.6 Failure to provide qualified superintendent, competent workmen or subcontractors to carry on the Work in an acceptable manner.

.7 Failure to execute the Work according to agreed schedule of completion.

.8 Disregard or violation of any provisions of Contract Documents.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-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 may, without prejudice to

3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect and Owner, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor shall not proceed with the Work affected by a reported error, omission or inconsistency without receiving clarification or instructio

3.4

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3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 Contractor shall provide adequate protection throughout the course of the Work, for all trees and shrubs on the site indicated in Contract Documents not to be removed. Contractor shall be responsible for damage to any such trees or shrubs during the period of construction and shall replace or repair, any trees or shrubs damaged by Contractor, its subcontractors or employees, with plantings acceptable to Owner at no cost to Owner. Damaged sod areas shall be replaced with top grade sod of a type acceptable to Owner. All landscape repairs shall carry one-year full guarantee.

3.13.3 Contractor shall enforce Owner's Instructions regarding smoking, noise, signs, advertisements, and fires.

3.13.4 Contractor shall keep the site of construction reasonably free from weeds during the course of construction. Contractor shall cut all weeds on the site so as to discourage further germination.

3.13.5 All utilities, curbs, drives, pavements, streets, buildings, railings, guardrails, improvements, mechanical and electrical equipment, etc., which are damaged or cut during construction and are to be used after construction shall be repaired such that the quality of repaired item equals or exceeds its condition prior to construction.

3.13.6 Continued occupancy of existing facilities: See General Requirements.

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construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a seer

organized local labor units, whether or not of the same trade or craft, or other labor concerns of any kind that may occur during performance of the Contract, to the fullest extent permitted by law.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative. Architect, Engineer, Architect/Engineer or Engineer/Architect hereinafter called the Architect as indicated in Bidding Requirement. Each of these terms means the Architect or an affiliate as otherwise provided in Contract Documents, or duly authorized representatives, such representatives acting severally within the scope of particular duties entrusted to them, unless otherwise provided in Contract Documents. When Contractor is required to contact, notify or otherwise interact with the Architect, contact the Owner's Representative first. Request instructions from Owner's Representative as to whether the Architect should also be contacted.

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

4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new architect.

4.1.4 Architect shall not be liable to Contractor for any claim, cause of action arising out of Architect's responsibilities under Contract, either personally or as an official of Owner, it being understood that in such matters Architect acts as agent and representative of Owner.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 Owner will provide administration of the Contract as described in Contract Documents during construction and until final payment is due. Owner will advise and consult with Architect.

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Contractor's schedule must reflect these anticipated adverse weather delays in all weather dependent activities.

MONTHLY ANTICIPATED ADVERSE WEATHER CALENDAR DAYS

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
(08)	(05)	(03)	(04)	(06)	(04)	(05)	(05)	(03)	(02)	(03)	(06)

The schedule above will constitute the base line for monthly, or a portion thereof, weather time evaluations. Upon acknowledgement of Notice to Proceed and continuing throughout the Contract, on a monthly basis, actual adverse weather days will be recorded on a calendar day basis (including weekends and holidays) and compared to the monthly anticipated adverse weather schedule, above. The term "actual adverse weather days" shall include days impacted by adverse weather. The number of actual adverse weather days shall be calculated chronologically from the first to the last day in each month. Once the number of actual adverse weather days anticipated in schedule above has been exceeded, Owner will examine all actual adverse weather days to determine whether Contractor is entitled to a time extension. These actual adverse weather days must prevent 50 percent or more of Contractor's workday, delay Work critical to timely completion of the Project, and be documented in Contractor Quality Control reports. Owner will convert any delays meeting these requirements to calendar days and issue a Change Order to Contractor.

4.3.8 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the

receipt of the request by the other party, unless stayed for a longer period by agreement of the parties or court order. In the event the parties cannot agree upon a mediator and on the procedures and timing for

promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1

Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

.2 unit prices stated in the Contract Documents or subsequently agreed upon;

.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

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contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other 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, but Contractor shall not be entitled to any increase in the Contract Price or to damages or additional compensation as a consequence of such delay or interference. No allowance for an extension of time for any cause whatsoever shall be claimed by, or granted to, Contractor unless Contractor shall have made written request within the time periods and in the manner set forth in the Contract Documents.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

8.3.3 This Section 8.3 does not preclude recovery of damages by Owner for delay under any provision of the Contract Documents.

ARTICLE 9 - PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.2 SCHEDULE OF VALUES

9.2.1 Before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.2.2 Schedule of Values: See General Requirements.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 Applications for Payment: See General Requirements.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.2.1 The Owner may approve progress in an amount equal to 95% of all work and materials under the following conditions:

The Contractor shall obtain the approval of the Owner's Representative before making any arrangements to obtain an Application for Payment for materials stored off the site. Materials must be suitable for storage and must be properly packaged as necessary.

The Contractor shall furnish and maintain a suitable storage site and proper storage conditions, which must be approved in advance by the Owner's Representative.

