work Order. Final payment for individual Contracts, constituting the entire unpaid balance of the Contract Sum, less 150% of the value of punch list Work, shall be made by the Owner to the Contractor when:

1. the Contractor has fully performed the Work except for the Contractor's responsibility to correct Work as provided in Section 16.2, and to satisfy other requirements, if any, which extend beyond final payment;
2. the Contractor has submitted a final accounting for the Cost of the Work, where payment is on the basis of the Cost of the Work with or without a Guaranteed Maximum Price;
3. the Contractor has delivered to the Owner a Contractor's Final Affidavit pursuant to Montana Law and a final Certificate for Payment has been issued by the Architect in accordance with Section 13.7.1.
4. Contractor has delivered to Owner a certification that the Work does not contain any asbestos; and
5. Contractor has delivered to Owner a certification from the Building Department that the building permit has been finalized and closed out.

§ 3.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, but in no event until all the conditions of 3.2.1 have been met.

ARTICLE 4 DISPUTE RESOLUTION

§ 4.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 19.5, the method of binding dispute resolution shall be as follows:

- ☐ Arbitration pursuant to Section 19.6 of this Master Agreement
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other: *(Specify)*

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

ARTICLE 5 GENERAL PROVISIONS

§ 5.1 The Work

The term "Work" means the construction and services required by the Contract Documents enumerated in a Work Order, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations under the Work Order and related Contract. The Work may constitute the whole or a part of the Project identified in a particular Work Order.

§ 5.2 The Contract Documents

The Contract Documents are enumerated in each Work Order and consist of this Master Agreement; the Work Order executed by the Owner and Contractor (including, if applicable, Supplementary and other Conditions applicable to the Work Order); all Drawings, Specifications, and Addenda issued in connection with the Work Order; other documents listed in the Work Order; and Modifications issued after execution of the Work Order. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 5.3 The Contract

The Contract Documents for each Work Order form a separate Contract for construction of the Work ("The Contract"). The Contract represents the entire and integrated agreement between the parties hereto for construction of the Work and supersedes prior negotiations, representations or agreements, either written or oral. A Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Contractor.

§ 5.4 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

§ 5.5 Ownership and Use of Drawings, Specifications and Other Instruments of Service

§ 5.5.1 Drawings, specifications, Instruments of Service and other documents including those in electronic form, prepared by the Architect or Contractor and furnished for the Project are the

property of Owner. The Owner shall retain all common law, statutory and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 5.5.2 The Contractor, Subcontractors, Sub-subcontractors and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to the protocols established pursuant to Sections 5.6 and 5.7, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to a Project outside the scope of a Contract without the specific written consent of the Owner.

§ 5.6 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 5.7 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in Building Information Modeling and Digital Data Exhibit, and the requisite Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 5.8 Severability

The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 5.9 Notice

§ 5.9.1 Except as otherwise provided in Section 5.9.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission in accordance with Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

Electronic mail may be used by the parties using the email addresses provided by each party in this Master Agreement or in each Work Order.

§ 5.9.2 Notice of Claims shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 5.10 Relationship of the Parties

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

ARTICLE 6 OWNER

§ 6.1 Information and Services Required of the Owner

§ 6.1.1 The Owner shall furnish all necessary surveys and a legal description of sites referenced in a Work Order, if required.

§ 6.1.2 The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 6.1.3 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 7.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 6.2 Owner's Right to Stop the Work

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents, or repeatedly fails to carry out the Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order is eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 6.3 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to any other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 13.4.3, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to

reimburse the Owner for the reasonable cost of correcting such deficiencies, including the Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 19.

ARTICLE 7 CONTRACTOR

§ 7.1 Review of Contract Documents and Field Conditions by Contractor

§ 7.1.1 Execution of a **Work** Order by the Contractor is a representation that the Contractor has visited the relevant site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 7.1.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 6.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 7.1.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 7.2 Supervision and Construction Procedures

§ 7.2.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under a Contract, unless the Contract Documents give other specific instructions concerning these matters.

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

§ 7.3 Labor and Materials

§ 7.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and

pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

§ 7.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Architect and in accordance with a Modification.

§ 7.4 Warranty

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. For a period of one (1) year after the date of Substantial Completion (and longer if extended warranties are provided in the Contract Documents for certain materials, equipment, and installations), the Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage. All other warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 13.6.3.

§ 7.5 Taxes

The Contractor shall pay sales, consumer, use and other similar taxes that are legally enacted when bids are received or negotiations concluded for an individual Contract, whether or not yet effective or merely scheduled to go into effect.

§ 7.6 Permits, Fees, Notices, and Compliance with Laws

§ 7.6.1 Contractor shall secure and pay for the building permit as well as other permits, fees, licenses and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of a Contract and legally required at the time bids are received or negotiations concluded. Such permit fees are included in the Contract Sum.

§ 7.6.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 7.7 Allowances

The Contractor shall include in the Contract Sum for each Work Order all allowances stated in the Contract Documents for that Work Order. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amounts shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts. Contractor's costs for unloading and handling at the site, labor, installation, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowance.

§ 7.8 Contractor's Construction Schedules

§ 7.8.1 The Contractor, promptly after executing a Work Order, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work described in that Work Order. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 7.8.2 The Contractor shall perform the Work in general accordance with the most recent schedule submitted to the Owner and Architect.

§ 7.9 Submittals

§ 7.9.1 The Contractor shall review for compliance with the Contract Documents and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in coordination with the Contractor's construction schedule and in such sequence as to allow the Architect reasonable time for review. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them; (2) determined and verified materials, field measurements, and field construction criteria related thereto, or will do so; and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Work shall be in accordance with approved submittals.

§ 7.9.2 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents.

§ 7.9.3 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents or unless the Contractor needs to provide such services in order to carry out the Contractor's own responsibilities. If professional design services or certifications by a design professional are specifically required, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional. If no criteria are specified, the design shall comply with applicable codes and ordinances. Each Party shall be entitled to rely upon the information provided by the other Party. The Architect will review and approve or take other appropriate action on submittals for the limited purpose of checking for conformance with information provided and the design concept expressed in the Contract

Documents. The Architect's review of Shop Drawings, Product Data, Samples, and similar submittals shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. In performing such review, the Architect will approve, or take other appropriate action upon, the Contractor's Shop Drawings, Product Data, Samples, and similar submittals.

§ 7.10 Use of Site

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

§ 7.11 Cutting and Patching

The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 7.12 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under a Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus material from and about the Project.

§ 7.13 Access to Work

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

§ 7.14 Royalties, Patents and Copyrights

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

§ 7.15 Indemnification

§ 7.15.1 Contractor shall indemnify and hold harmless the Owner from any and all liabilities, damages, losses, and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the Contractor, its subcontractors of every tier, or its agents or employees in connection with providing the Work and services called for in this Master Agreement. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 7.15.1.

