

**PROFESSIONAL SERVICES CONTRACT BETWEEN
THE STATE OF WYOMING
DEPARTMENT OF ADMINISTRATION AND INFORMATION,
CONSTRUCTION MANAGEMENT and
HDR ARCHITECTURE, INC.**

WITNESSETH:

WHEREAS, the State of Wyoming, Department of Administration and Information, Construction Management (Owner) intends to retain a licensed professional architectural firm to provide professional design and management services which is financially solvent and able to assume design responsibility for the services required pursuant to Owner's Request for Professional Services 0642, the scope of which is more fully described in the Contract Attachment(s) attached hereto and incorporated herein for all purposes; and,

WHEREAS, HDR Architecture, Inc. (Architect) represents that it has the experience, team, skill and expertise to provide certain professional services, the scope of which is more fully described in its Proposal dated December 19, 2012 attached hereto and incorporated herein by reference; and,

WHEREAS, the Architect accepts the relationship established with the Owner by this Contract, and covenants with the Owner to furnish reasonable skill and judgment to cooperate with the Owner's representatives in completing the requirements of this Agreement; and,

WHEREAS, the Owner has been authorized to expend funds for this project as detailed per this certain Contract;

NOW, THEREFORE, for and in consideration of the premises and of the mutual promises and covenants contained herein, Owner and Architect hereby agree as follows:

DEFINITIONS:

The following words and phrases shall have the meanings set out below unless the context clearly dictates otherwise, and for all purposes of the Agreement the following definitions shall apply:

"Applicable", as it relates to laws, rules, regulations, orders, ordinances and permits, shall mean pertinent to, or relating to, or governing the Architect, the Architect's business, equipment, personnel or Services covered by this Contract.

"Agent" shall mean one who is empowered legally by signatory powers to act on behalf of the Owner.

"Architect" means the individual or entity with whom the Owner has entered into the

Contract.

“Change Order” means proposed change(s) via written instrument to a valid contract related to compensation, scope of work and/or services and/or times that become a formal change order when approved in writing by the parties.

“Claim” means a demand or assertion by the Architect or Owner seeking an adjustment of the Contract Compensation or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.

“Contract” shall mean the agreement between Owner and Architect, and any exhibits, attachments, amendments, or other written instruments attached hereto, or incorporated by reference, and made a part hereof. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral. In the event of conflict between the language contained in this Contract, and any language contained in any attachment, the language in this Contract shall control.

“Contract Amendments” are those documents required to change the Scope of Services, Period of Performance and Contract terms and conditions.

“Contract Compensation” shall mean the total amount to be paid to the Architect for all Services performed hereunder. This amount may be adjusted for extra Services, a decrease in the Services and the like.

“Construction Contract” shall mean the agreement between Owner and Construction Contractor, including all incorporated and referenced documents, written instruments, specifications, drawings, submittals, shop drawings, warranties, and other project related documentation.

“Consultant” shall have the same meaning as a “Subconsultant” for purposes of this Contract Document.

“Construction Contractor” (Contractor) shall mean the individual, partnership, or corporation which has the responsibility to provide construction and services required by the Contract Documents or subsequent contracts, and include (but are not limited to) labor, supervision, schedule, quality control/quality assurance, cost estimating, pre-construction services, bidding, materials, equipment, documents and/or services. Definition shall have the same meaning as “Contractor”, or “General Contractor” as defined by and in relation to a subsequent construction contract.

“Construction Cost” shall be the total cost or estimated cost to the Owner of all elements of the Project designed or specified by the Architect. Construction Cost does not include the compensation of the Architect and Architect’s consultants, financing or other costs which are the responsibility of the Owner.

“Contract Documents” shall include working drawings, specifications, general conditions, and supplementary general conditions, information for bidders, bid proposal, addenda and the Owner-Contractor Contract, developed to set forth in detail all aspects of design, function, construction, and administration, and will be used for estimating the cost of the Project, securing bids for constructing the Project and for use by the Contractor in construction of the Project.

“Construction Phase” shall mean the work done by the Construction Contractor in the management and construction of the Project from the awarding of a Construction contract until the final acceptance of the Project and/or Work.

“Drawings” shall mean that part of the Contract Documents prepared and approved by the Architect and their retained licensed Consultants that graphically shows the character, dimensions, design, extent, location, and scope of the Work to be performed by the Construction Contractor, generally including plans, elevations, sections, details, schedules and diagrams. Shop drawings are not Drawings as so defined.

“Effective Date of the Contract” is the date on which the Contract is signed by the last Party and fully executed.

“Final Acceptance” shall mean the time when the Owner notifies the Architect and Construction Contractor of its acceptance of the Project.

“Notice” shall mean any communication in writing from one Party to the the other Party by such means of delivery that receipt cannot be properly denied in accordance with Article X, Item T.

“Owner” the individual or entity with whom the Architect has entered into the Contract and for whom the Services and/or Work is to be performed, specifically the State of Wyoming, Department of Administration & Information, Construction Management.

“Professional Services” shall mean the Services required of this certain Contract and more specifically detailed in the Contract and any attachment(s) and exhibit(s).

“Project” is the total of professional services and construction of which the Work performed under the Contract Documents is a part, and may include construction by a Construction Contractor.

“Project Budget” shall mean a dated Project Construction Cost approved by Owner which shall not exceed total Project Budget approved by the Owner.

“Project Construction Cost” shall mean the Architect's dated estimate, including the major categories of work, of the entire Project's current cost of construction with respect to each phase of development. Architect's estimate will include all items that would be included by the Construction Contractor in its bid to the Owner. These items may include, but not be

limited to, allowances of the Construction Contractor for field and home office overhead, labor, payment and performance bonds, insurance and profit. The Architect's estimate represents the Architect's best judgment as a design professional familiar with the construction industry. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment, over the Contractor's methods of determining bid prices or over competitive bidding, market or negotiating conditions. However, it is understood that the Architect cannot and does not warrant or represent that bid or negotiated prices will not vary, but that the overall Project cost may not exceed Owner's Project Budget approved by the Owner.

"Representative" shall mean a person who represents the Owner or Architect as a substitute or delegate in matters of decisions, opinions, interpretations, advice, consultation, observations, and approvals of the construction project processes.

"Services" shall mean any and all obligations, duties and responsibilities necessary to the successful completion of the services undertaken by the Architect under this Contract, including the furnishing of all labor and services reasonably incidental thereto, and where the context indicates it may also refer to the physical results of the performance of such obligations, duties and responsibilities in accordance with all incorporated Contract Documents and Exhibits.

"Specifications" shall mean the Specifications set forth in accordance with this Contract and subsequent Construction Contract Documents, the directions, provisions and requirements contained therein, or in any Special Conditions or Amendments as may be issued or made pertaining to the method and manner of performing the Services or for quantities and qualities of services to be furnished under the Contract.

"Subconsultant" is an individual or entity having a direct and separate contract with the Architect or with any other professional design or engineering consultant, or any other subconsultant for the performance of any part of the Services identified in this Contract.

"Subcontractor (Construction)" is an individual or entity having a direct and separate contract with the Construction Contractor or with any other Contractor, or any other subcontractor for the performance of a part of the construction Work for this Project, when and if the Owner authorizes the expenditure of funds for the construction of the Project .

"Substantial Completion" shall mean the time at which the Work (or a specified part thereof) has progressed to the point where the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.

"Supplier" is a manufacturer, fabricator, supplier, distributor or vendor having a direct contract or agreement with the Architect, Contractor, consultants or any subcontractor to

furnish materials, labor, or equipment to be incorporated in the Work.

“Work” refers to the completed construction required by the Contract Documents and includes all labor necessary to produce such construction, and all materials and equipment incorporated or to be incorporated in such construction.

“Work Product” shall mean any and all finished or unfinished design development and construction documents, data, studies, surveys, drawings, maps, models, notes, photographs, reports and related electronic files prepared as part of the successful completion of the services undertaken by the Architect under this Contract.

“Warranty Period” shall mean one year from the date of final acceptance by the Owner of the completed construction Work, during which the Construction Contractor shall be responsible for damages resulting from defects in materials or workmanship.

ARTICLE I PARTIES

This Contract is made and entered into by and between the State of Wyoming Department of Administration and Information Construction Management (Owner) whose address is 700 West 21st Street, Cheyenne, Wyoming 82002; (Owner) and HDR Architecture, Inc., (Architect), whose address for the purposes of this Contract is 1670 Broadway, Suite 3400, Denver, CO 80202-4824.

ARTICLE II CONTRACT DOCUMENTS

The Contract Documents for this certain Contract shall consist of the agreement between Owner and Architect (hereinafter the Contract), all referenced and incorporated documents and attachments, and modifications issued after execution of the Contract. A modification is (1) a written amendment to the Contract signed by parties; (2) an additional service request signed by both Parties; (3) a construction or work change directive signed by both Parties; or (4) a written order for a change in the professional services issued by either Party and signed by both Parties. Unless specifically identified in the Contract, the Contract Documents do not include any other documents not described herein, any conversations, other memoranda, or other matter between the parties relating to the subject of this Contract, oral or written. The intent of the Contract documents is to include all items necessary for the proper execution and completion of the services provided by the Architect, their consultants and/or sub-contractors(s). **In the event of any conflict, disagreement, discrepancy, or ambiguity between the incorporated or documents referenced in this Contract, the terms and conditions of the Contract shall prevail, shall be considered the governing document and shall take precedence.**

ARTICLE III PURPOSE OF CONTRACT

PROFESSIONAL SERVICES CONTRACT BETWEEN
THE STATE OF WYOMING
DEPARTMENT OF ADMINISTRATION & INFORMATION,
CONSTRUCTION MANAGEMENT and
HDR ARCHITECTURE, INC.

Architect shall provide phased architectural design and professional engineering services regarding the Owner's State Capitol located at 200 West 24th Street in Cheyenne, Wyoming as detailed in Article VI, VII, VIII and Attachment A to this Document. The standard of care for all professional services performed or furnished by the Architect and its retained Consultants under this Agreement will be the skill and care used by members of their respective professional disciplines practicing under similar circumstances. Architect shall retain responsibility to promptly correct errors in the services, drawings, specifications and/or other contractual responsibilities and bear, at its sole expense, all costs associated with such defective professional services.