Storage Conditions: Material covered by the Request for Application for Partial Payment must be stored above grade, and must be properly protected at all times against weather, heat, cold, moisture, vandalism or theft and other hazards as the material may require. All protection must be provided by the Contractor,

at his own expense, and must be maintained throughout the storage period.

Material must not be commingled with other similar material, but must be stored by itself and must be plainly labeled, "PROPERTY OF THE BOARD OF REGENTS, UNIVERSITY OF NEBRASKA", with project name.

It must be stored so that it can be readily inspected, measured, and counted, at all times, by the Owners' representatives.

Request for Application for Partial Payment for materials stored under the above conditions must be accompanied by a Bill of Sale, properly identifying the material and transferring ownership of the materials to the Board of Regents, University of Nebraska. The Bill of Sale must be accompanied by an inventory of stored material, together with a description of the storage site by street number and city, or by a legal description of the premises.

RESPONSIBILITY: The Contractor agrees that, in accepting partial payment for the stored materials, he is in no way relieved of responsibility for the safe storage of the material and its safe transportation to, and installation in, the Work or for furnishing and installing the material in strict accordance with plans and specifications.

The Contractor further agrees that acceptance by the Owner of a Bill of Sale for stored material does not imply acceptance of such material for the purpose of this Contract. Such acceptance shall not occur until completion of the Work by the Contractor and final acceptance thereof by the Owner.

The Contractor further agrees that the usual guarantees covering his Work under the plans, specifications and contract are in no way impaired as a result of the partial payment and acceptance of the Bill of Sale. For additional conditions and requirements for payment for materials stored off site, see General Requirements.

9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which payments have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.4 RESERVED

9.5 DECISIONS TO WITHHOLD PAYMENT

9.5.1 The Owner may withhold payment in whole or in part, if in its sole discretion exercised in good faith based on observations at the site and on the data comprising the Application for Payment, the Work has not progressed to the point indicated, or the Work is not in conformance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion), or the Contractor is otherwise not entitled to payment in the amount specified. If the Owner decides to withhold payment on all or part of the amount of the Application, it will notify the Contractor within seven days of receipt of the Application. If the Owner and Contractor cannot agree on a revised amount, the Owner will pay the amount not in dispute, in accord with the Contract Documents. The Owner may also withhold payment because of subsequently discovered evidence or subsequent observations, to such extent as may be necessary, in the opinion of the Owner, to protect the Owner from loss because of:

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

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.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. More specifically, the Contractor shall give notice in writing at least 48 hours before breaking ground, to all persons, Public Utility Companies, Owners of the property having structures or improvements in proximity to site of the Work, Superintendents, inspectors, or those otherwise in charge of property, streets, water pipes, gas pipes, sewer pipes, telephone cables, electric cables, railroads or otherwise, who may be affected by Contractor's operation, in order that they may remove any obstruction for which they

claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

10.7 WATER PRECAUTIONS

10.7.1 Contractor shall keep all parts of site, including excavations, free from any accumulation of water, no matter the source or cause.

10.7.2 The Contractor shall dispose of water and waste water in such manner as will not endanger public health and safety or cause damage or expense to property. The Contractor shall comply with all laws, or administrative regulations, rules or local ordinances applicable to the disposal of water and waste water. If sewers and streets are allowed to be used for drainage or disposal of water during construction, they shall be maintained and left satisfactorily clean upon completion of Work.

10.8 SIGNS

10.8.1 The Contractor shall not erect signs, billboards, or advertisements on or about premises, except as required by Contract. The display of signs other than those required by law shall be limited to those required by Contract Documents and for safety.

10.8.2 Contractor shall furnish and maintain all signs as required for execution of the Work and as required by law.

10.9 WEAPONS POLICY

10.9.1 Possession of dangerous weapons (concealed or unconcealed) on University property, on the work site, in University vehicles, or in personal vehicles when on University property shall be a violation of University policy. (A dangerous weapon shall include guns, knives, explosives, or any other device as determined by the University, which in the manner used or intended is capable of producing death or bodily injury. Devices authorized by the Vice Chancellor for Business and Finance and/or provided to its employees for the purpose of carrying out work responsibilities shall not be deemed dangerous weapons for the purpose of this policy.) Violations of this policy shall make the offender subject to appropriate disciplinary action.

ARTICLE 11 - INSURANCE AND BONDS

11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 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 such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- **.2** claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- **.3** claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- **.4** claims for damages insured by usual personal injury liability coverage;
- **.5** claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** claims for bodily injury or property damage arising out of completed operations;
- **.8** claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18; and

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11.4.2 Boiler and Machinery Insurance. The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

11.4.3 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6 Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.6.1 Copies of Owner's insurance are on file at the University's Office of Risk Management and may be reviewed or obtained by Contractor if requested.

11.4.7 Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written

12.2.2 AFTER SUBSTANTIAL COMPLETION

12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of 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. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed 2 Tf1 0 0o6.4 EMC /P

such other party in respect to covenants, agreements and obligations contained in the Contract

13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Docu2(cu)-3.5

percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment as set forth and subject to the limitations in § 14.4.3.

14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

14.2