§ 7.15.2 In claims against any person or entity indemnified under this Section 7.15 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 7.15.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 8 ARCHITECT

§ 8.1 The Owner shall retain an Architect to perform the services enumerated in this Article 8 and as described elsewhere in this Master Agreement. If an Architect is not required by law, or otherwise not engaged on the Project, the Owner shall perform such services.

§ 8.2 The Architect listed on each Work Order will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction, until the date the Architect issues the final Certificate for Payment for the Contract. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. However, any approvals, certificates, or decisions of the Architect are subject to the approval of Owner. At Owner's discretion, the duties of the Architect described herein may be performed by the Owner or the Owner's representative.

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

§ 8.4 The Architect will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 8.5 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

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

§ 8.7 The Architect has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 8.8 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 8.9 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect will make initial decisions on all claims, disputes and other matters in question between the Owner and Contractor but will not be liable for results of any interpretations or decisions rendered in good faith.

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

ARTICLE 9 SUBCONTRACTORS

§ 9.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at a Project site.

§ 9.2 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after execution of a Work Order, shall notify the Owner and Architect of the Subcontractors or suppliers proposed for each of the principal portions of the Work. The Contractor shall not contract with any Subcontractor or supplier to whom the Owner or Architect has made reasonable written objection within ten days after receipt of the Contractor's list of Subcontractors and suppliers. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 9.3 Contracts between the Contractor and Subcontractors shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, and (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner.

ARTICLE 10 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 10.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to a Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

§ 10.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work, or defective construction of a separate contractor.

ARTICLE 11 CHANGES IN THE WORK

§ 11.1 By appropriate Modification, changes in the Work may be accomplished after execution of a Work Order. The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Order signed by the Owner, Contractor, and Architect, or by written Construction Change Directive signed by the Owner and Architect. Upon issuance of the Change Order or Construction Change Directive, the Contractor shall proceed promptly with such changes in the Work, unless otherwise provided in the Change Order or Construction Change Directive.

§ 11.2 Adjustments in the Contract Sum and Contract Time resulting from a change in the Work shall be determined by mutual agreement of the parties or, in the case of a Construction Change Directive signed only by the Owner and Architect, by the Contractor's cost of labor, material, equipment, and reasonable overhead and profit as listed in Exhibit A, unless the parties agree on another method for determining the cost or credit. Pending final determination of the total cost of a Construction Change Directive, the Contractor may request payment for Work completed pursuant to the Construction Change Directive. The Architect will make an interim determination of the amount of payment due for purposes of certifying the Contractor's monthly Application for Payment. When the Owner and Contractor agree on adjustments to the Contract Sum and Contract Time arising from a Construction Change Directive, the Architect will prepare a Change Order.

§ 11.3 Subject to the Owner's written approval, the Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall

carry out such written orders promptly. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work.

§ 11.4 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be equitably adjusted as mutually agreed between the Owner and Contractor; provided that the Contractor provides notice to the Owner and Architect promptly and before conditions are disturbed.

§ 11.5 For Change Orders or Construction Change Directive Work, the amount for overhead and for profit added or deducted shall be a total of ten percent (10%) of the Cost of the Work that is added or deducted, respectively ("Contractor's Fee"). Cost of the Work is defined in Exhibit "A". Such Contractor's Fee includes all profit, overhead, general conditions costs, and insurance (but not additional bond costs, if applicable), except if a Change Order extends the Date of Substantial Completion, then Contractor's reasonable extended daily general conditions costs shall be added to the cost of the Change Order per §12.5 of the Master Agreement. Likewise, subcontractors shall not add general conditions costs, except that if the change includes an increase in the Contract Time, then extended daily general conditions costs may be added in accordance with §12.5 of the Master Agreement. However, fee shall not be reduced for deductive Change Orders arising as a result of the Sales Tax Savings Program of Article 21.12 of the Master Agreement, except fee on the amount of the sales tax saved shall be deducted.

1. For Change Order Work accomplished by the Contractor's own forces, acting in the role of a subcontractor, overhead and profit shall be a maximum of 10% of the Cost of the Work.
2. For Change Order Work accomplished by Subcontractors, Subcontractor's overhead and profit shall be a maximum of 10% of the Cost of the Work.
3. For each Subcontractor, for Work performed by that Subcontractor's sub-subcontractor, no overhead charges, but a 5% fee for overhead and profit on the amount due the sub-subcontractor shall be paid the Subcontractor.
4. For each Sub-subcontractor, for Work performed by that Sub-subcontractor, overhead and profit shall be a maximum of 10% of the Cost of the Work.
5. No further tiering of sub-subcontractors will be allowed mark up for fees, overhead, or profit.

ARTICLE 12 TIME

§ 12.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Work Order, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 12.2 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 12.3 The term "day" as used in the Contract Documents shall mean calendar day unless

otherwise specifically defined.

§ **12.4** The date of Substantial Completion is the date certified by the Architect in accordance with Section 13.6.3.

§ **12.5** If the Contractor is delayed at any time in the commencement or progress of the Work of any Work Order by changes ordered in the Work, by fire, acts of God, unusual, extraordinary adverse weather events not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control or responsibility, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine, subject to the provisions of Article 21; however, the Contract Sum shall not be increased, except for a per diem payment as described below. It is the express and bargained for intent of the parties that the risk of any monetary damages caused by any delays described in this Section or any other delays from any other cause are accepted and assumed entirely by Contractor, and in no event shall any claim relating thereto for an increase in the Contract Sum be made or recognized, except for the per diem payment as described below. Contractor's sole remedy for any delay, impact, disruption, or interruption caused by any of the reasons listed in this Section shall be an equitable extension of time to perform the Work for each day of such delay that impacts the critical path schedule of the Project that extends the Date of Substantial Completion, and a per diem payment not to exceed the Contractor's reasonable extended daily general conditions costs per day for each day of such delay that impacts the critical path schedule of the Project that extends the Date of Substantial Completion.

Contractor shall not make any other claim nor seek any other damages of any kind against Owner or Architect for any delays, impacts, disruptions, or interruptions of any kind. If a Contractor caused delay runs concurrent with such delays, Contractor shall not be entitled to any extension of time or per diem payment for the concurrent period of delay. Delays caused by labor disputes, delivery delays, and dispute resolution proceedings are considered within the Contractor's control and shall not be grounds for a delay claim. This Section does preclude recovery of damages for delay by Contractor under any other provisions of the Contract Documents.

Extensions of time will be granted only if the item, task, or other phase of construction delayed is critical to the Work and so indicated in the Contractor's Schedule.

Extensions of time due to unusual, extraordinary adverse weather events not reasonably anticipatable will be granted only because of such inclement weather occurring on a normal working day and preventing the execution of the major or critical item of construction ordinarily performed at the time. In addition, extensions of time for such unusual extraordinary adverse weather events not reasonably anticipatable will be considered only if such inclement weather exceeds by twice that normally recorded by the National Weather Bureau for the same month and location on a 20-year average basis.