ARTICLE IV **TERM OF CONTRACT**

This Contract is effective when all parties have executed it, and all required approvals have been granted as per Article X, Paragraph X and Article XXI of this Contract and continues through the Contract Administration and Warranty Period of this project, unless this Contract is otherwise terminated pursuant to the termination provision of Article XI. The term of this Contract is from the date of execution through March 1, 2014. All services shall be completed during this term. This Contract may be renewed or amended by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of renewal and any renewal will be determined at the discretion of the Owner.

Promptly after the execution of this agreement, Architect shall prepare and submit for approval to Owner a final master schedule showing the order in which Architect proposes to perform services. The schedule shall apply to the completion of all services listed hereunder within the times established by this Agreement. The schedule shall be in the form of a progress chart so as to indicate by percentage the services completed at any time. Architect shall update the progress schedule as requested by the Owner. Three copies of each such schedule shall be delivered to the Owner no later than ten business days after execution of this Contract.

At the time the Owner indicates its intent to proceed with the Project, Architect shall in good faith negotiate with the Owner the time schedule for the Facility Program Plan (PD), Schematic Design (SD), Design Development (DD) and Construction Document (CD), Contract Administration (CA), and Warranty Period services to be provided during this agreement. The Owner reserves the right to proceed with, postpone, or terminate the PD/SD/DD/CD/CA phases of the project as deemed in the best interests of the Owner.

Services of the Architect under this agreement will continue during the Warranty Period, unless earlier terminated pursuant to Article XI.

By law, contracts for professional or other services must be approved by the Attorney General and the Procurement Services Division of the Department of Administration and Information, Wyo. Stat. § 9-1-403(b)(v), and all contracts for services costing over one

thousand five hundred dollars (\$1,500.00) must be approved by the Governor or his designee as well, Wyo. Stat. § 9-2-1016(b)(iv).

ARTICLE V **REPRESENTATIONS AND RESPONSIBILITIES OF OWNER**

- A.** The Owner shall provide required information and documents, data, and other written instruments in a timely manner and of sufficient technicality regarding requirements for this Contract, including the “not to exceed” total Project Budget in such detail as necessary to complete said Project. In addition, Owner shall be responsible for review and verification of said information and documents regarding authenticity and compliance.
- B.** The Owner shall periodically review the budget in cooperation with the Architect, and specifically that portion allocated for Architect’s design services and fees.
- C.** The Owner shall designate a contract/project representative (Article XVIII) who shall be authorized to act on the Owner’s behalf with respect to this Contract and subsequent project. The Owner or Owner’s designated project representative shall render decisions via written instrument in a timely manner pertaining to documents submitted by the Architect in accordance with the requirements of the Project Schedule and in the progress of the Architect’s services. The Owner shall notify the Architect of Owner-required administrative procedures and name the Owner representative authorized to act in its behalf. The Owner shall review documents submitted by the Architect and shall render decisions pertaining thereto to avoid unreasonable delay in the progress of the Project per Article V, Paragraph H.
- D.** The Owner shall furnish the services of consultants, other professionals, skilled trades or other disciplines when such services are requested by the Architect and are reasonably required by this Contract, provided such services are not contractually required to be provided by the Architect.
- E.** The Owner shall furnish surveys, legal limitations, utility locations, soils reports, structural, mechanical, chemical, laboratory tests, inspections, reports and other project site documents, data, or written instruments necessary to initiate the Contract project. Furnish an accurate survey of the Project site, including grades and lines of streets, pavements, and adjoining property; rights-of-way, restrictions, easements, boundaries, and topography of the building site; locations, dimensions and floor elevations of existing buildings where necessary, other improvements and trees; and what information it has as to the available service and utility lines, both public and private.

- F.** The Owner reserves the right to perform work related to the installation of loose Furniture, Fixtures and Equipment, Owner-provided equipment and materials with the Owner's own personnel, subcontractors, and equipment.
- G.** The Owner shall have the right to negotiate and award contracts in connection with the Services and/or project that are not part of the Architect's contractual responsibilities. Such contracts shall be the responsibility of the Owner.
- H.** The Owner is responsible for timely review, redlining and approval of the Facility Program Plan, Schematic Design, Design Development, and Construction Documents, Submittals, Plans, Specifications, and Drawings per these project phases in a not to exceed period of fourteen (14) business days, unless otherwise negotiated.
- I.** The Owner shall notify the Architect when it becomes aware of any deficiencies of defects in materials or workmanship which become apparent during Contractor's warranty period. The Owner shall notify the Architect, in writing, of the acceptance of the Project by the Owner.
- J.** The Owner shall be responsible for assisting and cooperating with Architect to maintain compliance regarding the Project Scope, Plans, Specifications and Budget as defined in Contract Attachment A or other incorporated documents.
- K.** The Owner shall be responsible for assisting and cooperating with Architect to maintain compliance with the Architect's responsibilities as defined in Article VI, and ensure that project management protocol is adhered to as defined in Article V, Paragraph C and Article VI, Paragraph P.
- L.** Nothing in this Contract nor any act or failure to act on the part of the Owner shall be construed as a waiver of a claim by the Owner for any defects or deficiencies in the Drawings and Specifications or of the Project administration required of the Architect.

ARTICLE VI REPRESENTATIONS AND RESPONSIBILITIES OF ARCHITECT

- A.** Architect shall provide architectural design and engineering professional services for the Owner as specifically described in Contract and proposed Scope of Services (Attachment A). Architect hereby agrees to commit its organization, personnel, qualifications, expertise, experience, capabilities, education, administration, and talents to the duties described herein and to perform its professional services to the standard of care for all professional services performed or furnished by the Architect and its retained Consultants under this Agreement will be the skill and care used by members of their respective professional disciplines practicing under similar circumstances..

- B.** The Architect, as an independent Consultant, shall perform the professional services including pre-design, design, and post design according to a schedule mutually agreed upon by both Parties, and in a professional manner by qualified supervision and skilled professionals. Services may include, Facility Program Plan (PD), Design Development (DD) Schematic Design (SD), Construction Documents (CD) and Contract Administration (CA). Architect shall contract for or employ at Architect's expense licensed professional consultants and/or subconsultants to the extent it deems necessary for design of the Project and development of plans and specifications, including mechanical, electrical, structural, and civil engineering; audio/visual, code/life safety, landscaping, and cost estimating necessary for the development of the Project. Architect shall submit for approval by the Owner, all consultants for each professional discipline required of the Project. Nothing in the foregoing procedure shall create any contractual relation between the Owner and any consultants employed by Architect under the terms of this Agreement.
- C.** By written agreement, the Architect shall provide, compensate, and be responsible for all contracted professional design consultants and/or subconsultants listed in Article XIX who are required to complete the Project related professional services. The Architect shall require each subconsultant, to the extent of the services to be performed by subconsultant, to be bound to the Architect by the terms of this Contract and to assume all obligations and responsibilities which the Architect, by this Contract, assumes. The Architect agrees that it is fully responsible to the Owner for negligence, negligent acts and omissions of its subconsultants and their agents, and or persons either directly or indirectly employed by them, as it is for the negligence, negligent acts or omissions of persons directly employed by it.
- D.** Architect has examined and carefully studied the Contract and the other related data and/or documents identified and referenced in the Contract Attachments.
- E.** Architect has visited the site and become familiar with and is satisfied as to the general, local, and site conditions and its surroundings that may impact their performance of the professional services. Architect shall provide consultation and advice to the Owner as to the necessity and manner of providing or obtaining services related to the site, such as: property boundary, right-of-way, topographic, hydrographic, and utility surveys, and physical properties of the subsoil as well as any other reasonably required services for concealed or other existing conditions not apparent from a visual observation of the surface area.
- F.** Architect understands and is familiar with and shall comply with all applicable federal, state, and local laws and regulations that may affect cost, progress, and performance of the professional services of this Contract, and will abide by all

regulations imposed by funding sources or governmental agencies related to the provision of the Architect's services under this contract.

- G.** Architect has obtained and reviewed by the appropriate consulting engineer (or assumes responsibility for having done so) all Owner supplied reports, documents, data, and other relevant information related to the performance of the Contract professional services which may affect performance of the Contract professional services. Notwithstanding the foregoing, Architect has the right to rely upon the completeness and accuracy of Owner supplied information. Architect shall review site surveys, subsoil data, chemical and mechanical data, logs of borings and other data, test results and documents furnished to the Architect and advise the Owner whether such data is sufficient for purposes of design, or whether additional data is necessary before the Architect can proceed with design, and define with specificity what additional tests are required to develop any additional information needed by the Architect.
- H.** Architect shall notify Owner in writing of other required examinations, investigations, tests, studies, or data are necessary for the performance of the professional services at the Contract Price, within the Contract times, and in accordance with the other terms and conditions of the Contract Documents.
- I.** Architect is aware of the specific nature of the professional services requested by the Owner at the site that relates to the professional services as indicated in the Contract Documents.
- J.** Architect will provide to the subsequent Project Construction Contractor for its use any pertinent information including information and observations obtained from site visits, reports, drawings, and specifications to be identified in the Contract Documents and other additional information, documents, and data directly related to the specific project for which Architect has been retained. The expense of reproduction and distribution of twenty-five (25) sets of Drawings and Specifications shall be included in this Contract.
- K.** Architect will provide to Owner's Contract Representative written notice of any conflicts, errors, ambiguities, or discrepancies discovered in this Contract Document before execution.
- L.** The Architect agrees that the Contract is generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the required professional services.
- M.** The Architect will require that its employees, contracted consultants, and/or other professionals entering the Owner's premises shall adhere to all Owner personnel policies, procedures, safety regulations, and to any applicable federal, State of Wyoming, County, and City codes, rules, and regulations, while on site.

