

WEBER CENTER EXTERIOR WALL CLADDING/REPAIR PROJECT

Agreement Between: Owner and Contractor

Contract Type: Construction Projects with Limited Scope where basis of payment is a Stipulated Sum

Contract Agreement Date: The date signed by the last party to sign

Between the Owner:

Weber County
2380 Washington Blvd.
Ogden, UT 84401

and the Contractor:

JD Wadsworth Construction, LLC
406 W South Jordan Pkwy Ste. 440
South Jordan UT 84095

the Project is:

Weber Center Exterior Cladding Repair
2380 Washington Blvd.
Ogden, UT 84401

The Owner and Contractor agree as follows:

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ARTICLE 1 THE WORK OF THIS CONTRACT

1.1 The Contractor shall execute the Work described in the Contract Documents which consist of the Job Description and Mandatory Meeting notes posted on Sciqwest, except as specifically indicated in the Contract Documents to be the responsibility of others. The work generally consists of the removal and replacement of limestone wall cladding at the bottom course along the West and South faces of the Weber Center building.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

2.1 The date of commencement of the Work shall be the date fixed in a Notice to Proceed issued by the Owner.

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

2.3 The Contractor shall achieve Substantial Completion of the entire Work not later than 16 weeks from the date of commencement, subject to adjustments of this Contract Time as provided in the Contract Documents.

ARTICLE 3 CONTRACT SUM

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

- The Stipulated Sum, in accordance with Section 3.2 below

3.2 The Stipulated Sum shall be Ninety Thousand One Hundred and Twenty-two Dollars (\$90,122.00), subject to additions and deletions as provided in the Contract Documents or directed by the owner.

3.2.1 The Stipulated Sum is based upon the following alternates: None

ARTICLE 4 PAYMENTS

4.1 Progress Payments

4.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

4.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

4.1.3 Provided that an Application for Payment is received by the Owner not later than the 10th day of a month, the Owner shall make payment to the Contractor within 30 days of receipt of an approved Application for Payment.

4.1.4 Retainage of 5% shall be withheld until the project is complete.

4.1.5 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate prevailing from time to time at the place where the Project is located.

4.2 Final Payment

4.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum including contract change orders, if applicable, shall be made by the Owner to the Contractor when:

- the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 18.2, and to satisfy other requirements, if any, which extend beyond final payment.

- a final Certificate for Payment has been submitted by the contractor to owner.

4.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance and approval of the Contractor's final Certificate for Payment.

ARTICLE 5 DISPUTE RESOLUTION

5.1 Binding Dispute Resolution

For any claim subject to, but not resolved by, mediation pursuant to Section 21.3, the method of binding dispute resolution shall be as follows:

- i. Arbitration pursuant to Section 21.4 of this Agreement
- ii. Litigation in a court of competent jurisdiction

ARTICLE 6 ENUMERATION OF CONTRACT DOCUMENTS

- 6.1 The Contract Documents are listed in Article 7 and, except for Modifications issued after execution of this Agreement, are enumerated as follows:
- 6.1.1 The Agreement is the executed edition of the Agreement Between: Owner and Contractor.
- 6.1.2 The Conditions of the Contract: Job Description and Mandatory Pre-Bid Meeting Notes posted to SciQuest.
- 6.1.3 The Specifications: Replace with same materials, same texture, same quality, and same general appearance.
- 6.1.5 The Addenda, if any, are as follows: No Addenda Issued

ARTICLE 7 GENERAL PROVISIONS

7.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Job Description, Pre-Bid Mtg Notes and any other applicable documents listed in this Agreement (see 6.1 above) and any Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor.

7.2 THE CONTRACT

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

7.3 THE WORK

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

ARTICLE 8 OWNER

8.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- 8.1.1 The Owner shall furnish and pay for surveys and a legal description of the site, if applicable.

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

8.1.3 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, including those required under Section 9.6.1, the Owner shall secure and pay for other necessary approvals, easements, assessments and charges required for the construction, use or occupancy of permanent structures or permanent changes in existing facilities.

8.2 OWNER'S RIGHT TO STOP THE WORK

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

8.3 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within a (14) fourteen day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner, without prejudice to any other remedy the Owner may have, may correct such deficiencies and may deduct the reasonable cost thereof, including Owner's expenses and compensation for the services made necessary thereby, from the payment then or thereafter due the Contractor.

ARTICLE 9 CONTRACTOR

9.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

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

9.1.2 Because the Contract Documents are complementary and limited in scope, the Contractor shall, before starting each portion of the Work, carefully study and compare the Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 8.1.1, shall take field measurements of any existing conditions related to that portion of the Work and shall observe the conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner any errors, inconsistencies, or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

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

9.2 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

9.3 LABOR AND MATERIALS

9.3.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

9.3.3 The Contractor may make a substitution only with the consent of the Owner, after evaluation by the Owner and in accordance with a Contract Modification or other acceptable change directive.