ARTICLE 13 PAYMENTS AND COMPLETION

§ 13.1 Schedule of Values

§ 13.1.1 Where the Contract is based on a Stipulated Sum or the Cost of the Work with a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Stipulated Sum or Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Architect. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 13.1.2 The allocation of the Stipulated Sum or Guaranteed Maximum Price under this Section 13.1 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 13.2 Control Estimate

§ 13.2.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to the Work Order, the Contractor shall prepare and submit to the Owner a Control Estimate within 14 days of executing the Work Order. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee.

§ 13.2.2 The Control Estimate shall include:

1. the Contract Documents enumerated in the Work order, including all Modifications thereto;
2. a list of the assumptions made by the Contractor in the preparation of the Control Estimate to supplement the information provided by the Owner and contained in the Contract Documents;
3. a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee;
4. a project schedule upon which the Control Estimate is based, indicating proposed Subcontractors, activity sequences and durations, milestone dates for receipt and approval of pertinent information, schedule of shop drawings and samples, procurement and delivery of materials or equipment, the Owner's occupancy requirements, and the date of Substantial Completion; and
5. a list of any contingency amounts included in the Control Estimate for further development of design and construction.

§ 13.2.3 When the Control Estimate is acceptable to the Owner and Architect, the Owner shall acknowledge it in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ 13.2.4 The Contractor shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Contractor's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 13.2.5 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in the Control Estimate. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Contract Documents.

§ 13.3 Applications for Payment

§ 13.3.1 Applications for Payment will be submitted individually for each Contract as set forth in this section 13.3.

§ 13.3.2 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 13.1, for completed portions of the Work. The application shall be notarized, if required; be supported by all data substantiating the Contractor's right to payment that the Owner or Architect require; shall reflect retainage if provided for in the Contract Documents; and include any revised cost control information required by Section 13.2.4. Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 13.3.3 With each Application for Payment where the Contract Sum is based upon the Cost of the Work with a Guaranteed Maximum Price, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.

§ 13.3.4 Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment stored, and protected from damage, off the site at a location agreed upon in writing.

§ 13.3.5 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or other encumbrances adverse to the Owner's interests.

§ 13.4 Certificates for Payment

§ 13.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner of the Architect's reasons for withholding certification in whole or in part as provided in Section

13.4.3. The Architect's Certificate of Payment is subject to the approval of the Owner.

§ **13.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluations of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ **13.4.3** The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 13.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 13.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 7.2.2, because of

1. defective Work not remedied;
2. third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or a Separate Contractor;
6. reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. repeated failure to carry out the Work in accordance with the Contract Documents.

§ **13.4.5** The Architect may not withhold a Certificate for Payment in whole or in part, and the Owner shall not withhold payments to the Contractor, pertaining to one Contract to offset amounts in dispute under a separate Contract.

§ 13.4.6 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 13.4.3, in whole or in part, that party may submit a Claim in accordance with Article 19.

§ 13.5 Progress Payments

§ 13.5.1 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in a similar manner. As a condition to each progress payment the Contractor shall have furnished Owner with a partial lien waiver and release signed by Contractor, conditioned upon payment for all Work performed that is included in the current Application for Payment in the form attached to the Contract or if not attached, in a form approved by Owner, and shall have furnished Owner with partial unconditional lien waivers and releases signed by all subcontractors, suppliers, persons or entities furnishing any labor or material, equipment, services, and materials for the Project and for all Work performed by same that is included in the respective prior Application for Payment. In addition, as a condition to each progress payment, in the event that any liens have been filed against the Project, the Contractor shall have either recorded a satisfaction of such lien or transferred the lien to a bond satisfactory to Owner within ten (10) days of notice from Owner.

§ 13.5.2 Neither the Owner nor Architect shall have an obligation to pay or see to the payment of money to a Subcontractor or supplier except as may otherwise be required by law.

§ 13.5.3 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 13.5.4 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 13.6 Substantial Completion

§ 13.6.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

§ **13.6.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. When the Architect determines that the Work or designated portion thereof is substantially complete, the Architect will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ **13.6.4** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ **13.7 Final Completion and Final Payment**

§ **13.7.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions stated in Section 13.7.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ **13.7.2** Final payment shall not become due until the Contractor has delivered to the Owner a complete release of all liens arising out of the Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed, or a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including costs and reasonable attorneys' fees.

§ **13.7.3** The making of final payment shall constitute a waiver of claims by the Owner except those arising from

1. liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents;
3. terms of special warranties required by the Contract Documents; or
4. audits performed by the Owner, if permitted by the Contract Documents, after final payment

§ 13.7.4 Acceptance of final payment by the Contractor, a Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of the final Application for Payment.

ARTICLE 14 PROTECTION OF PERSONS AND PROPERTY

§ 14.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of a Contract. The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
3. other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of construction.

The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules, and regulations, and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury, or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 14.1.2 and 14.1.3, except for damage or loss attributable to acts or omissions of the Owner or Architect or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 7.15.

§ 14.2 Hazardous Materials

§ 14.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

ARTICLE 15 INSURANCE AND BONDS

§ 15.1 Contractor's Insurance

The Contractor shall purchase and maintain insurance coverage required in this Article 15 and as otherwise required for a specific project as set forth in a Work Order.

§ 15.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in this Section 15.1 or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the insurance required by this Master Agreement from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 16.4, unless a different duration is stated below:

§ 15.1.2 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One Million (\$1,000,000) each occurrence, Two Million (\$2,000,000) general aggregate, and Two Million (\$2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

1. damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
2. personal and advertising injury;
3. damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
4. bodily injury or property damage arising out of completed operations; and
5. the Contractor's indemnity obligations under Section 7.15.

§ 15.1.3 Automobile Liability covering vehicles owned by the Contractor and non-owned vehicles used by the Contractor, with policy limits of not less than One Million (\$1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance, and use of those motor vehicles along with any other statutorily required automobile coverage.

§ 15.1.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 15.1.2 and 15.1.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 15.1.5 Workers' Compensation at statutory limits.

§ 15.1.6 Employers' Liability with policy limits not less than One Million (\$1,000,000) each accident, One Million (\$1,000,000) each employee, and One Million (\$1,000,000) policy limit.

§ 15.1.7 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million (\$1,000,000) per claim and One Million (\$1,000,000) in the aggregate.

§ **15.1.8** If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than One Million (\$1,000,000) per claim and One Million (\$1,000,000) in the aggregate.

§ **15.1.9** Coverage under Sections 15.1.7 and 15.1.8 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than One Million (\$1,000,000) per claim and One Million (\$1,000,000) in the aggregate.

§ **15.1.10** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Section 15.1 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the period required by Section 15.1.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy.