- N.** Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear, in Owner's sole discretion, to compromise the Architect's professional judgment with respect to this Contract.
- O.** The Architect shall consult, to the extent reasonably required by the Owner, with authorized employees, agents, and/or representatives of the Owner relative to the design and construction of the Project, and shall cooperate with other professionals employed by the Owner for the design and/or administration of other services related to the Project.
- P.** The Architect shall designate a principal or member of Architect's staff satisfactory to the Owner as the Contract/Project Manager who shall, so long as their performance continues to be acceptable to the Owner, remain in charge of the architectural services for the Project from programming phase through the Project warranty period. The Architect's designated project representative shall render decisions via written instrument in a timely manner pertaining to documents submitted by the Architect or Owner in order to avoid unreasonable delay in the progress of the Project's work and/or services.
- Q.** The Architect shall assist the Owner in fulfilling requirements and contingencies set forth or required by appropriate authorities and agencies whose interest bears on the design, cost, and construction of the Project. Architect shall provide copies of all documents the Owner or other appropriate authorities and agencies require for review and approval. Expenses incurred for document reproduction will be borne by the Architect.
- R.** Architect shall promptly notify the Owner of the discovery of any unanticipated hazardous material. Hazardous materials are those materials identified by the Environmental Protection Agency or the National Institute for Occupational Health and Safety as materials hazardous to the health and safety of persons or property. Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials.
- S.** Architect's professional services shall be consistent with sound architectural practices and shall incorporate the requirements of those federal, state and local laws, regulations, codes and standards that are applicable at the time the Architect renders services. In the event of a change in laws, regulations, or other legal requirements, Architect shall inform the Owner of the change and its impact on Services already performed or to be performed, fees and costs involved, and scheduling. If either the Owner or the Architect believes the change requires a renegotiation of this Contract, the parties will meet to renegotiate this agreement promptly and in good faith. If a renegotiated agreement cannot be agreed to, either party may terminate this Agreement in accordance with Article XI.

- T.** Architect agrees to comply with the requirements of Wyo. Stat. §16-6-203 for any "Laborers" (as defined in Wyo. Stat. §16-6-202 (a)(i)) employed to perform work under this Contract. Architect understands that failure to comply with the Required Resident Labor Statute is punishable pursuant to Wyo. Stat. §16-6-206. Unless otherwise provided in the Contract, the Architect shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent. The Architect shall comply with all resident and other preference requirements, including but not limited to those applicable to labor, materials and subcontractors.

ARTICLE VII PRE-DESIGN, SD'S, DD'S, CD'S and BIDDING

- A.** The Architect shall be responsible for and manage the architectural design team professionals and consultants, and provide project services by programming and design phases as detailed in Contract Attachment A and in accordance with Article VII, Paragraph D. Architect shall be responsible for providing project research, design and documentation, coordination of services provided by the Architect and Architect's consultants, coordination of services provided by the Owner and Owner's consultants, attend and coordinate project meetings as needed, issue acceptable and traditional project written reports, issue and update project schedules, and other services as detailed per this Contract.
- B.** The Architect shall prepare a written estimated construction cost for the Project and update and refine said budgets throughout the design of the project. In preparing estimates for the cost of the project, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the construction project following Owner approval; to make reasonable adjustments in the project scope to first define, and then meet but not to exceed the Owner's Project Budget; all in conjunction with Owner's review and approval.
- C.** The Architect shall provide review, evaluation and recommendations of all information furnished by the Owner, and initiate and administer necessary planning with regard to such information.
- D.** The Architect shall provide to the Owner the following phase submittals in accordance with Contract Documents to include: facility program plan (PD); schematic design (SD); design development (DD); construction documents (CD); materials, and project manual/specifications in written format; and bidding

specifications in written format for all services and materials, all subject to Owner review and approval.

- (i) All submittals shall be based upon a mutually agreed upon program, schedules, and Project Budget of both the Owner and Architect.
- (ii) All submittals shall illustrate and describe the concept and/or design of the project, establishing the scope, relationships, forms, size, and appearance of the project by means of plans, models, illustrations, drawings, specifications, sections, elevations, typical construction details, and other required information or instruments as required.

E. The Architect shall prepare (at a minimum) formal written Project Specification Manuals and formal 100% Drawing Package documents at the CD phase for purposes of competitive bids necessary to employ a Construction Contractor, and to be managed and received by this contractor for milestone construction phases as follows: a) pre-construction; b) project construction; and c) post construction warranty period. The Owner shall assist Architect in establishing a list of potential bidders, contractors, suppliers, and shall assist same in bid evaluation. All bidding documents, requirements, specifications and processes shall be in accordance with subsequent construction project contract language.

- (i) All bidding documents shall consist of reasonably accurate documents with detailed specifications, drawings, or other written instruments needed to obtain competitive bids. Project Specifications shall be bound and separated by divider tabs for Divisions 1 through 49 on 8.5” x 11” paper.
- (ii) The Architect shall review all requests for substitutions, modifications, alterations, additions, and/or deletions, if permitted by the bid documents, and shall assist Owner in review and approval of same.
- (iii) The Architect shall participate at the Owner’s direction, in all pre-bid and pre-construction conferences and/or meetings.

F. The Architect shall prepare realistic preliminary estimates of the Construction Cost at the Schematic Design and Design Development phases and prepare a detailed estimate of the Construction Documents in accordance with “Construction Specification Institute” Divisions 1 through 49 which represent the Architect’s best and most accurate judgment as a design professional familiar with the construction industry, and which is in compliance with Owner Project Budget. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment, over the Contractor’s methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner’s Project Budget or from any estimate of Construction Cost or evaluation prepared or agreed to by the Architect.

G. The Pre-Design services (programming) shall consist of the following elements, designed to establish and document the Project program, scope of project, financial and time requirements:

- (i) Participate in workshops, meetings, clinics, and other research venues with the intent of establishing and documenting program/project requirements.
- (ii) Provide consultation and applicable written documentation that will define and summarize the aspects of all pre-design services into a formal document.
- (iii) Research and document: design objectives, project criteria, initial development of net assignable square feet and gross square feet, space relations, space functions, space flexibility/adaptability, space requirements, special needs, preliminary budget, operational needs/issues, security, traffic and flow patterns, space schematics, flow diagrams, codes issues and other data to design a facility that is functional, adaptable, flexible, and efficient.
- (iv) Provide existing facility surveys, other research, other reviews and other supplemental information in conjunction with the facility programming in order to provide a thorough analysis and recommendation for the proposed new facility program.
- (v) Provide site development services related to: site analysis, site development, site utilization, site utilities, and relevant off-site studies which may impact programming.
- (vi) Provide or assist with: environmental studies and reports (if necessary), geotechnical engineering services upon request, and site surveying upon request.

H. The Schematic Design (SD) services shall consist of the following elements designed to establish the general scope of the project, begin conceptual and schematic design and define the scale and relationships of the project components:

- (i) Prepare for Owner approval: Schematic Design studies and documents incorporating the program requirements and including structural systems, site utilization plans, initial interior design, floor plans, elevation sections, perspective sketches, identification and selection of architectural and building systems, components and materials, approximate dimensions/areas, and other drawings necessary to describe the Project. Schematic design studies shall be revised until an acceptable design concept has been approved by the Owner.
- (ii) Prepare and submit for Owner approval: (1) refined narrative descriptions indicating architectural, civil, structural, mechanical and electrical systems, landscape systems, and proposed material types and components; (2) mounted presentation drawings, and other graphic material, necessary to convey the architectural design; and (3) a tabulation of both gross and

assignable floor areas and a comparison to the initial program area requirements.

- (iii) Prepare and submit for Owner approval a written estimated Project Construction Cost to become the Owner's approved Project Budget.

I. The Design Development (DD) services shall consist of the following elements, designed for continued development and expansion of the size, forms, relationships, appearance and character of the project by including architectural, structural, mechanical/electrical, civil, landscape systems; material types and components:

- (i) Prepare from the approved Schematic Design Phase Documents; eight (8) sets of Design Documents consisting of: (1) civil and site plans; architectural, structural, mechanical and electrical floor plans, components, and systems; elevations; cross-sections and other required drawings, and (2) outline specifications describing the size, character, and quality of the entire Project and its essentials as to types and locations of materials; specifications and materials lists for interior development, special features, finishes and colors; type, sizes and capacities of structural, mechanical, and electrical systems; and (3) a tabulation of both gross and assignable floor areas and a comparison to the initial program area requirements.
- (ii) Prepare and submit for Owner approval design criteria for mechanical and electrical systems/layouts, further development of civil and structural systems, including but not limited to, temperature, humidity, lighting levels and live floor load designs stated for general and special occupancy areas, fire protection systems, utility chases, acoustical controls, communication systems, and plumbing systems.
- (iii) Prepare and submit for Owner approval a written estimated Project construction cost which does not exceed Owner approved Project Budget. It is the Architect's responsibility to maintain the approved Schematic Design development budget throughout the Design Development phase.

J. The Construction Document (CD) services shall consist of preparation of the Project Specification Manuals and Drawing packages, designed to establish and include a full scope of all project requirements set forth in specific detail:

- (i) Prepare from approved Design Development Phase Documents, eight (8) complete sets of construction documents consisting of plans and specifications and other standard documents furnished by the Owner, including, but not limited to, the Owner supplied Contract Document between the Owner and subsequent Project Contractor, the General Conditions, any Supplemental General Conditions required, the form of Performance Bond and Payment Bond, the form of Labor and Materials Payment Bond, and the Invitation to Bidders, all of which set forth in detail the requirements for construction of the entire Project.
- (ii) Submit for Owner review Construction Documents when 50% and 100%

complete which include at a minimum: architectural, structural, mechanical, electrical, civil, landscape, interior, specialties, furnishings, fixtures, equipment, and material specifications. The 100% Construction Documents shall consist of preparation of final architectural construction requirements, final structural/civil engineering calculations and system requirements, final mechanical engineering calculations and system requirements, final electrical engineering calculations and system requirements, final landscape design and system requirements, final IT/AV/communication engineering calculations and system requirements, and final interior design and furniture layout.

- (iii) Prepare all Construction Documents in full compliance with building codes, ordinances, and all regulatory and governmental authorities and laws that are applicable at the time Architect renders services.
- (iv) Prepare bid forms and other documents in such detail as required to obtain competitive bidding for the entire Project or any division of the work incorporating Owner standard documents and/or documents of appropriate authorities and lending agencies as furnished by Owner. Develop and prepare Specifications and Drawings describing materials, systems, equipment, workmanship, quality and performance criteria required for the construction of the Project.
- (v) Prepare and submit for Owner approval a written “not to exceed” Project construction cost when the construction documents are 100% complete, and which does not exceed Owner’s approved Project Budget. The budget shall be itemized by Division, including estimates for alternates, in conformance with the form of proposal intended for bidding purposes.
- (vi) Provide cost estimating, materials research and specifications, working drawings, and technical specifications in compliance with Owner’s Project objectives and Project budget as previously established during the SD and DD phases.
- (vii) Provide copies of the Construction Documents for bidding and construction purposes in the quantity required by the Owner and subsequent Construction Contractor; any additional copies of the Construction Documents above the quantity stated in Article VI, Paragraph J, will be borne by Owner. Owner reserves the right to select the type and quantity of reproduction. Prepare special Specifications and Drawing packages for alternate bids when requested and required by the Owner as determined no later than the 50% CD submittal/review.
- (viii) Prepare and furnish Project Specification Manuals, Drawing packages and other related Construction Documents that clearly identify and define all assumptions, clarifications, exceptions and exclusions, and that are in as much as possible free of errors, conflicts and omissions.
- (ix) Upon written approval by the Owner of a final set of construction drawings, and a final draft of specifications, provide to the Owner three (3) full size complete sets of plans/drawings, eight (8) complete sets of typed specifications, and six (6) half-size sets of plans/drawings (12” x 18”

- approximate size).
- (x) Prepare and furnish recommended scopes of work, standards, procedures and frequency of required independent inspections.