9.4 WARRANTY

The Contractor warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform with the requirements of the Contract Documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

9.5 TAXES

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

9.6 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

9.6.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

9.6.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities applicable to performance of the Work. The Contractor shall promptly notify the Owner if the contract documents are observed by the Contractor to be at variance therewith. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Owner, the Contractor shall assume appropriate responsibility for such Work.

9.7 ALLOWANCES

The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. The Owner shall select materials and equipment under allowances with reasonable promptness. Allowance amount shall include the costs to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts.

9.8 CONTRACTOR'S CONSTRUCTION SCHEDULES

9.8.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

9.9 SUBMITTALS

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

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

9.10 USE OF SITE

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

9.11 CUTTING AND PATCHING

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

9.12 JOBSITE CLEANLINESS

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

9.13 ACCESS TO WORK

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

9.14 INDEMNIFICATION

9.14.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, Subcontractor, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 9.14.1. Contractor's obligation to indemnify Owner is not limited or waived in any way by compliance or non-compliance with the insurance requirements of this Agreement. Contractor will be required to indemnify Owner to the fullest extent allowed by law, regardless of whether Contractor has sufficient insurance to cover this obligation.

9.14.2 In claims against any person or entity indemnified under this Section 9.14 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 9.14.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 10 ADMINISTRATION

10.1 The Owner will provide administration of the Contract and will designate a representative during construction who will oversee the work, make binding decisions for the Owner and issue the final Certificate for Payment. The Representative will have authority to act on behalf of the Owner to the extent provided in the Contract and Contract Documents unless otherwise modified in writing.

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

10.3 On the basis of the site visits, the Owner will observe and make known to the Contractor any (1) deviations from the Contract Documents, and (2) defects and deficiencies observed in the Work.

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

ARTICLE 11 SUBCONTRACTORS

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

Contracts between the Contractor and Subcontractors shall require each Subcontractor, to the extent of the Scope of Work of that Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities of the Subcontractor's Work and also allow the Subcontractor the benefit of all rights, remedies and redress afforded to the Contractor by these Contract Documents.

ARTICLE 12 CONSTRUCTION BY OWNER OR OTHER CONTRACTORS

The Owner reserves the right to perform construction operations related to the Project with the Owner's own forces and/or to award separate contracts in connection with other portions of the Project. If the Contractor claims that delay or additional cost results from such action by the Owner, the Contractor shall make such claim as provided in Article 21.

ARTICLE 13 CHANGES OR MODIFICATIONS IN THE WORK

13.1 By appropriate Modifications, changes in the Work may be accomplished after execution of the Contract. The Owner may order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, with the Contract Sum and Contract Time being adjusted accordingly. Such changes in the Work shall be authorized by written Change Orders (CO) signed by the Owner and Contractor, or by written Construction Change Directive (CCD) signed by the Owner.

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

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

ARTICLE 14 TIME

14.1 Time for completion shall be determined mutually between the Owner and Contractor. Lead time of materials is a significant factor which will have a direct impact on the Contractor's ability to start work at the site. The Contractor and Owner agree that the Contract Time will be a reasonable period which allows for procuring materials and Installation of said materials.

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

14.3 The term "day" shall mean calendar day unless otherwise specifically defined.

14.4 The date of Substantial Completion is the date certified by the Owner in accordance with Section 15.4.3.

14.5 If the Contractor is delayed at any time in the commencement or progress of the Work by changes ordered in the Work, by labor disputes, fire, unusual delay in deliveries, abnormal adverse weather conditions not reasonably anticipatable, unavoidable casualties or any causes beyond the Contractor's control, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order. for such reasonable time as the Owner may determine, subject to the provisions of Article 21.

ARTICLE 15 PAYMENTS AND COMPLETION

15.1 APPLICATIONS FOR PAYMENT

15.1.1 Where the Contract is based on a Stipulated Sum the Contractor shall submit, before the first Application for Payment, a schedule of values, allocating the entire Contract Sum to the various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy. This schedule, unless objected to, shall be used in reviewing the Contractor's Applications for Payment.

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

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

15.2 CERTIFICATES FOR PAYMENT

15.2.1 The Owner will, within 30 days after receipt of the Contractor's Application for Payment, approve the Certificate for Payment for the amount requested by Contractor or notify the Contractor in writing of the reason(s) for withholding certification in whole or in part as provided in Section 15.2.3.

15.2.2 The issuance of a Certificate for Payment will constitute a representation by the Owner, based on the Owner's evaluations of the Work and the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Owner's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner. The Owner retains the rights for evaluation of the Work for conformance with the Contract Documents upon Substantial Completion and to correction of deviations from the Contract Documents. The issuance of a Certificate for Payment constitutes a representation that the Contractor is entitled to payment in the amount certified.

15.3 PROGRESS PAYMENTS

15.3.1 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to sub-subcontractors in similar manner.