§ **15.1.11** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ **15.1.12** To the fullest extent permitted by law, the Contractor shall cause the commercial liability coverage required by this Section 15.1 to include (1) the Owner, the Architect, and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's Consultants, CG 20 32 07 04. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

§ **15.1.13** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 15.1, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 15.1.14 Other Insurance Provided by the Contractor

Coverage

Excess Liability, Umbrella form

Limits

Three Million (\$3,000,000)

§ 15.2 Owner's Insurance

15.2.1 Owner's Liability Insurance

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

§ 15.2.2 Property Insurance Provided by the Contractor

§ 15.2.2.1 For each Work Order, the Contractor shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section 15.2.2, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Master Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ 15.2.2.2 Unless the parties agree otherwise, upon Substantial Completion, the Contractor shall continue the insurance required by Section 15.2.2.1 or, if necessary, replace the insurance policy required under Section 15.2.2.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 16.4.

§ 15.2.2.3 If the insurance required by this Section 15.2.2 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions, unless such costs are caused by the acts, omissions, or negligence of Contractor and in such event, Contractor shall pay such costs not covered because of the deductibles.

§ 15.2.2.4 For each Work Order, if the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 16.4, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ 15.2.2.5 Prior to commencement of the Work in each Work Order, the Contractor shall secure the insurance, and provide evidence of the coverage, required under this Section 15.2.2 and, upon the Owner's request, provide a copy of the property insurance policy or policies required by this Section 15.2.2. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

§ 15.2.2.6 Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by this Section 15.2.2, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration.

§ 15.2.2.7 Waiver of Subrogation

§ 15.2.2.7.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by and paid by property insurance required by this Master Agreement or other property insurance applicable to the Project where the loss occurred, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 15.2.2.7 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 15.2.2.7.2 If during a Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 15.2.2.7.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 15.2.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements, written where legally required for validity, the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 15.2.3 Other Insurance Provided by the Owner

Coverage	Limits
Discretionary with Owner	

§ 15.3 Performance Bond and Payment Bond

Contractor shall furnish unconditional performance and payment bonds in an amount equal to 100% of the Contract Sum for each Work Order covering faithful performance of the Agreement

and payment of all obligations arising thereunder. The cost of the bonds is included in the Contract Sum. The bonds shall comply with the requirements of Montana Code Annotated; however, "Conditional" Payment Bonds shall **not** be acceptable. Proper Power of Attorney shall accompany said bonds. Said bonds shall be delivered to the Owner. Contractor shall record the bonds in the public records of the County where the Project is located. No Work shall commence on each Project until the Notice of Commencement and copies of the Payment Bonds are recorded and certified copies thereof are posted at the Project site.

§ 15.3.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

§ 15.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 16 CORRECTION OF WORK

§ 16.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 16.2 In addition to the Contractor's obligations under Section 7.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 13.6.3, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

§ 16.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 6.3.

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

§ 16.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 16.

ARTICLE 17 MISCELLANEOUS PROVISIONS

§ 17.1 Assignment of Contract

Neither party to a Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 17.2 Governing Law

The Work Order shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 19.6. Venue for any dispute shall be exclusively in the State Courts in the County where the Project is located.

§ 17.3 Tests and Inspections

Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations require.

§ 17.4 Neither the Owner's nor the Contractor's representatives, for this Master Agreement or for individual Work Orders, identified in accordance with sections 1.4 and 1.5, shall be changed without ten days' prior notice to the other party.

ARTICLE 18 TERMINATION

§ 18.1 Termination of a Contract

A Contract may be terminated in accordance with this Article 18. Termination of a Contract under this Article 18 shall not be deemed a termination of any other Contract created pursuant to this Master Agreement.

§ 18.1.1 Termination by the Contractor

If the Architect fails to certify payment as provided in Section 13.4.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 3.1.5 for a period of 30 days, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner payment for Work

executed. Contractor shall not be entitled to any payment, damages, fees, costs, or profits for Work not yet performed.

§ 18.1.2 Termination by the Owner for Cause

§ 18.1.2.1 The Owner may terminate a Contract if the Contractor

1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of a public authority; or
4. otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 18.1.2.2 When any of the reasons described in Section 18.1.2.1 exists, the Owner, may, without prejudice to any other remedy the Owner may have and after giving the Contractor seven days' notice, terminate a Contract and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 18.1.2.3 When the Owner terminates a Contract for one of the reasons stated in Section 18.1.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 18.1.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§ 18.1.2.5 In the event the Owner terminates this Contract for cause, but a Court later determines that the Owner did not have cause, then such termination shall be automatically deemed a termination for convenience pursuant to §18.1.3 below.

§18.1.3 Termination by the Owner for Convenience

The Owner may, at any time, terminate a Contract for the Owner's convenience and without cause. As the Contractor's sole remedy hereunder, Owner shall pay the Contractor for the Work completed as of the effective date of the termination of this Agreement. Contractor shall not be entitled to any payment, damages, fees, costs, or profits for Work not yet performed.

§ 18.2 In the event of any termination, the Contractor shall upon Owner's request, assign any and all subcontracts and purchase orders to Owner. Contractor shall have clauses in all its subcontracts and purchase orders allowing such assignment to Owner. As a precondition to any payment due Contractor as a result of any termination of this Agreement, Contractor shall execute any and all documents necessary to assign all rights and benefits of such subcontracts and purchase orders to Owner.

ARTICLE 19 CLAIMS AND DISPUTES

§ 19.1 Claims, disputes, and other matters in question arising out of or relating to a Contract executed pursuant to this Master Agreement, including those alleging an error or omission by the Architect but excluding those arising under Section 14.2, shall be referred initially to the Architect for decision. Such matters, except those waived as provided for in Section 19.11 and Sections 13.7.3 and 13.7.4, shall, after initial decision by the Architect or 30 days after submission of the matter to the Architect, be subject to mediation as a condition precedent to binding dispute resolution. Venue for mediation shall be exclusively in the State Courts of the County where the Project is located.

§ 19.2 Notice of Claims

§ 19.2.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 16.2, shall be initiated by notice to the Architect within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 19.2.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 16.2, shall be initiated by notice to the other party.

§ 19.3 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action against the other and arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in this Master Agreement, whether in contract, tort, breach of warranty, or otherwise, within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.3. Venue for any dispute shall be exclusively in the State Courts where the Project is located.

§ 19.4 If a claim, dispute or other matter in question relates to or is the subject of a mechanic's lien, the party asserting such matter may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 19.5 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be in accordance with Monana Statutes.

§ 19.6 Continuing Contract Performance

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 19.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive claims against each other for consequential damages arising out of or relating to any Contracts formed pursuant to this Master Agreement. This mutual waiver includes

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for losses of use, principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, lost bonding capacity, loss of future work, loss of productivity, lost rentals, and for loss of profit except anticipated profit arising directly from the Work properly performed.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 18. Nothing contained in this Section 19.11 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents. The Parties agree that costs to repair, correct, or remedy defective Work are not considered consequential damages.