K. The Bidding services shall consist of the following elements:

- (i) Preparation of bidding documents, review of proposed Owner's construction Contract document, General Conditions, Supplementary Conditions (if any), Plans, Specifications and Drawings, assist with evaluation of bidding requirements and received bids.
- (ii) Preparing addenda and clarification documents via written instrument, interpret construction documents via written instrument, and assist Owner, as required.
- (iii) Assisting Owner in pre-bid conferences for prospective Construction Contractors, and assist Owner in answering questions related to pre-bid conferences.
- (iv) Assisting Owner, following the Owner's approval of the Construction Documents and final Construction Costs in obtaining bids for the Construction Contractor, and with review, evaluation, and recommendations for awarding construction contract.
- (v) Assisting Owner in analysis and recommendations of alternates and substitutions.
- (vi) If the lowest responsible bid exceeds the Owner's Project Budget, the Owner may, at its discretion: (1) give written approval of an increase in the Project budget, or (2) authorize re-bidding of the Construction Documents within a reasonable time, or (3) require Architect to revise the scope of the Project or its quality, or both, so as to reduce the Project construction cost, in which case Architect shall, at its expense, if so directed by the Owner, modify the Construction Documents, as directed, in order to reduce the Project construction cost to be within the latest Project budget, or (4) abandon the Project.

ARTICLE VIII CONTRACT ADMINISTRATION SERVICES

- A.** The Architect shall provide contract administration services for the construction project and in conjunction with the Contract between the Owner and the Contractor for the project as set forth below and in accordance with applicable Contract Attachments and Exhibits and subsequent Construction Contractor contract.

- B.** The Architect's responsibility to provide contract administration services under this Contract shall be at the discretion of the Owner and shall commence with the award of the project contract for construction and terminate at the conclusion of the applicable "warranty" period, one (1) year following "substantial completion".

Following completion of the CD phase of the project, Owner reserves the right to proceed with, postpone, or terminate the bidding and construction phases of the project in its discretion as it deems to be in the best interests of the Owner.

- C.** The Architect shall be a representative of and shall advise and consult with the Owner during the construction contract administration phase services. The Architect shall have authority to act on behalf of the Owner as a representative only to the extent provided by this Contract unless otherwise modified by written amendment.
- D.** Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from this certain Contract and the Construction Contract Documents and shall be in writing or in the form of drawings and/or specifications. When making such interpretations and initial decisions, the Architect shall endeavor to secure faithful performance by both Owner and Construction Contractor.
- E.** The Architect shall render initial decisions, interpretations and/or clarifications of Drawings, Specifications, and other Construction Documents via written instruments such as “Submittal packages”, “Request for Information” (RFI), “Architect’s Supplemental Information” (ASI) or similar professionally recognized documents.
- F.** The Architect’s responsibility will include checking “submittals” (shop drawings) for conformance with the Contract Documents. All materials requested or processes used in the Project shall be of the kinds and brands specified in the Contract Documents or, where not so specified, shall be as approved by the Architect during the bidding period only. Where a certain kind, grade or brand of material, article or process shall be used in substitution for the material, article or process of the kind, grade or brand specified unless such substitution and the terms and conditions thereof shall have first been approved by the Architect, and then the Owner. Any request by the Contractor for any substitution shall specify other parts of the Project, as well as, Project under any separate contract, if any, which would be affected by such substitution. When possible, all materials shall have the marks of the manufacturer and the weights per standard unit distinctly shown upon them. Samples of all materials to be used and of the finish to be applied shall be delivered by the Contractor to the Architect as called for by the Contract Documents or as directed in writing by the Architect, in sufficient size (large scale samples) to properly judge and/or test their conformance to the requirements of the Contract Documents. These samples shall be submitted in triplicate unless otherwise specified, and the written approval of the Architect thereof shall be obtained. At the time of submission of any samples, the contractor shall inform the Architect in writing of any deviation in the samples submitted from the requirements of the contract documents.

- G.** The Architect and Owner shall review submittals, shop drawings, product data, and samples required by the Contract Documents to be submitted and reviewed for approval per Contract Document compliance by the Contractor. The Architect's review shall be solely for conformance with the Construction Documents of the Project and not for revision or modification of the Construction Documents as reasonably inferable from the information given in the Contract Documents. Such review shall not be conducted for the purpose of determining the accuracy or completeness of dimensions and quantities, nor shall approvals or acceptances constitute approval or acceptance of safety precautions or construction means, methods, or techniques, all of which remain the responsibility of the Construction Contractor. The Architect's review shall be performed with such reasonable promptness as to cause no delay in the Project or in the work and/or services of separate contracts, while allowing sufficient time in the Architect's professional judgment to permit adequate review but not to exceed fourteen (14) business days upon receipt of each submittal. The Owner agrees that the Contractor is responsible at all times for the conformity of the Project installed in compliance with the intent of the Contract Documents. Additionally, the Owner will include this paragraph and the provision in the Contractor's contract requiring that all shop drawing submittals for all related work by the Construction Contractor or their subcontractors shall be in conformance with the Architect's Contract Documents "For Construction" including Quality Control and Compliance with accepted Industry Standards.
- H.** The Architect, as a representative of the Owner, shall make regular site visits at intervals consistent with various stages of the each Project and in compliance with Attachment A, but not less than twice per month by a qualified individual, employed by the Architect and approved by the Owner and not less than twice per month by the Architect or Engineers, to become familiar with the progress of the work; and determine if the character, scope and detail of construction, the quantity and quality of materials and equipment and the standard of workmanship conforms to the intent of the Architect as expressed in the Contract Documents and its written directives. Each site visit shall be documented by field report. The Architect shall make additional visits to the Project when so requested by the Owner. The Architect shall attend Project meetings and review and respond to meeting minutes of such Project meetings as distributed by the Contractor to the Architect and Owner. The Architect will not be responsible for or have control or charge over the acts or omissions of the Contractor, Subcontractors, or any of its agents or employees, or any other persons performing any of the work.
- I.** Architect shall notify the Owner promptly, via written instrument, of deficiencies known or observed in construction of the Project, including those which have developed following the acceptance of the Work and prior to expiration of the warranty period of the Project, and advise as to satisfactory methods for correction of such deficiencies. If the Architect sees or is informed of defective work, it must direct its efforts toward obtaining compliance by the Contractor.

- J.** The Architect shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the construction project.
- K.** The Architect shall review and provide recommendation on the amounts due the Contractor and shall review the Certificates of Payment in such amounts, and determine amounts of progress payments and final payment due to the Construction Contractor. The Architect shall determine these amounts based on observations at the site and on evaluation of the Contractor's Applications for Payment, and shall review the Certificates for Payment in such amounts as provided in the Contract Documents and which are in accord with its observations and evaluations. The recommendation for the Owner to issue a Certificate for Payment shall constitute a representation by the Architect to the Owner, based on the Architect's observations at the site and on its evaluation of the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, in the Architect's professional opinion, the quality of the work is in accordance with the Contract Documents; and that the Contractor is entitled to payment in the amount recommended. However, the review and recommendation for the Owner to issue a Certificate for Payment shall not be a representation that the Architect has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract sum.
- L.** The Architect shall prepare all Modifications to the Contract for construction. The Owner shall have sole authority to approve all Modifications, provided, however, that the Architect is authorized to order minor changes in the Work which do not involve an adjustment to the Contract Sum or any extension of Time within which the Contract is to be completed, which changes shall be consistent with the Contract Documents.
- M.** Architect will review tests and reports of independent field inspection and/or materials testing service provider(s), evaluate and monitor compliance issues.
- N.** When necessary, Architect will properly interpret the Contract Documents and furnish to the Owner one copy in reproducible form of all clarification drawings and other documentation required. Such interpretations shall be consistent with the intent of, and must be reasonably inferable from, the Contract Documents. Architect will also prepare, for approval by the Owner, change orders to the construction contract and analyze price quotations received from the Construction Contractor for proposed change orders and advise the Owner in writing as to the acceptability of the same.
- O.** Without additional cost to the Owner, Architect will make all revisions and changes to the Contract Documents as directed by the Owner to correct errors, conflicts or omissions directly attributable to or created by the Architect and/or its contracted

professionals and subconsultants.

- P.** Architect will author punch lists and separate warranty period work lists; participate in punch walks and inspect punch list and warranty period list work.
- Q.** Architect will review and deliver to the Owner, written guarantees, operating and maintenance instruction books, diagrams, as-built drawings and charts required of the Construction Contractor. Architect will assist Owner in commissioning, start-up, initial operation and maintenance of facilities and equipment, and resolution of issues associated with such processes.
- R.** Architect will notify the Owner in writing when, in the Architect's opinion, the Project is Substantially Complete and ready for beneficial occupancy by the Owner. Architect will participate in the final inspection of the Project and advise the Owner, in writing, as to the acceptability of Work performed by the Construction Contractor.
- S.** Architect will notify the Owner in writing when, in the Architect's opinion, the Project is ready for Final Completion.
- T.** Promptly, after recording of Notice of Completion by the Owner, Architect will furnish the Owner, at no expense to the Owner, with an Owner approved form of final Plans in electronic format compatible with a recent version of AutoCAD and in PDF format and copies of Specifications which are reproducible and also in PDF format, including such revisions, alterations, additions, or modifications that may have been made in the course of construction. Revisions or changes shall be properly annotated on the reproducible Plans and cross-referenced. Each sheet of the Plans shall be prominently noted, "record drawings."
- U.** Upon final acceptance of the Project by the Owner, the Architect shall complete the following warranty period services:

 - (i) Provide assistance in the form of professional advice as requested by the Owner, in connection with the Contractor's refining and adjusting of any equipment or system until the end of the warranty period.
 - (ii) Make visits to the Project, as requested by the Owner, to observe apparent defects and deficiencies in the completed construction. Consult with the Owner and advise as to satisfactory methods for corrections of such deficiencies or defective work.
 - (iii) Render prompt decision on claims, disputes and other matters in question between Construction Contractor and Owner relating to operations of and defects in the completed work.
 - (iv) Assist the Owner in an eleven (11) month review of the completed work to determine if any operational deficiencies, material defects, or construction deficiencies exist that require correction. Advise as to acceptance by the

Owner and for corrective action by the Construction Contractor.

