



AIA® Document A101® – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the date of full execution by the Owner

(Paragraph deleted)

BETWEEN the Owner:

Beaverton School District #48J
1260 NW Waterhouse Avenue
Beaverton, OR 97006

and the Contractor:

CCB #

for the following Project:
Southridge High School – Athletic Facility
Southridge High School
9625 SW 125th Avenue
Beaverton, Oregon 97008

The Architect:

Commercial Industrial Design Architecture, Inc.
15895 SW 72nd Avenue, Suite 200
Portland, Oregon 97224
503.226.1285

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101®–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

(Paragraph deleted)

§ 2.1 The Contractor shall fully execute the Work described in the Contract Documents or incidental, necessary, or reasonably inferable therefrom, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.2 THE OWNER'S RELIANCE ON THE CONTRACTOR AND SUBCONTRACTORS

§ 2.2.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner and Contractor acknowledge and agree that (1) all Work performed by the Contractor and the Subcontractors shall be performed in the interests of the Owner and for its benefit, (2) the Contractor and the Subcontractors are authorized by the Owner to exercise their own independent, professional and trade judgments in performing their contractual obligations pursuant to this Section 2.2 on behalf of the Owner, (3) the Owner will be relying on the Contractor and the Subcontractors to perform their obligations consistent with this Section 2.2 and (4), as a result, the Contractor and Subcontractors at all tiers shall owe a duty to the Owner to exercise reasonable care and to avoid negligence in performing their obligations under the Contract and on the Project. The Contractor shall incorporate, and shall cause to be incorporated, into all subcontracts with Subcontractors a provision equivalent to this Section 2.2.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall

(Paragraphs deleted)

be the date fixed in a notice to proceed issued by the Owner.

(Paragraphs deleted)

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

Init.

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§ 3.3 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than January 15, 2027 and Final Completion of the entire Work not later than January 27, 2027 (collectively, the "Contract Time"). In addition to achieving Substantial Completion and Final Completion by the dates required herein, the Contractor shall achieve sufficient completion of the Work so that Owner has full access to the Premises for the purpose of Owner's installation of furniture, fixtures, cabling and equipment that are not included in the Work not later than 10 days prior to the earlier of the required or actual Substantial Completion date ("Access Completion").

§ 3.3.1

(Paragraphs deleted)

The Contractor shall perform the Work diligently and continuously consistent with the Contract Time and Construction Schedule. Time is of the essence in the performance of the Work.

(Paragraph deleted)

§ 3.4 ACCELERATION OF THE WORK

§ 3.4.1 If during the course of construction the Owner or Architect determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Construction Schedule, the Owner shall have the right to order the Contractor to take corrective measures as necessary to restore the progress of the construction to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) finishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Contractor pursuant to this Section 3.4.1 shall be paid by the Contractor.

§ 3.4.2 In the circumstances referenced in Section 3.4.1, and without limiting the Owner's rights under that Section, upon demand by the Owner the Contractor shall prepare and submit to the Owner and Architect a Recovery Schedule, in a form and providing sufficient detail to explain and display how the Contractor intends to reschedule the Work to regain compliance with the Construction Schedule during an agreed Recovery Period.

§ 3.4.2.1 Within seven (7) days after the Contractor's receipt of the Owner's demand for a Recovery Schedule, the Contractor shall present the Recovery Schedule to the Owner and Architect. The Recovery Schedule shall represent the Contractor's best judgment as to how the Work should be made to comply with the Construction Schedule within the agreed Recovery Period. The Recovery Schedule shall be prepared to a similar level of detail as the Contractor's construction schedule.

§ 3.4.2.2 Five (5) days prior to the expiration of the agreed Recovery Period, the Owner, Architect and Contractor shall confer to determine whether the Contractor has regained compliance with the Construction Schedule. If in the opinion of the Owner the Contractor is still not in compliance with the Construction Schedule, the Contractor shall prepare another Recovery Schedule pursuant to Sections 3.4.2 and 3.4.2.1, to take effect during the immediate subsequent agreed Recovery Period. If in the opinion of the Owner the Contractor has regained compliance with the Construction Schedule, the use of the Construction Schedule shall be resumed.

§ 3.5 Nothing in this Article 3 or any other provision of this Agreement shall be construed or applied to prevent or bar the Owner from directing the Contractor to accelerate the Work pursuant to the General Conditions.