ARTICLE 20 SCOPE OF THIS MASTER AGREEMENT

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

§ 20.2 This Master Agreement is comprised of the following documents listed below:

1. Standard Form Master Agreement Between Owner and Contractor;
2. **Exhibit A**, Determination of the Cost of the Work.
3. Other documents:
 - Exhibit B** - Scope of Work
 - Exhibit C** - form of Work Order.

ARTICLE 21 OTHER PROVISIONS

§ 21.1 Owner shall be entitled to make any decision or approval required by this Agreement to be made by the Architect. Any decision of Owner shall supersede any decision of the Architect. Any time Contractor shall be required to notify or report to Architect such notice or report shall also be made to Owner.

§ 21.2 **Bonds.** Contractor shall furnish unconditional performance and payment bonds in an amount equal to 100% of the Contract Sum of each Work Order covering faithful performance of

the Agreement and payment of all obligations arising thereunder. The cost of the bonds is included in the Contract Sum. The bonds shall comply with the requirements of Montana Statutes; however, "Conditional" Payment Bonds shall **not** be acceptable. Proper Power of Attorney shall accompany said bonds. Said bonds shall be delivered to the Owner. Contractor shall record the bonds in the public records of the County where the Project is located. No Work shall commence on the Project until the Notice of Commencement and copies of the Payment Bonds are recorded and certified copies thereof are posted at the Project site.

§ **21.3** There are no intended or unintended third-party beneficiaries of this Agreement, and no parties other than the Owner and the Contractor shall have the right to enforce this Agreement.

§ **21.4 Discrimination Prohibited.** The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that qualified applicants are employed if work is available, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Contractor agrees to post in places available to all employees and applicants for employment, notices setting forth the policies of nondiscrimination.

§ **21.5 Conflicts.** This Master Agreement shall have precedence in the event of any conflicts between this Agreement and any of the Drawings, Specifications, Contractor's Proposal or Quotation Form, attachments, or other documents incorporated by reference to this Master Agreement.

§ **21.6 Use of Contingency.** If the Contract Sum breakdown for a Work Order includes a line item for contingency, such amount shall be for the Contractor's use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order, with all unspent contingency sums accruing to the benefit of the Owner. Examples of acceptable use of contingency include: scope gaps, omitted items, trade contractors which fail to sign acceptable subcontracts, and unforeseen field conditions for which a change order is not authorized hereunder. Contingency funds shall not be used for expenses related to correcting defective work, legal expenses, or subcontractor defaults. At Final Completion, the Contract Sum shall be reduced by Change Order by the amount of the unspent contingency sum. Expenditure of contingency funds by the Contractor shall be done only with written approval of the Owner.

§ **21.7** Contractor agrees to remove from the Project any employee, Subcontractor, or Subcontractor employee that commits any breach of the Contract Documents or any breach of the Owner's written rules and regulations regarding jobsite conduct.

§ **21.8** Contractor shall require all construction personnel to maintain a neat general appearance at all times. Shirts, trousers, and proper shoes are required apparel. The display of vulgar words, signs, or figures is prohibited. Sandals and flip-flops are prohibited on the Project site.

§ **21.9** Construction personnel shall not use profanity, illegal drugs, or alcohol on the Project site.

§ **21.10** The use of radios, tape players, cd players, boom boxes, sound producing devices, and the like are prohibited on the Project site.

§ **21.11** Smoking and all tobacco products are prohibited on the Project site, and prohibited anywhere on Owner's property. Tobacco is defined as tobacco products including, but not limited to, cigars, cigarettes, e-cigarettes, pipes, chewing tobacco and snuff. Failure to abide by this policy may result in civil penalties levied under Chapter 386, Florida Statutes and/or contract enforcement remedies.

§ **21.12 Sales Tax Savings Program.** The Owner is a not-for-profit, tax-exempt organization. The Contractor shall work with and assist the Owner to prevent payment of taxes not due.

Notwithstanding anything herein to the contrary, because Owner is exempt from sales tax and wishes to generate sales tax savings for the Project. Owner reserves the right to make direct purchases of various construction materials and equipment included in the Work. Before purchasing materials or equipment for the Project or a combination of like items that exceed \$5,000 in cost, Contractor shall identify in writing to Owner all materials and equipment or a combination of like items to be included in the Work that will generate sales tax savings if purchased direct by Owner. Contractor shall comply with the written procedures for Owner Purchased materials provided by Owner to Contractor and shall incorporate a similar provision to this provision in all of its subcontracts requiring the Subcontractors' compliance with said procedures. Owner shall execute direct purchase orders with vendors for such Owner Purchased materials. The purchase orders shall contain Owner's Consumer Certificate of Exemption number. Owner shall assume all risk of loss and theft for the Owner Purchased Materials upon their delivery to the Project site and until they are incorporated into the real property. Vendors shall invoice Owner directly for the Owner Purchased Materials. Owner shall pay vendors directly for the Owner Purchased Materials. Contractor represents and warrants that it will use its best efforts to cooperate with Owner in implementing this sales tax savings program in order maximize cost savings for the Project. Upon the execution of a purchase order, Owner and Contractor shall execute a Change Order decreasing the Contract Sum by the total cost, including the saved sales tax for the materials or equipment purchased directly by Owner under said purchase order. With respect to all direct purchases by Owner, Contractor shall remain responsible for coordinating, installing, inspecting, storing, safekeeping, handling, warranting, installation, and quality control for all direct purchases. Notwithstanding anything herein to the contrary, Contractor expressly acknowledges and agrees that any materials or equipment directly purchased by Owner pursuant to this Paragraph shall be included within and covered to the same extent as all other warranties and performance guarantees provided by Contractor pursuant to the terms of the Contract Documents, including bonds. Owner assigns to Contractor any and all warranties and rights Owner may have from any manufacturer or supplier of any such direct purchases by Owner. The Parties understand that the above Owner direct purchase procedures are generally not available to purchase fabricated materials from a vendor that, in addition to fabricating them, also installs those same fabricated materials into the Project.

The Owner agrees to indemnify and hold harmless the Contractor, its Subcontractors, vendors and suppliers from and against the payment of or liability for any sales or use taxes arising out of or resulting from the Owner purchasing materials for the Project under the Owner's sales tax

exempt status, and for which the Owner or the Contractor, Subcontractors, vendors or suppliers should become liable, but only upon the condition that Contractor has properly complied with the Owner's written sales tax program procedures.

§ **21.13** Contractor shall permit Owner to have reasonable access to Contractor's records, account books, bills, invoices, payrolls, daily logs, and other records related to the Project. Contractor shall preserve such records for five (5) years after Substantial Completion of the Project.