ARTICLE IX COMPENSATION

- A.** Owner agrees to pay the Architect for the professional services described herein in full consideration for the services to be performed by Architect hereunder, including the cost of contracted consultants and subconsultants for the services of same. Costs typically known as reimbursable expenses shall be included in the Contract Amount. Owner agrees to make payment and Architect agrees to accept compensation in accordance with the fees as agreed to in their respective Proposal and Scope of Services, attached hereto as Attachment A. Architect's professional fees shall be itemized and categorized by the type of service and/or fee. The fees shall be in lump sums as outlined in Architect's Basic Level I and Level II Study services and Enhanced Level I and II Study services in accordance with Contract Attachment A. No payment shall be made for services performed before the date upon which the last required signature is affixed to this Contract.
- B.** Architect shall not exceed the Contract compensation amount without prior written approval as detailed in Article XII of this Contract. For the Architect's services, compensation in accordance with Contract Attachment A shall not exceed the amount of one million forty two thousand and 00/100 dollars (\$1,042,000.00) for services rendered in accordance with this Contract.
- C.** During the term of this Contract, Architect shall furnish to the Owner a detailed monthly invoice (unless otherwise negotiated) for professional services performed in accordance with Contract Attachment A. All invoices shall detail the professional services performed, and include the following specific categories:
- (i) Services rendered by task: Facility Program Plan (PD), Schematic Design (SD), Design Development (DD), Construction Documents (CD), and Construction Administration/Warranty Period (CA); and,
 - (ii) Project Component Phase by scope, if applicable; and,
 - (iii) Contracted professional services rendered by each professional discipline; and,
 - (iv) Reimbursable expenses supported by written documentation, if applicable.
- D.** Reimbursable expenses included in the contract amount shall include (unless otherwise negotiated) the following:
- (i) Expense of reproduction, postage and handling of Drawings and Specifications required by this Contract; and,
 - (ii) Incidental expenses and/or Project Administration expenses directly related to the project and required in performance of this Contract; and,

- (iii) Expense of transportation in connection with the Project, expenses in connection with out-of-town travel, long-distance communication related to the project; and,
 - (iv) Expense of renderings, models, and mock-ups requested by the Owner.
- E.** Reimbursable expenses not included in the contract amount shall include (unless otherwise negotiated) the following:
 - (i) Expense of fees paid for securing approval of authorities having jurisdiction over the Project; and
 - (ii) Other expenses as approved and agreed upon by both Parties.
- F.** Consultant may submit monthly invoices for payment for services completed during that month. No advance payment for services may be requested. Payments shall be made pursuant to Wyo. Stat. § 16-6-602.
- G.** Upon final completion and acceptance of professional services per Contract requirements and documents, the Owner shall pay the Architect the remainder of the Contract Price as negotiated.
- H.** For applicable items, Architect shall provide Owner with an “estimated” summary of all Project reimbursable expenses, as set out above, by specific categories.
- I.** If the Project is suspended or abandoned in whole or in part for more than ninety (90) days, the Architect shall be compensated for services performed prior to the receipt of notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than 90 days, the Architect's compensation shall be equitably adjusted by negotiation. If the Architect's compensation cannot be mutually agreed upon, the Owner, at its discretion, may terminate this Contract and employ another Architect of its choosing to complete the Project.
- J.** If the Project has not been suspended or abandoned by the Owner and the Architect is delayed in the progress of the services required by this Contract for causes beyond the control of the Architect, the Architect's time or compensation shall be equitably adjusted by mutual agreement of the parties.

ARTICLE X GENERAL PROVISIONS

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the Parties to this Contract shall be incorporated by written instrument, executed and signed by all Parties to this Contract.

- B. Applicable Law/Venue.** The construction, interpretation and enforcement of this Contract shall be governed by the Laws of the State of Wyoming and the Owner's Policy Governance. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the Parties, and the Venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment/Contract Not Used as Collateral.** Architect shall not assign or otherwise transfer any of the rights or delegate any of the duties set forth in this Contract without the prior written consent of the Owner. The Architect shall not use this Contract, or any portion thereof, for collateral for any financial obligation, without the prior written permission of the Owner. All covenants contained in this Contract shall not be extended to nor be binding upon the successors and assigns of Architect and Owner. Architect shall not assign this Contract or any moneys to become due hereunder without prior written consent of the Owner; provided, however, that no conveyance or transfer of any interest of Architect shall be binding upon the Owner until Owner has been furnished with written notice and true copy of such conveyance and transfer. Owner reserves the right to refuse consent for such assignment or transfer for any reason whatsoever.
- D. Audit/Access to Records.** Owner and its designated representatives shall have access to any books, documents, papers, and records of the Architect which are pertinent to this Contract. Architect shall maintain such permanent files, records, books, documents, reports, drawings, papers, images, invoices and other data rendered for the particular professional service(s) done pursuant to this Contract. Owner shall have the right to inspect and audit such files, records, books, documents, reports, drawings, papers, images, invoices or other supporting documents of Architect and to make copies of such documents as may be needed for the performance of an audit, for the purpose of determining the reasonableness and accuracy of such costs and expenditures charged to the Owner or for the purpose of answering any inquiries or requirements made by a regulatory authority to the Owner. Architect shall require all subconsultants or other payees to comply with the provisions of this item by insertion of the requirements hereof in a written agreement between Architect and Payee. Such records shall be available to the Owner's agent or its authorized representative from time to time and at reasonable times and places throughout the term of this Contract and for a period of three (3) years after final payment or longer if required by law.
- E. Award of Related Contracts.** Owner may undertake or award supplemental or successor contracts for services and/or work related to this Contract.
- F. Compliance With Law.** The Architect shall keep informed of and its services shall generally comply with all applicable federal, state and local laws and regulations in the performance of this Contract, and with all applicable professional standards, codes, and regulations.

G. Confidentiality of Information. All design, drawings, specifications, technical data, and other instruments produced by the Architect in the performance of this Contract shall be the sole property of the Owner and the Owner is vested with all rights therein of whatever kind and however created, whether created by common law, statutory law, or by equity. The Architect agrees that the Owner shall have access at all reasonable times to inspect and make copies of all notes, designs, drawings, specifications, and other technical data pertaining to the services to be performed under this Contract. Owner's use of the instruments produced by the Architect for this project on a different project, or to complete this Project in the event of the Architect's termination, shall be undertaken at Owner's sole risk unless the Architect otherwise agrees in writing.

Submission or distribution of documents to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's common law copyrights or other reserved rights.

Electronic Media: Due to potential for modification, unintentionally or otherwise, of information provided by the Architect to the Owner on electronic media, including that provided on portable drive, computer diskette or tape, the Owner agrees to hold responsibility for Owner's use of documents or other information provided in this manner. The Owner further agrees that all copies of the Drawings, Specifications or other documents made by the Owner from electronic media shall bear the statutory copyright notice shown on the Drawings and Specifications furnished by the Architect. The Drawings, Specifications, and other documents provided on electronic media shall not be used by the Owner on other projects, for additions to the Project hereunder, or for completion of the Project by others, unless agreed to in advance in writing by the Architect.

H. Conflicts of Interest. Architect shall not engage in providing consultation or representation of clients, agencies, or firms which may constitute a conflict of interest which results in a disadvantage to the Owner or a disclosure which would adversely affect the interests of the Owner. Architect shall notify the Owner of any potential or actual conflicts of interest during the course of the Architect's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of the Contract will be subject to a mutual settlement of accounts. In the event the Contract is terminated under this provision, the Architect shall take steps to insure that all files, evidence, evaluation and data are provided to the Owner or its designee. This does not prohibit or affect the Architect's ability to engage in consultations, evaluations, or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

A conflict of interest warranting termination of this Contract includes, but is not necessarily limited to, representing a client in an adversarial proceedings against

the State of Wyoming, its agencies, boards or commissions, or the University of Wyoming or initiating suits in equity, including injunctions, declaratory judgments, writs of prohibition, or quo warranto.

- I. Entirety of Contract.** This Contract consisting of forty-three (43) pages, together with all Attachment A, consisting of twenty six (26) pages, constitutes the entire agreement between the Parties and supersedes all previous negotiations, representations, and agreements, whether written or oral between the Parties with respect to the subject matter hereof, whether expressed or implied, and shall bind the Parties unless the same be in writing and signed by both Parties. The Parties hereto further understand and agree that the other Party and its agents have made no representations or promises with respect to this Contract, except as in this Contract expressly set forth.
- J. Ethics.** Architect shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, et seq.), and any and all ethical standards governing Architect's profession.
- K. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Owner, and shall be effective only after it is transmitted by written instrument and executed by the Parties to the Contract. Any agreement to extend this Contract shall include, but not necessarily be limited to: an unambiguous identification of the Contract being extended; the term of the extension; the amount of any payment to be made during the extension, or a statement that no payment will be made during the extension; a statement that all terms and conditions of the original Contract shall, unless explicitly delineated in the exception, remain as they were in the original Contract; and, if the duties of either Party will be different during the extension than they were under the original Contract, a detailed description of those duties.
- L. Force Majeure.** Neither Party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming Party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the Party failing to perform immediately notifies the other Party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays. This provision shall not be effective unless the failure to perform is beyond the control and without the fault or negligence of the nonperforming Party.
- M. Indemnifications.**

- (i) To the fullest extent permitted by law, Architect shall indemnify and hold harmless the State of Wyoming and Owner and their officials, commissions, agents, administration, directors, employees, successors and assigns, from and against any and all claims, demands, damages, losses, suites, judgments, liabilities, costs and expenses, including reasonable attorneys' fees, arising out of any bodily injuries, personal injuries, death, property damage, or claims for payment (collectively "Claims") but only to the extent such Claims are found, on a comparative basis of fault, to be caused by any negligent act, error or omission of Architect or Architect's officers, directors, partners, employees, consultants in the performance of this Contract.
- (ii) In the event the Architect hires any consultant and/or subconsultant to perform any of the design services herein or to furnish any services required under this Contract, the Architect and Owner hereby agree that such consultants and/or subconsultants are subject to the indemnification clause as stated in sub-paragraph (i) above and which are asserted by any of the Architect's consultants and/or subconsultants relating to the furnishing or supplying of services by such professional design consultants and/or subconsultants in accordance with this Contract.
- (iii) Without limitation of other remedies the Owner may have, the Architect will, without additional compensation, correct or revise any errors, negligent acts or omissions in its designs, drawings, specifications or other services.