15.4 SUBSTANTIAL COMPLETION

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

15.4.2 When the Contractor considers that the Work is substantially complete, the Contractor shall give the owner written notice. When the Owner determines that the Work is substantially complete, the Owner will issue a Certificate of Substantial Completion which shall establish the date of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

15.5 FINAL COMPLETION AND FINAL PAYMENT

15.5.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly inspect the work and, when the Owner finds the Work acceptable under the Contract Documents, the Owner will promptly approve Final Payment. The Owner's final Certificate for Payment will constitute a further representation that conditions stated in Section 15.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

15.5.2 The Contractor shall deliver to the Owner a complete release of all liens arising out of this Contract or receipts in full covering all labor, materials and equipment for which a lien could be filed.

15.5.3 The making of final payment shall constitute a waiver of claims by the Owner except those arising from: liens, claims, security interests or encumbrances arising out of the Contract and unsettled; failure of the Work to comply with the requirements of the Contract Documents; or terms of special warranties required by the Contract Documents.

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

ARTICLE 16 PROTECTION OF PERSONS AND PROPERTY

16.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising the safe practices in connection with the performance of the Contract. The Contractor shall take reasonable precautions for safety and shall provide reasonable protection to prevent damage, injury *or* loss to employees and other persons who may be affected thereby, materials and equipment to be incorporated therein and existing trees, shrubs, lawns, walks, pavements, roadways, structures and utilities.

16.1.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons and property and their protection from damage, injury or loss. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible, except for damage or loss attributable to acts or omissions of the Owner or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 9.14.

16.2 HAZARDOUS MATERIALS

16.2.1 The Contractor is responsible for compliance with the requirements of the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay and start-up.

16.2.2 Except as provided in Section 16.2.3, the indemnification provisions of Section 9.14 shall apply to claims related to hazardous materials. Additionally, all claims against the Owner are subject to the Governmental Immunity Act of Utah.

16.2.3 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

ARTICLE 17 INSURANCES

17.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written on an occurrence basis, for not less than (1) \$1,000,000 for bodily injury or death to each person, with \$2,000,000 aggregate; and (2) \$1,000,000 for property damage resulting from any one accident, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.14. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner.

17.2 OWNER'S LIABILITY INSURANCE

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

17.3 PROPERTY INSURANCE

17.3.1 The parties acknowledge that the Owner maintains liability coverage through the Utah Counties Indemnity Pool, and that claims against the Owner are subject to the Governmental Immunity Act of Utah. The Owner shall not be required to purchase and maintain any additional property insurance.

ARTICLE 18 CORRECTION OF WORK

18.1 The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work shall be at the Contractor's expense.

18.2 In addition to the Contractor's obligations under Section 9.4, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.

18.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 8.3.

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

18.5 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Article 18.

ARTICLE 19 MISCELLANEOUS PROVISIONS

19.1 ASSIGNMENT OF CONTRACT

Neither party to the Contract shall assign the Contract without written consent of the other, except that the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project if the lender assumes the Owner's rights and obligations under the Contract Documents.

19.2 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located, except, that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 21.4.

19.3 TESTS AND INSPECTIONS

Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. The Contractor shall make arrangements for such tests, inspections and approvals with the independent testing laboratory or entity selected and paid for by the Owner, or with the appropriate public authority. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

19.4 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 19.4.

ARTICLE 20 TERMINATION OF THE CONTRACT

20.1 TERMINATION BY THE CONTRACTOR

If the Owner fails to certify payment as provided in Section 15.2.1 for a period of 30 days through no fault of the Contractor, or if the Owner fails to make payment as provided in Section 4.1.3 for a period of 30 days, the Contractor may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

20.2 TERMINATION BY THE OWNER FOR CAUSE

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

20.2.2 When any of the above reasons exists, the Owner may after giving the Contractor seven days' written notice, terminate the Contract and take possession of the site and of all materials, equipment and tools thereon and may finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

20.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 20.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

20.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Owner, upon application, and this obligation for payment shall survive termination of the Contract.

20.3 TERMINATION BY THE OWNER FOR CONVENIENCE

The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. The Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 21 CLAIMS AND DISPUTES

21.1 Claims, disputes and other matters in question arising out of or relating to this Contract, including those alleging an error or omission by the Owner but excluding those arising under Section 16.2, shall be referred initially to the Owner for decision. Such matters, except those waived as provided for in Section 15.5.3 and 15.5.4, shall, after initial decision by the Owner or 30 days after submission of the matter to the Owner, be subject to mediation as a condition precedent to binding dispute resolution.

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

21.3 The parties shall endeavor to resolve their disputes by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with their Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

21.4 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any claim, subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association, in accordance with the Construction Industry Arbitration Rules in effect on the date of this Agreement. Demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

21.5 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

21.6 Any party to an arbitration may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described in the written Consent.

21.7 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

This Agreement entered into as of the date signed by the last party to sign below.

Owner: _____

(Date)

(Printed Name and Title)

Contractor: _____

12-16-2020

(Date)

(Printed Name and Title)

 MANAGER

JEFF DAVIS

JD WADSWORTH CONSTRUCTION