§ **21.14** The Contractor shall ascertain, coordinate, and minimize interruptions to Owner's on-going operations that exist on or near the Project sites. To avoid impacts to Owner's operations, Contractor has anticipated the need to use non-standard work hours and has included same in the Contract Sum. No claims for extras or requests for Change Orders based upon premium or overtime work due to non-standard work hours as defined by this Section shall be submitted to Owner.

§ **21.15 Sovereign Immunity.** Owner's limits of liability are set forth in the Montana Statutes, and nothing herein shall be construed to extend the liabilities of Owner beyond that provided in the Montana Statutes. Nothing herein is intended as a waiver of Owner's sovereign immunity under the Montana Statutes. Nothing hereby shall inure to the benefit of any third party for any purpose, including but not limited to anything which might allow claims otherwise barred by sovereign immunity or operation of law. Furthermore, all of Owner's obligations under this Agreement are limited to the payment of no more than the per person amount limitation and the aggregate contained in the Montana Statutes, even if the sovereign immunity limitations of that statute are not otherwise applicable to the matters as set forth herein.

In no event shall Owner be liable to Contractor for indirect, special, or consequential damages, including, but not limited to, loss of revenue, loss of profit, cost of capital, or loss of opportunity regardless of whether such liability arises out of contract, tort (including negligence), strict liability, or otherwise. Owner shall not assume any liability for the acts, omissions, or negligence of Contractor its agents, servants, employees, or subcontractors. In all instances, Contractor shall be responsible for any injury or property damage resulting from any activities conducted by Contractor.

§ **21.16** Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§ **21.17** Prohibition against Contingent Fees. Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement.

§ **21.18** Contractor shall be responsible for maintaining in good condition all cultivated grass plots, trees, shrubs, and landscaping on the Project site. If damaged, Contractor shall restore same to its original condition after completion of the Work.

§ **21.19 Public Records.**

- a. To the extent Contractor is acting on behalf of Owner, Contractor shall:
 - i. Keep and maintain public records required by Owner to perform the services under this Agreement.
 - ii. Upon request from Owner's custodian of public records, provide Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the costs provided by law.
 - iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to Owner.
 - iv. Upon completion of the Agreement, transfer, at no cost, to Owner all public records in possession of Contractor or keep and maintain public records required by Owner to perform the service. If the Contractor transfers all public records to Owner upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Owner, upon request from Owner's custodian of public records, in a format that is compatible with the information technology systems of Owner.
- b. If the Contractor fails to provide the public records to Owner within a reasonable time the Contractor may be subject to penalties under Montana law. Further, Owner may exercise any remedies at law or in equity, including, without limitation, the right to (i) impose sanctions and assess financial consequences, (ii) withhold and/or reduce payment, and (iii) terminate this Agreement in accordance with the terms hereof.

Contractor shall defend, at its own cost, indemnify, and hold harmless Owner, their officers, directors, and employees from and against all claims, damages, losses, and expenses, (including but not limited to fees and charges of attorneys or other professionals and court and arbitration or other dispute resolution costs) arising out of or resulting from Contractor's failure to comply with the terms of this Section.

§ **21.20** Contractor shall not use any funds received pursuant to this Agreement for lobbying the Montana Legislature, the judicial branch, or any state agency.

§ **21.21** Contractor represents that it is not on the State's discriminatory vendor list and that for services related to this Agreement, Contractor shall not transact business with any entity that has been placed on the State's discriminatory vendor list.

§ **21.22** The obligations of Owner under this Agreement are subject to availability of funds

lawfully appropriated for its purpose by the Owner's Board of Trustees, or other specified funding source for this Agreement.

§ **21.23** Contractor shall coordinate and conduct with its subcontractors and Owner a Project Warranty Inspection at the Project site on a mutually convenient date within the 14 day period before the expiration of the one (1) year warranty period.

§ **21.24** Contractor shall provide the builder's risk insurance for all Work Orders.

§ **21.25** Contractor shall provide a harassment-free workplace, with any allegation of harassment given priority attention and action by management. Contractor shall insert a similar provision in accordance with this Section, in all subcontracts for all Projects.

§ **21.26** Contractor shall maintain a redlined set of drawings at the job site to show any deviations made from the Contract drawings, and which reflect the "As-Built" conditions. These drawings shall clearly identify all dimensions established in the field and all deviations to the drawings, as approved by the Owner representative. All red-line drawings shall be turned-over and provided to Owner within two (2) weeks of Final Completion.

§ **21.27 PROGRESS REPORTING.** Contractor shall provide to Owner with each pay request, a written progress report containing a narrative description of the Work completed, whether the Work is proceeding according to the Project schedule, a description of any executed Change Orders, problems encountered, problem resolutions, schedule of the Work to be performed during the next reporting period.

§ **21.28 Non-Exclusivity.** Contractor agrees that this Master Agreement is not exclusive. This Master Agreement does not guarantee Contractor any right to enter into with Owner any Task Order and does not guarantee any work, revenue or level of revenue will be provided to Contractor. Only if Owner and Contractor execute a Task Order and Contractor properly performs the Work will Contractor be entitled to any compensation. Contractor does not have exclusivity to perform construction services for Owner. Owner has and may enter into other continuing services contracts and other contracts with other construction firms to provide construction services to Owner.

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

OWNER *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)

EXHIBIT A

DETERMINATION OF THE COST OF THE WORK FOR WORK ORDERS BASED UPON COST OF THE WORK, CHANGE ORDER WORK, AND CONSTRUCTION CHANGE DIRECTIVE WORK

COST OF THE WORK

§ 1.1 Costs to Be Reimbursed

§ 1.1.1 The term Cost of the Work shall mean the actual costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 1.1 through 1.7.

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

§ 1.2 Labor Costs

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

§ 1.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

None.

§ 1.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel (including Contractor's Project Manager) engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Prior to commencing the Work, the Contractor shall submit to the Owner for approval, a list of supervisory and field office personnel, their duties on the Work and their respective pay rates, and anticipated hours for the Project that will be assigned as a Cost of the Work. Time and wages beyond 40 hours per week for salaried personnel will not be reimbursed.

§ 1.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 1.2.1 through 1.2.3.

§ 1.2.5 Relocation and temporary out of town living costs of personnel, but only if approved by Owner in writing.

§ 1.3 Subcontract Costs

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

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

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

§ 1.4.2 Costs of materials described in the preceding Section 1.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 1.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and costs of transportation, installation, minor repairs, dismantling and removal. Rates of contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval. The total rental cost of any piece of equipment for the duration of the Project that the Contractor, any subcontractor, or any related party, person, or entity owns shall not exceed 75% of the fair market value of that equipment at the commencement of the rental period. Where a rental agreement contains an option to purchase and this option is exercised, the equity accrued shall be credited to the Owner against the total rental cost of that equipment on the Work. Prior to beginning the Work, the Contractor shall submit a list to the Program Manager and Owner of rental equipment owned by the Contractor or a related party of the Contractor indicating the fair market value at commencement of the Work and the proposed rental rates. The Contractor shall attach to each monthly Application for Payment an itemized list of rental equipment owned by the Contractor or a related party and the applicable rates for such equipment used on the Project during that period.