N. Independent Contractor. The Architect is and shall act as an independent contractor; shall act as the Owner's representative as defined in Article VIII; and shall have no authority to act as legal agent for or on behalf of the Owner or to bind the Owner to any contract or in any other manner. The Architect shall function as an independent contractor for the purposes of this Contract, and shall not be considered an employee of the Owner for any purpose. Consistent with the express terms of this Contract, Architect shall be free from control or direction over details of the performance of this Contract. The Architect shall assume sole responsibility for any debts or liabilities that may be incurred by the Architect in fulfilling the terms of this Contract, and shall be solely responsible for payment of federal, state and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Architect or its consultants and/or employees to act as an agent (except as previously defined) for or on behalf of the Owner or to incur any obligation of any kind on behalf of the Owner. The Architect agrees that no health/hospitalization benefits, workers' compensation, unemployment insurance and/or similar benefits available to the Owner employees will inure to the benefit of the Architect or the Architect's agents, and/or employees as a result of this Contract. Nothing contained herein shall be construed to create a partnership, joint venture, or association of any kind.

O. Kickbacks. The Architect certifies and warrants that no gratuities, kickbacks or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If the Architect breaches or violates this warranty, Owner may, at its discretion, terminate this Contract without liability to the Owner, or deduct from the Contract price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

P. Limitation of Payments. The Owner's obligation to pay the Architect for services rendered pursuant to this Contract is conditioned upon the availability of state funds which are allocated to pay the Architect. If funds are not allocated and available for the Owner to pay the Architect for these services, the Owner may terminate this Contract at the end of the period for which the funds are available.

The Owner shall notify The Architect at the earliest possible time if this Contract will or may be affected by a shortage of funds. No liability shall accrue to the Owner in the event this provision is exercised, and the Owner shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section. This provision shall not be construed so as to permit the Owner to terminate this Contract to acquire similar services from another party. The Architect shall be paid for all services provided and expenses incurred prior to receipt of any such notification that the Owner is terminating the Contract because of a shortage of funds.

Q. Monitor Activities. The Owner shall have the right to monitor all Contract related activities of the Architect and all subconsultants. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work product or work product in progress, and to observe all Architect's personnel in every phase of performance of Contract related services.

R. No Finder's Fees. No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract shall be paid by either party.

S. Nondiscrimination. The Architect shall comply with the Civil Rights Act of 1964, The Wyoming Fair Employment Practices Act (WY Statute § 27-9-105 et seq.) the Americans with Disabilities Act (ADA), 42 U.S.C. 12101, et seq., and the Age Discrimination Act of 1975. The Architect shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin or disability in connection with the performance of this Contract.

T. Notices. All notices or invoices arising out of, or from, the provisions of this Contract shall be in writing and given to the parties at the address provided under this Contract, either by regular mail or delivery in person. All notices sent via the U.S. Postal Service are deemed effective on the date of postmark. Notices and

invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

- U. Notice and Approval of Proposed Sale or Transfer.** Architect shall provide the Owner with the earliest possible advance notice of any proposed sale or transfer or any proposed merger or consolidation of the assets of Architect. Such notice shall be provided in accordance with the notice provision of this Contract. If the Owner determines that the proposed merger, consolidation, sale, or transfer of assets is not consistent with the continued satisfactory performance of Architect's obligations under this Contract, then the Owner may, at its option, terminate or renegotiate the Contract.
- V. Ownership of Documents/Work Product.** All design, drawings, specifications, technical data, and other instruments produced by the Architect in the performance of this Contract shall be the sole property of the Owner in accordance with Article X, Paragraph G, unless otherwise negotiated. Architect shall be the sole owner of intellectual property rights in such work product, including all trade secret rights (e.g. the right of first publication), all patent rights, and all rights of copyright. All Construction Documents, including Plans and Specifications, prepared by the Architect, whether complete or incomplete, shall be and remain the property of the Owner. The Owner shall not revise any of the Construction Documents without prior written approval by the Architect. The Architect will not be held liable for any claim or loss for reuse of the construction documents over which the Architect has no control.
- W. Patent or Copyright Protection.** The Architect recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license or other similar restrictions, and represents that no services performed by the Architect or its subconsultants or payees will violate any such restriction. The Architect shall defend and indemnify the Owner for any violation of such patent, trademark, copyright, license, or other restrictions. It is the intention of the Owner and Architect that any work product is a "work for hire" as that term is used in the Federal Copyright Act. The Architect and the Architect's consultants shall be deemed the authors of their respective written instruments, and shall retain all common law, statutory or other reserved rights, including copyrights per Article X, Paragraphs G and Y.
- X. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed under the terms of this Contract, and the Wyoming State Auditor shall not draw warrants for payment on this Contract until this Contract has been reduced to writing, approved as to form by the Office of the Attorney General, filed with and approved by the Department of Administration and Information, and approved by the Governor of the State of Wyoming or his designee if required by Wyo. Stat. § 9-2-1016(b)(iv)(D).

Y. Proof of Insurance. The Architect shall not commence the professional service(s) under this Contract until the Architect has obtained the following required insurance coverage and provided the corresponding certificates of insurance to the Owner Contract Representative:

- (i) **Commercial General Liability Insurance.** Architect shall provide coverage during the entire term of the Contract against claims arising out of bodily injury, death, damage to or destruction of the property of others, including loss of use thereof, and including underground, collapse, and explosion (XCU) and products and completed operations in an amount not less than one million dollars (\$1,000,000.00) per occurrence and two million dollars (\$2,000,000.00) aggregate.
- (ii) **Business Automobile Liability Insurance.** Architect shall maintain, during the entire term of this Contract, automobile liability insurance in an amount not less than five hundred thousand dollars (\$500,000.00) per occurrence.
- (iii) **Workers' Compensation and Employers Liability Insurance:** Architect shall provide proof of workers' compensation coverage pursuant to the Wyoming Workers' Safety and Compensation program, if statutorily required, or such other workers' compensation insurance as appropriate. Architect's insurance shall include "Stop Gap" coverage in an amount not less than five hundred thousand dollars (\$500,000.00) per employee for each accident and disease. Architect shall also provide THE OWNER proof of workers' compensation and employer's liability insurance on each and every subconsultant before allowing that subconsultant onto the job site.
- (iv) **Professional Liability:** Architect shall provide proof of professional liability insurance or errors and omissions liability insurance to protect the Owner from any and all claims arising from Architect's alleged or actual negligence, professional errors, omissions, or mistakes in the performance of professional duties by Architect or its civil, structural, electrical, or mechanical engineering consultants in an amount not less than five hundred thousand dollars (\$500,000.00) aggregate per year.
- (v) **Coverage:** All policies required under this Contract shall be in effect for the duration of this Contract. All policies shall be primary and not contributory. Architect shall pay the premiums on all insurance policies and provide thirty (30) days written notice to the Agency of any cancellation or non renewal of any coverage required under this Contract.
- (vi) **Proof of Insurance:** When requested by Owner, the Architect shall furnish, or cause to be furnished to Owner, in the manner provided, certificates of insurance coverage for each subconsultant(s) in minimum amounts deemed necessary by the Architect to cover the professional services of the particular subconsultant(s).
- (vii) **Certificate of Good Standing:** The Architect shall provide a Certificate of Good Standing verifying compliance with the unemployment insurance

and workers' compensation programs prior to performing services under this Contract.

- (viii) **Owner's Right to Reject.** The Owner reserves the right to reject a certificate of insurance if the Architect's insurance company is widely regarded in the insurance industry as financially unstable. Such determination of instability would include, but not be limited to, insurance companies with less than AVIII rating in the A.M. Best insurance rating guide.
- (ix) In the event Owner should desire any other type of insurance during the period of performance of the Contract, such insurance shall be provided by the Architect and shall contain such terms and conditions as Owner may require, and the Contract compensation shall be adjusted by an amount equal to the cost of such insurance.
- (x) Architect waives its right of subrogation under all policies of insurance that are in any way related to the professional services and that are secured and maintained by Architect, and Architect shall require all its subconsultants to waive their rights against Owner, Architect, and all other subconsultants under all policies of insurance that are in any way related to the professional services and that are secured and maintained by each subconsultant(s).

Z. Publicity. Any publicity given to this Contract, its professional services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Architect, shall identify Owner as the sponsoring Owner and shall not be released without prior written approval by the designated Owner Contract representative.

AA. Severability. Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of this Contract shall continue in full force and effect, and either party may attempt to renegotiate the terms affected by the severance

BB. Sovereign Immunity. Owner does not waive sovereign immunity by entering into this Contract and specifically retains all immunity and all defenses available to it as a sovereign pursuant to applicable Wyo. Stat. § 1-39-104(a) and all other applicable law. Designations of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

CC. Taxes. The Architect shall pay all taxes and other such amounts in effect as of the date of this agreement as required by federal, state and local law, including but

not limited to federal and social security taxes, workers' compensation, unemployment insurance, and applicable sales taxes.

- DD. Third Party Beneficiary Rights.** The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the Parties to this Contract, and shall inure solely to the benefit of the Parties to this Contract. The provisions of this Contract are intended only to assist the Parties in determining and performing their obligations under this Contract. The Parties to this Contract intend and expressly agree that only parties signatory to this Contract shall have any legal or equitable right to seek to enforce this Contract, to seek and remedy arising out of a Party's performance or failure to perform any term or condition of this Contract, or to bring an action for the breach of this Contract.
- EE. Time is of the Essence.** Time is of the essence in all provisions of this Contract.
- FF. Titles / Headings.** The titles and headings in this Contract are for purposes of convenience and reference and shall not in any way define, limit, extend or otherwise affect the meaning or interpretation of any of the terms hereof.
- GG. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.