(Paragraph deleted)

(Table deleted)

ARTICLE 4 CONTRACT SUM

§ 4.1 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 (\$), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: None

(Table deleted)

(Paragraphs deleted)

(Table deleted)

(Paragraph deleted)

§ 4.3 Unit prices, if any:

Unless expressly stated otherwise herein, unit prices cover the entire cost of material, labor, equipment, shipping, insurance, installation, and overhead, fees and profit.

(Table deleted)

§ 4.4

(Paragraphs deleted)

Allowances included in the Contract Sum, if any:

(Table deleted)

§ 4.5 Liquidated

(Paragraphs deleted)

Damages

(Paragraphs deleted)

§ 4.5.1 The Contractor acknowledges that the Owner will incur significant damages if the Project is not completed within the Contract Time, including without limitation, damages in the form of: inability to use the Project and all related facilities (i.e., "loss of use"); delay costs for completion of portions of the Project or related projects to be constructed by the Owner or the Owner's separate contractors; or costs of extended services of the Owner's project management staff, outside construction management firms, Architect, any separate contractors and consultants, and others performing work or services related to the Project. In consideration of the factors set out in this Section 4.5.1, the Contractor acknowledges and agrees that time is particularly of the essence in the Contractor's performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Access Completion, Substantial Completion and Final Completion of the Work, and the approved Construction Schedule. The Owner will incur serious and substantial special, incidental and consequential damages if Access Completion, Substantial Completion and Final Completion of the Work do not occur within the respective specified dates. It would be difficult if not impossible to determine the amount of such damages. Consequently, provisions for liquidated damages as a reasonable estimate of loss are included in the Contract Documents. Such liquidated damages are a reasonable estimate of actual damages from loss of use delay and are not a penalty. The Owner's right to liquidated damages for delay is not affected by partial completion, occupancy, or beneficial occupancy. If the Work is to be performed in phases, with separate dates set forth elsewhere in the Contract Documents, then the liquidated damages of this Section shall apply separately to each such phase. The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation the right to collect actual damages in any case where liquidated damages are unenforceable or otherwise unavailable. The provisions shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors or under the indemnification and warranty provisions of this Contract, that are not breaches expressly covered by liquidated damages.

§ 4.5.2 Loss of Use Liquidated Damages

§ 4.5.2.1 The Owner and Contractor acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion, or Access Completion is not achieved by the required date for Access Completion, the amount of the Owner's actual loss of use damages (as described in Section 4.5.1 above) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Access Completion or Substantial Completion is not achieved by the agreed date of Access Completion or Substantial Completion (as the case may be) as may be adjusted pursuant to the Contract Documents, the Contractor shall pay to the Owner as liquidated damages for the loss of use of the Project the following amounts: the sum of Two hundred fifty dollars (\$250.00) for each partial day or full day of delay beyond the deadline for Access Completion or Substantial Completion. [Liquidated damages shall be the greater of the two numbers, so for example if Access Completion is 3 days late and Substantial Completion is 2 days late, 3 days of liquidated damages shall apply.]

§ 4.5.2.2 The parties further acknowledge and agree that the Contractor's obligation to pay liquidated damages under this Section 4.5.2 shall be in lieu of the obligation to pay actual delay damages for the loss of use damages in connection with Access Completion and Substantial Completion. The parties agree that the daily rate agreed to above is reasonable in comparison to the approximate scope of actual delay damages for loss of use that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for Access Completion and/or Substantial Completion loss of use delay damages and that the Owner reserves the right to claim other types of damages against Contractor resulting from delays, including but not limited to other delay

damages. The Contractor's obligation to pay liquidated damages for the applicable period shall not require Owner's establishment of any actual damages for such delay.

§ 4.5.2.3 Withholding of Liquidated Damages

The Owner may withhold liquidated damages from any progress or final payment.

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner and Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Payments shall be made in accordance with the Oregon Prompt Payment Act, ORS 279C.570.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month:

§ 5.1.3 Provided that a complete and correct Application for Payment is received by the Owner and Architect not later than the first (1st) day of a month, the Owner shall make payment of the approved amount to the Contractor not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Owner and Architect after the application date fixed above, payment shall be made of the approved amount by the Owner not later than thirty (30) days after the Owner and Architect receive the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor and approved by the Owner in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or the Owner may require. The current schedule of values as approved by the Owner shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Owner determines, in the Owner's judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect or the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Paragraphs deleted)

five percent (5%) of each progress payment (unless otherwise required by law).