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

§ 1.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office. There shall be no markup on these expenses.

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

§ 1.5.6 Job site vehicle shall be limited to one per site or as agreed to in writing by the Owner. Rental rates for the job site vehicle shall include gas, maintenance, repairs, and taxes and licenses and shall not be billed separately. This single job site vehicle is in addition to the supervisors' vehicle allowances.

§ 1.6 Miscellaneous Costs

§ 1.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. If the Owner optionally implements and funds directly an Owner Controlled Insurance Program (OCIP) for the Project, no insurance costs other than the insurance costs required in the OCIP contract provisions to be paid by Contractor shall be included in the Cost of the Work. However, the cost of the Performance and Payment Bonds required for the Contractor by this Agreement shall be included in the Cost of the Work.

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

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

§ 1.6.4 Fees of laboratories for tests required by the Contract Documents, except those to be provided by the Owner and those related to defective or nonconforming Work for which reimbursement is excluded by the Contract Documents, and which do not fall within the scope of Section 1.7.3.

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

§ 1.6.6 Small tools shall be treated as a Cost item and are defined as those tools costing five hundred dollars (\$500.00) or less. A record showing the disposition of these tools is to be on file at the Contractor's office on the project site. Ownership of small tools not consumed during construction shall remain with the Owner upon completion of the Project.

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

§ 1.6.8 In lieu of renting certain items of equipment, machinery and tools, valued at more than five hundred dollars (\$500.00) from the Contractor or other third parties, the Owner reserves the right to have those items purchased and maintained as a Cost of the Work. A record showing the disposition of these items is to be on file at the Contractor's office on the project site. Ownership of the items not consumed during construction shall remain with the Owner upon completion of the Project.

§ 1.7 Other Costs and Emergencies

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

§ 1.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

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

§ 1.7.4 The costs described in Sections 1.1 through 1.7 shall be included in the Cost of the Work, unless such costs are excluded by the provisions of Section 1.8.

§ 1.8 Costs Not To Be Reimbursed

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

1. Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 1.2;
2. Expenses of the Contractor's principal office and offices other than the site office;
3. Overhead and general expenses, except as may be expressly included in Sections 1.1 to 1.7;
4. The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
5. Except as provided in Section 1.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
6. Any cost not specifically and expressly described in Sections 1.1 to 1.7;
7. Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
8. Costs for services incurred during the Preconstruction Phase, unless provided for in a separate Change Order.
9. Payments to Contractor's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.), including salary increases not identified in the Contractor's bid proposal.
10. Technology, Data Processing, Project Specific Web Sites, or Project Management System Cost incurred by the Contractor in preparing the Project Schedule, Payroll, Accounting, Project Cost Reports or Project Status Reports and any other reports necessary to the progress of the Work.
11. Any fees paid to Contractor organizations (AGC, ABC, etc.).
12. Contractor's business license.
13. Recruitment or training costs of personnel.

14. Overtime expense of any salaried personnel.
15. Except as provided in Section 1.7, any cost not specifically and expressly described in Section 1.
16. Bond costs for Contractor's suppliers and subcontractors.
17. Legal fees, attorney's fees, litigation costs, mediation costs, dispute resolution costs, settlements, and arbitration costs.
18. Travel expenses.
19. Relocation and temporary out of town living costs of personnel.
20. Audit or audit response expenses.

§ 1.9 Discounts, Rebates and Refunds

§ 1.9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner. Trade discounts, commissions, volume discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 1.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 1.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

EXHIBIT "B"
SCOPE OF WORK AND SERVICES

Contractor shall provide and or perform and be fully responsible for the various professional construction Work and construction management services required for each assigned project either by self-performance or through subcontractors. The various professional construction management services, depending on the scope, composition and complexity of each project may include, but not necessarily be limited to:

Construction, repair, remodeling, renovation, rehabilitation, alteration, upgrade, maintenance services, site work and new construction related to buildings and facilities located throughout City of Sidney, Montana generally with limited design requirements and valued generally less than \$1,000,000, although on occasion could be higher. Because any Work under this Master Agreement will be on an as needed basis, exact project specifications are generally not available. The Work shall be performed in accordance with industry standards and in compliance with federal, state, and local published rules, regulations, standards and/or statutes.

EXHIBIT C - WORK ORDER
for use with Master Agreement Between Owner and Contractor

WORK ORDER number _____ made as of the _____ day of _____, 20__.

BETWEEN the Owner:

City of Sidney
115 2nd Street SE
Sidney, Montana, 59270
(406) 433-2809

and the Contractor:

B & B Builders Inc.
108 2nd St NE
Sidney, Montana, 59270
(406) 482-4401

License no. _____ for the following **PROJECT:**
(Name, location, and detailed description)

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

THE CONTRACT

This Work Order, together with the Contract Documents enumerated herein, including the Master Agreement between Owner and Contractor dated the ____ day of _____, 20__ form the Contract.

The Owner and Contractor agree as follows.

TABLE OF ARTICLES

1. THE WORK OF THIS WORK ORDER
2. DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3. CONTRACT SUM
4. PAYMENTS
5. INSURANCE AND BONDS
6. PARTY REPRESENTATIVES
7. ENUMERATION OF CONTRACT DOCUMENTS

ARTICLE 1 THE WORK OF THIS WORK ORDER

The Contractor shall execute and pay for the Work described in the Contract Documents enumerated in Article 7 of this Work Order, and any modifications issued after execution of this Work Order, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

☐ The date of this Work Order.

☐ A date set forth in a notice to proceed issued by the Owner.

☐ Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

The Date of Commencement of the Work for the Project shall be the date that the Building Permit is issued for the Work.

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Work Order.

§ 2.2 The Contract Time shall be measured from the date of commencement.

§ 2.3 Substantial Completion

§ 2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check the appropriate box and complete the necessary information.)

☐ Not later than () calendar days from the date of commencement of the Work.

☐ By the following date:

§ 2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Substantial Completion Date

§ 2.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 2.3, liquidated damages, if any, shall be assessed as set forth in Section 3.6.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be one of the following:

(Check the appropriate box.)

☐ Stipulated Sum, in accordance with Section 3.2 below

☐ Cost of the Work plus the Contractor's Fee, in accordance with Section 3.3 below

☐ Cost of the Work plus the Contractor's Fee with a Guaranteed Maximum Price, in accordance with Section 3.4 below

☐ Other, in accordance with Section 3.5 below

(Based on the selection above, complete Section 3.2, 3.3, 3.4 or 3.5 below.)