ARTICLE XI TERMINATION

- A. Breach.** In the event the Architect materially breaches any of the terms, conditions or provisions of this Contract, Owner reserves the right to immediately terminate this Contract, or require specific performance according to the terms, conditions or provisions of this Contract. In the event of termination of this Contract by Owner, such termination shall not relieve the Architect of any liability to Owner for damages sustained by virtue of any breach by the Architect. In the event of requiring specific condition performance, Owner shall give written notice stating such nonperformance with respect or respects to which Architect is failing to comply with the terms and conditions of this Contract. If the Architect does not remedy such defect(s) within fifteen (15) calendar days after receipt of said notice, or if the breach is not susceptible to remedy within such fifteen (15) day period, or if Architect has not commenced and diligently pursued remedying such breach within the fifteen (15) day period following receipt of Owner's written notice, Owner may immediately terminate this Contract which shall be of no further force or effect, may procure the remaining services from other sources, and may hold the terminated Architect responsible for any and all costs and for any and all losses occasioned thereby.

In the event Owner materially breaches any of the terms, conditions and provisions of this contract, the Architect reserves the right to provide written notice to Owner. Owner shall have a fifteen (15) day period to correct said breach(es). If the breach is not corrected, or if the breach is not susceptible to remedy within such fifteen (15) day period, or Owner has not commenced and diligently pursued remedying such breach within the fifteen (15) day period following receipt of Architect's written notice, Architect may issue a fifteen (15) calendar day cancellation notice.

- B. Without Cause.** If for any other reason the Owner desires to terminate this Contract without cause, it may do so upon fifteen (15) day advance written notice to the other Party. Upon receipt of such notice, Architect will discontinue specific services and subsequent financial obligations with fifteen (15) days notice to its consultants and/or subconsultants terminating all services in accordance with the effective date requested by the Owner's original termination notice.

In the event of termination, all finished or unfinished design development and construction documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Architect shall be immediately surrendered to the Owner.

Upon termination and payment of all amounts required under this paragraph, the Owner may complete the original Project or a substantially similar project. The Owner shall, for such purposes, have the right to utilize any original tracings, drawings, calculations, specifications, estimates, and other construction documents prepared by the Architect under this Contract. At the Architect's request, the Owner agrees to credit the Architect with authorship of such documents, but is not required to renew this Contract.

- C. Termination Compensation.** In the event this Contract is terminated under any of the foregoing provisions of Article XI, it is agreed that the compensation due Architect as full and complete settlement of this Contract shall only be that amount incurred by Architect pursuant to this Contract up to and including the termination date of this Contract. The Owner agrees to consider completed work product and work product in progress; complete and incomplete drawings; other documents, whether delivered to the Owner or in the possession of the Owner; and any authorized reimbursable expenses.

- D. Termination Notices.** It is agreed that any and all termination notices by both Parties shall be transmitted via written instrument, and shall be deemed given upon the mailing thereof, postage prepaid, by certified or registered mail, return receipt requested, addressed to the other party at the address set forth in Contract Article XVIII, or at such other address as either Party shall designate to the other Party in writing hereafter.

ARTICLE XII ADDITIONAL SERVICES

The Architect shall not change the professional services or deviate from the same as described in the Contract without prior written authorization in the form of a change order or amendment to this Contract. The Architect shall not be entitled to an increase in the Contract sum or an extension of time(s) under the Contract for additional services and/or work which should have reasonably been included in the Architect's original scope of services, proposal or bid, which was reasonably foreseeable following examination of the original job site, or bid documents, or plans and specifications, or original scope of services, or original proposal.

- (i) Changes in the professional services may be made after execution of the Contract, and without invalidating the Contract, by written instrument or amendment, subject to the limitations stated in this Contract.
- (ii) Any professional services ordered pursuant to a written instrument or an amendment shall be performed in accordance with this Contract's requirements.
- (iii) An additional service shall be based upon agreement between the Architect and Owner. A change in the Contract Document is a written instrument prepared by Owner, reviewed by the Architect, and signed by Owner and the Architect, stating their agreement upon the following:
 - (a) The change in the professional services; and,
 - (b) The adjustment in the Contract sum, if any; and,
 - (c) The adjustment in the Contract time, if any.
- (iv) A request for additional services does not amend any other terms of this Contract.
- (v) Any request from the Architect for additional services shall be in writing, signed by its designated representative, and forwarded to Owner for review and decision. Said request(s) shall include the reason for the request and the change in the services, Work Product, Contract sum and/or Contract time. A request for a change order must be made within fifteen (15) calendar days after the reason for this request is discovered. Failure to file a change order request within fifteen (15) calendar days constitutes a waiver of any future claim. Any change or deviation from the Contract without prior written authorization will be at the Architect's own risk for which no payment, under *quantum meruit* or otherwise, shall be made.
- (vi) No compensation for additional services shall be paid for the following services or revisions unless otherwise negotiated:
 - (a) Preparation of study models made at the Architect's option; and,
 - (b) Preparation of alternates requested by the Owner, as determined no later than the 100% DD submittal/review, to assure receipt of bids within the approved project budget; and,
 - (c) Pursuant to Article VIII, Paragraph I; and,
 - (d) For corrections of errors and omissions by the Architect; and,

- (e) For corrections of defects or damage related to or arising from the errors or omissions of the Architect.

ARTICLE XIII SUBSTANTIAL COMPLETION / FINAL COMPLETION

When Architect deems that it has provided all professional services as defined hereunder related to the construction project and has observed final completion by the Contractor, it shall notify Owner in writing that the professional service(s) are completed, that the construction project is ready for substantial completion and that it is ready for final acceptance by Owner and Architect, who shall be responsible for such inspection within ten (10) days after receipt of such notice. When Owner's and Architect's final inspection has been completed in accordance with the Architect's final inspection "punch list" and all Contractor construction project defects or deficiencies, if any, have been remedied pursuant to the Contractor Contract Document, Owner shall promptly execute and cause to be delivered to Architect a letter of acceptance stating that, subject to continuing obligations under Articles X (Item N) and XIV herein, Architect has performed all its professional services under the terms of this Contract. The term "final acceptance" shall mean the date of Owner's letter of acceptance. The terms "substantial completion" and "final acceptance" are as defined per this Contract Document and in accordance with the General Conditions for the subsequent Contractor's contract document, as provided by the Owner. Final acceptance shall occur when all the following conditions have been met to the satisfaction of Owner.

- A. Completion of the professional services by Architect and the absence of inconsistencies by project phase obligations of the Contractor in the professional services which is known to or which should have been known to Architect.
- B. Completion of all performance(s) as required by Contract Documents. Inspection shall be conducted with Owner's project representative and Architect to check Contractor conformance with the Contract Documents, Construction project and to verify the accuracy and completeness of the same.
- C. Receipt of acceptable written evidence by Owner that all bills for labor, supplies, professional services, reimbursable expenses, and other contract related expenses and/or claims incurred by Architect in the performance of the professional services have been paid.
- D. Receipt and acceptance by Owner of Architect's final inspection "punch list", and that satisfactory remedies have been applied to and performed for each punch list item.

ARTICLE XIV REPRESENTATIONS

A. Representations: In addition to any other representations contained in this Contract, the Architect represents to Owner which representations shall survive the execution and delivery of this Contract, any termination of this Contract and the final completion of the professional services:

- (i) That it and its consultants and/or subconsultants are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the professional service obligations hereunder; and,
- (ii) That it is able to furnish all required professional qualification(s), supplies, and labor required to complete the professional services required by this Contract; and,
- (iii) That it is authorized to do business in the State of Wyoming and Laramie County Wyoming, and properly licensed by all necessary governmental and public authorities having jurisdiction over the Architect and over the Contract professional services; and,
- (iv) That its execution of this Contract and its performance thereof is within its duly authorized powers; and,
- (v) That the Contract is sufficiently complete for the Architect to provide the professional services as outlined in this Contract Document; and,
- (vi) That the services required by the Contract, as required in the performance of the professional services, selection of building equipment, and selection of Owner and Architect approved product manufacturers are consistent with:
 - (a) Good and sound practices within the construction industry; and,
 - (b) Generally prevailing and accepted industry standards applicable to professional services; and,
 - (c) Appropriately qualified requirement of any representations applicable to professional services; and,
 - (d) All laws, ordinances, regulations, rules, orders and permits which bear upon the Architect's performance of the professional services, as of the date of this agreement.

B. Survival of Representations: The foregoing representations are in addition to, and not in lieu of, any and all other liability imposed upon the Architect by law with respect to the Architect's duties, obligations and performance hereunder as a design professional based on limitations of liability and standard of care. The Architect's liability hereunder shall survive Owner's final acceptance of and payment for the professional services. All representations set forth in this Contract, including, without limitation, those contained in Articles III, VI, VII, VIII, X, XIII, XIV and XV shall survive the final completion of the professional services or the earlier termination of this Contract.

ARTICLE XV REMEDIES

Design or professional negligence in professional services provided by Architect, Architect's consultants or by its subconsultant(s) for these professional services resulting from Architect's failure to complete these professional services in accordance with this Contract or engineering performed by Architect's consultants and/or sub-contractor(s), even though approved by the Owner, and occurring during the performance of the Work and/or services shall be remedied by Architect at the expense of either the Architect, Architect's consultants or its sub-contractor(s). In the event the Owner identifies a portion of these professional services it considers deficient, and a mutually agreeable solution cannot be reached, the parties shall select an independent consultant to evaluate the potential deficiency. Costs of such evaluation shall be borne by the Owner if a deficiency is determined by such consultant not to exist, and by Architect, Architect's consultants or by its sub-contractor(s) if such consultant concludes that the Work and/or services are deficient.

ARTICLE XVI DISPUTES, CLAIMS AND DISAGREEMENTS

In the event of any dispute, claim or disagreement arising out of or relating to the implementation or performance of this Agreement, the Architect shall provide notice to the Owner of any and all disputes, claims or disagreements. The Architect shall provide notice to the Owner of any and all disputes, claims or disagreements within thirty (30) days of the occurrence giving rise to the dispute, claim or disagreement, or within thirty (30) days after recognition of the condition causing the claim or dispute, whichever is later. The Architect's failure to provide notice as required herein shall bar recovery upon such dispute, claim or disagreement. Notice shall be given in accordance with Article X, Paragraph T. The Owner shall respond to the Architect regarding any and all disputes, claims or disagreements within thirty (30) days of notice of the occurrence giving rise to the dispute, claim or disagreement, or within thirty (30) days after recognition of the condition causing the dispute, claim or disagreement, whichever is later, and with the intent of resolving and disposing of said dispute, claim, or disagreement. Dispute resolution shall occur in Laramie County, Wyoming.