§ 3.2 Stipulated Sum

§ 3.2.1 The Stipulated Sum shall be (\$), subject to additions and deductions as provided in the Contract Documents. See Exhibit "B" for Contract Sum breakdown. Contractor's clarifications to the scope of Work are attached as Exhibit "C". The Work shall be performed in accordance with the schedule attached as Exhibit "D".

For Change Orders or Construction Change Directive Work, the amount for overhead and for profit added or deducted shall be a total of ten percent (10%) of the Cost of the Work that is added or deducted, respectively ("Contractor's Fee"). Cost of the Work is defined in Exhibit "A". Such Contractor's Fee includes all profit, overhead, general conditions costs, and insurance (but not additional bond costs, if applicable), except if a Change Order extends the Date of Substantial Completion, then Contractor's reasonable extended daily general conditions costs shall be added to the cost of the Change Order per §12.5 of the Master Agreement. Likewise, subcontractors shall not add general conditions costs, except that if the change includes an increase in the Contract Time, then extended daily general conditions costs may be added in accordance with §12.5 of the Master Agreement. However, fee shall not be reduced for deductive Change Orders arising as a result of the Sales Tax Savings Program of Article 21.12 of

the Master Agreement, except fee on the amount of the sales tax saved shall be deducted.

1. For Change Order Work accomplished by the Contractor's own forces, acting in the role of a subcontractor, overhead and profit shall be a maximum of 10% of the Cost of the Work.
2. For Change Order Work accomplished by Subcontractors, Subcontractor's overhead and profit shall be a maximum of 10% of the Cost of the Work.
3. For each Subcontractor, for Work performed by that Subcontractor's sub-subcontractor, no overhead charges, but a 5% fee for overhead and profit on the amount due the sub-subcontractor shall be paid the Subcontractor.
4. For each Sub-subcontractor, for Work performed by that Sub-subcontractor, overhead and profit shall be a maximum of 10% of the Cost of the Work.
5. No further tiering of sub-subcontractors will be allowed mark up for fees, overhead, or profit.

§ 3.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Work Order, attach a schedule of such other alternates showing the change in the Stipulated Sum for each and the deadline by which the alternate must be accepted.)

Exhibit “B”

§ 3.2.3 Unit prices, if any:

(Identify the item and state the unit price and any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
Exhibit “B”		

§ 3.2.4 Allowances, if any, included in the Stipulated Sum:

(Identify each allowance.)

Item	Price
Exhibit “B”	

§ 3.3 Cost of the Work plus Contractor's Fee

§ 3.3.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.3.1.1 The following costs are subject to the Owner's prior approval:

§ 3.3.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the fee for changes in the Work.)

§ 3.4 Cost of the Work plus Contractor's Fee with a Guaranteed Maximum Price

§ 3.4.1 The Cost of the Work is as defined in Exhibit A, Determination of the Cost of the Work.

§ 3.4.1.1 The following costs are subject to the Owner's prior approval:

§ 3.4.2 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Contractor's Fee and the method of adjustment to the fee for changes in the Work.)

§ 3.4.3 Guaranteed Maximum Price

§ 3.4.3.1 The sum of the Cost of the Work and the Contractor's Fee is guaranteed by the Contractor not to exceed (\$_____), subject to additions and deductions by changes in the Work as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. *(Insert specific provisions if the Contractor is to participate in any savings.)*

§ 3.4.3.2 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Work Order, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 3.4.3.3 Unit Prices, if any:

(Identify the item and state the unit price and any applicable quantity limitations.)

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 3.4.3.4 Allowances, if any, included in the Guaranteed Maximum Price:

(Identify each allowance.)

Item	Price
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§ 3.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

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

§ 3.4.3.7 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 3.4.3.5. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 3.4.3.5 and the revised Contract Documents.

§ 3.5 Other

§ 3.5.1 The Contract Sum shall be determined in accordance with the following:
(Insert a description of how the Contract Sum will be determined.)

§ 3.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

Liquidated Damages. If the Contractor fails to substantially complete the Work before the agreed upon Date of Substantial Completion set forth in this Agreement (including any extension granted by the Owner in writing), then the Contractor agrees to pay the Owner, as liquidated damages, a sum equal to the $(\text{Contract Sum} \times 10\%) / 365$ per calendar day until Substantial Completion of the Work is actually achieved. Such amount is agreed upon as a reasonable measure of the damages that the Owner will sustain from the Contractor's failure to timely complete the Work. Owner and the Contractor recognize the delays, expense and difficulties involved in providing in an arbitration or judicial proceeding the actual loss suffered by the Owner if the Work is not completed on time and accordingly, instead of requiring such proofs, they agree upon the above-stated amount as liquidated damages for delay (but not as a penalty). The foregoing liquidated damages shall be in lieu of all other monetary remedies that the Owner shall have in the event of the Contractor's delay in completing the Project.

ARTICLE 4 PAYMENTS

§ 4.1 Payments shall be in accordance with Article 3 of the Master Agreement, except as indicated below:

(Indicate all payment terms that differ from those set forth in the Master Agreement, such as period covered by each Application for Payment or date upon which each Application/or Payment is due.)

See Master Agreement.

§ 4.2 Retainage will be withheld in accordance with Article 3 of the Master Agreement, except as indicated below: *(Indicate all retainage terms that differ from those set forth in the Master*

Agreement, such as retainage amount, items not subject to retainage, terms for reduction, or limitation of retainage.)

See Master Agreement.

ARTICLE 5 INSURANCE AND BONDS

§ 5.1 Insurance and Bonds shall be in accordance with Article 15 of the Master Agreement.

ARTICLE 6 PARTY REPRESENTATIVES

§ 6.1 The Owner identifies the following representative in accordance with Section 1.4.1 of the Master Agreement:

Jeff Hintz
(406) 433-2809

§ 6.2 The Contractor identifies the following representative in accordance with Section 1.5.1 of the Master Agreement:

(List name, address, and other information.)

ARTICLE 7 ENUMERATION OF CONTRACT DOCUMENTS

§ 7.1 The Contract Documents are defined in Section 5.2 of the Master Agreement and, except for Modifications issued after execution of this Work Order, are enumerated in the sections below.

§ 7.1.1 This Work Order

§ 7.1.2 The Master Agreement

§ 7.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Exhibit E, if any.			

§ 7.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Work Order.)

Section	Title	Date	Pages
See Exhibit E			

§ 7.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Work Order.)

Number	Title	Date
See Exhibit E		

§ 7.1.6 The Addenda, if any:

Number	Date	Pages
See Exhibit E		

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are enumerated in this Article 5.

§ 7.1.7 Additional documents, if any, forming part of the Contract Documents:

(List here any additional documents that are intended to form part of the Contract Documents.)

This Work Order entered into as of the day and year first written above.

OWNER *(Signature)*

(Printed name and title)

CONTRACTOR *(Signature)*

(Printed name and title)