- A. Procedure.** In seeking to resolve any dispute relating to this Agreement, the Owner and the Architect shall attempt to negotiate a settlement in good faith.
- (i) Any dispute, claim or disagreement concerning a question of fact arising under this Agreement which is not disposed of by mutual agreement of project representatives of both Parties shall then be by judicial resolution as defined in Article XVII.
 - (ii) Any dispute, claim or disagreement (hereinafter claim), including those alleging an error, conflict or omission by the Architect or Engineer, shall be referred initially to the Owner. A claim shall be submitted in writing to the Owner within thirty (30) days after occurrence of the event giving rise

to the claim or within thirty (30) days after the claimant discovers the condition giving rise to the claim, whichever is later. The Owner's determination of the timeliness of a claim is final.

- (iii) The Owner shall review claims and take one or more of the following preliminary actions, in writing, within ten (10) days after receipt of a claim:
 - (a) Request additional information from the claimant;
 - (b) Deny the claim in whole or in part, providing reasons for the denial;
 - (c) Recommend approval of the claim by the other party; or
 - (d) Suggest a compromise.
- (iv) If a claim is resolved by the Owner's preliminary action, the Owner will prepare or obtain appropriate documentation of the claim's resolution.
- (v) If a claim is not resolved by the Owner's preliminary action, the claimant shall, within ten (10) days after the Owner's preliminary action, take one or more of the following actions, in writing:
 - (a) Submit any additional information requested by the Owner;
 - (b) Modify the initial claim; or
 - (c) Notify the Owner that the initial claim stands.
- (vi) Within ten (10) days after the claimant has taken one or more of the actions outlined in paragraphs "ii" thru "v" above, the Owner shall prepare its final decision and notify the claimant, in writing, of the decision.
- (vii) If the claimant is dissatisfied with the decision of the Owner, the claimant may seek settlement of the claim in accordance with Article XVII.
- (viii) A decision by the Owner, as provided in Article XVII, is a condition precedent to settlement of a claim as to all matters arising before the date final payment is made under this Agreement.
- (ix) If the Architect desires resolution of a claim, it shall, within fourteen (14) days after the Owner renders its final decision as provided in paragraphs "ii" through "vii" above, file a written notice of demand for resolution with the Owner. Failure to file a written notice of the demand for resolution within the time frames set forth herein shall be deemed a waiver of the right to resolution, and the claim shall not be subject to resolution.
- (x) Pending final resolution of a claim, including judicial resolution, unless otherwise agreed upon in writing, the Architect shall proceed diligently with performance of the Agreement and the Owner shall continue to make payments, except disputed payments, in accordance with the Agreement Documents.

ARTICLE XVII REMEDIES AND JUDICIAL RESOLUTION

A. Remedies. The Parties shall endeavor to settle disputes, claims or disagreements by mutual agreement and remedies. In the event of any dispute, claim or disagreement arising out of or relating to the implementation or performance of this Agreement, which the Parties have been unable to settle or agree upon within the time limits set forth in Article XVI, each Party shall pursue paragraphs “i” thru “v” below in an attempt to resolve such dispute, claim or disagreement.

- i) In seeking to resolve any dispute relating to this Agreement, the Owner does not waive its sovereign immunity.
- (ii) In the event a disagreement, dispute or claim (issue) arises between subsequent Construction Contractor, Architect/Engineer or the Owner, the Owner will be the initial interpreter of the requirements of the agreement documents and the initial judge of the interpretation and performance thereunder. From the initial date of a notice of disagreement, dispute or claim, the Owner shall, within ten (10) days, issue their initial interpretation and attempt to resolve the issue. In the Owner’s capacity as interpreter it will exercise its best efforts to insure faithful performance of the impacted parties.
- (iii) If the Owner’s interpretation does not resolve the issue, within ten (10) days of the Owner’s interpretation, any party can request a partnering session. The parties shall have twenty (20) days from the date of the request for the partnering session to discuss and attempt to resolve the issue. Upon resolution of the issue, a resolution agreement shall be developed by the Owner and distributed to all parties, and incorporated into the Contract with all the original terms and conditions of the Contract, including keeping Sovereign Immunity intact.
- (iv) No information disclosed during this informal process shall be used against parties during subsequent dispute resolution. If either Party disagrees with the proposed settlement, that Party may, by notifying the other parties within thirty (30) days, proceed with any other remedy available by law or under this Agreement.
- (v) The duties and obligations imposed on the Parties by this Article and the rights and remedies available hereunder, including but not limited to the warranties, guarantees and obligations imposed upon the Architect by this Contract; and the rights and remedies available to the Owner and the Architect thereunder, shall be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to them which are otherwise imposed or available by law, by special guarantee or by other provisions of this Contract.

B. JUDICIAL RESOLUTION

- (i) The Architect may, after obtaining a decision by the Owner as set forth in Article XVI, file a complaint against the Owner for compensatory damages due under the Contract Documents. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties, and venue shall be the First Judicial District, Laramie County, Wyoming.
- (ii) The trial of any claim filed against the Owner pursuant to Articles XVI and XVII shall be limited to a bench trial, unless the court on its own motion orders otherwise.
- (iii) Compensable damages payable by the Owner under this Contract shall not exceed two hundred fifty thousand dollars (\$250,000), or ten percent (10%) of the Contract Sum, whichever is less.
- (iv) If the Architect brings an action seeking relief not permitted herein, the Architect shall pay the Owner's cost of defending the claim barred by this Contract, including attorney's costs and fees.
- (v) If a court proceeding is to be recorded, it shall be recorded by a court reporter, and the transcript prepared by the court reporter shall be part of the official record of the court resolution proceedings.
- (vi) Regardless of the outcome of the proceeding, the parties to any court resolution proceeding under this Contract shall bear their own costs and attorney's fees. Fees and costs not attributable to one party shall be shared equally by the parties to the court proceeding.
- (vii) Nothing herein shall be construed as a waiver of the Owner's sovereign immunity. With respect to the Owner's conduct or performance under this Contract, the following claims, as against the Owner, shall not be subject to a cause of action brought by Architect or to the dispute resolution provisions of this Contract:
 - (a) Claims for consequential damages, including but not limited to loss of profit, loss of business or loss of use;
 - (b) Claims for damages or injury to person or property;
 - (c) Claims for exemplary or punitive damages;
 - (d) Claims for expectation damages;
 - (e) Claims or disputes related to the approval, refusal to approve, or substitution of subcontractor, regardless of tier, and suppliers;
 - (f) Claims or disputes related to the Owner's termination of the Contract because of the Architect's or subsequent Contractor's default or because of any act of God; or for lack of funding as provided in Article X, paragraph P; and,
 - (g) Claims or disputes concerning the Architect's decision in matters relating to artistic effect. These decisions will be final if consistent with the intent of the Contract.
 - (h) Claims for indemnification or subrogation; and,
 - (i) Claims for prejudgement interest; or
 - (j) Claims for attorney's fees or costs.

- (k) The Owner retains its sovereign immunity to the full extent not otherwise inconsistent with this section. Nothing herein is intended to relieve the Architect of its obligations under the Wyoming Governmental Claims Act.

ARTICLE XVIII CONTRACT/PROJECT REPRESENTATIVES

All notices, communications, and amendments regarding this Contract shall be via written instrument and shall be delivered either personally to the designated Representative of the Party being notified or by regular mail, facsimile, or e-mail, addressed to the appropriate representatives at the address set forth below, or at such other address as either representative shall designate to the other in writing hereafter. The below referenced project representatives shall be authorized to act on behalf of the Owner or Architect with respect to this Contract and or subsequent project.

Owner's Representative: Suzanne Norton
Project Coordinator
State of Wyoming
Department of Administration & Information
Construction Management
700 West 21st Street
Cheyenne, WY 82002
Phone: (307) 777-7271
Email: suzanne.norton@wyo.gov

Architect's Representative: Thomas Whetstone
Senior Project Principal
HDR Architecture, Inc.
1670 Broadway, Suite 3400
Denver, CO 80202-4824
Phone: (303) 764-1520 o.
 (303) 318-6266 d.
 (720) 253-4635 c.
Email: thomas.whetstone@hdrinc.com

ARTICLE XIX ARCHITECT'S PLANNED PROFESSIONAL CONSULTANTS

Robert Silman Associates Structural Engineering
Joseph R. Loring & Associates, Inc. HVAC
 Plumbing
 Power
 Exterior Lighting
 Fire Alarm

AON Fire Protection Engineering	Lightning Protection
	Code Analysis
	Fire Protection
Gary Steffy Lighting Design, Inc.	Interior Lighting
International Consulting, Inc.	Cost Estimating
GB Geotechnics	Non-Destructive Testing
Sage, Ltd.	Peer Review for Construction Efficiency
BenchMark Engineers, PC	Civil Engineering

ARTICLE XX CONTRACT ATTACHMENTS AND EXHIBITS

These Contract Documents and Attachments are hereby incorporated by reference and made a part of this certain Contract and shall consist of the following:

Attachments

Attachment A PS 0642 Proposal for Level I/II Design Studies

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ARTICLE XXI

CONTRACT SIGNATURES

By signing this Contract, the Parties certify that they have read and understood it, that they agree to be bound by the terms of this Contract, and that they have the authority to sign it.

This Contract is not binding on either party until approved by the Division of Procurement Services, Department of Administration And Information, and the Governor of the State of Wyoming or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).

The effective date of this Contract is the date of the signature last affixed to this page.

ATTORNEY GENERAL'S OFFICE APPROVAL AS TO FORM

Marion Yoder #97887
Marion Yoder, Senior Assistant Attorney General

March 7, 2013
Date

ARCHITECT

Thomas Sanders, Vice President
HDR Architecture, Inc.

Date

Thomas P. Whetstone, Senior Project Principal
HDR Architecture, Inc.

Date

STATE OF WYOMING A&I CONSTRUCTION MANAGEMENT

Jim Chaput, Sr. Project Manager (or designated)

Date