(Paragraphs deleted)

§ 5.1.7.2

(Paragraphs deleted)

Upon Final Completion of the Work and fulfillment of all requirements for Final Completion and release of retainage, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7.

(Paragraphs deleted)

§ 5.1.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.9 In accordance with ORS 279C.570, the Owner and Contractor shall endeavor to agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements. Unless otherwise agreed in writing with the Owner, the Contractor agrees to withhold as retainage from each first-tier Subcontractor five percent (5%) of the amount of each progress payment to such first-tier Subcontractor, until completion of the Work, and to otherwise apply such retainage in accordance with the applicable Subcontract to protect the interests of the Owner.

§ 5.1.10 The Owner may require Contractor to provide any form of retainage as allowed under ORS279.560. If the Owner requires the Contractor to deposit a surety bond for the retainage obligations set forth in this Agreement, then payments made to Contractor under pay applications shall be in accordance with ORS 279C.560(7). In this event, references in this contract to payments withheld from pay applications as retainage shall be interpreted to refer to the amount of money that would have been withheld as retainage were retainage to have been held in a retainage account.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work after final payment as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which arise or extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect and approved by the Owner; and
- .3 the Contractor has fully complied with the General Conditions and all other requirements of the Contract Documents for final payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than thirty (30) days after the issuance of the Architect's final Certificate for Payment.

§ 5.3 Interest payments due and unpaid under the Contract shall bear interest

(Paragraphs deleted)

at the rate required under Oregon law.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1

(Paragraphs deleted)

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.2 of the General Conditions, the method of binding dispute resolution shall pursuant to Section 15.3 of the General Conditions be at the Owner's sole option either (i) arbitration or (ii) litigation in a court of competent jurisdiction.

(Paragraphs deleted)

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of the General Conditions.

(Paragraphs deleted)

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of the General Conditions.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of the General Conditions or another Contract Document, the reference refers to that provision as amended therein or as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's Representative:

Peter Madaus
Purchasing Manager
Beaverton School District #48J
16550 SW Merlo Road
Beaverton, OR 97003
Telephone: (503) 356-4555

§ 8.3 The Contractor's
(Paragraphs deleted)
Representative:

§ 8.4 Either party may change their representative by written notice to the other party. The Contractor's Representative shall not be replaced without ten (10) days written notice to and the consent of the Owner. If the Owner approves replacement of the Contractor's Representative, the Owner shall have the right to approve the replacement Contractor's Representative. The Owner shall have the right, which shall be exercised in a reasonable fashion, to require replacement of the Contractor's Representative. The Owner may replace the Owner's Representative at its discretion.

§ 8.5 Contractor's Project Manager shall be:

§ 8.6 Contractor's Project Superintendent shall be:

§ 8.5 Insurance and Bonds

§ 8.5.1 The Contractor shall purchase and maintain insurance as set forth in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in the Contract Documents.

§ 8.6 The Owner's Project Manager.

Chris Hansen, Project Manager
16550 SW Merlo Road
Beaverton, Oregon 97003
christopher_hansen@beaverton.k12.or.us
503.356.4321

§ 8.6.1 The Owner's Representative and the Contractor's Representative shall have authority to bind the Owner and Contractor, respectively, regarding all matters related to the Contract. The Owner's Project Manager shall represent

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User Notes:

(896034642)

the Owner's interest throughout the Project. The Owner's Project Manager shall not have the authority to bind the Owner regarding any matter relating to the Contract.

§ 8.7 Other Provisions:

§ 8.7.1 The Contractor represents and warrants to the Owner, in addition to the other representations and warranties contained in the Contract Documents and as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution of this Agreement and the Final Completion of the Work, as follows:

- .1 that the Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform and complete the Work as described in the Contract Documents and to otherwise perform its obligations under the Contract Documents;
- .2 that the Contractor is able to furnish the labor, services, materials, equipment, facilities, supervision, Project management and other services necessary and required to perform and complete the Work and to otherwise perform its obligations under the Contract Documents, and has sufficient experience and competence to do so;
- .3 that the Contractor is authorized to do business in the state where the Project is located and is properly licensed and registered by all necessary governmental and quasi-public authorities having jurisdiction over the Contractor, the Work and the Project; and
- .4 that the Contractor's execution of this Agreement and its performance of the Contract is within its duly authorized powers.

§ 8.7.2 The Contractor hereby agrees that the Project will be completed substantially in accordance with building permits and any other permits related to development of the Project, the Contract Documents and unless otherwise provided in the Contract Documents all manufacturers' or suppliers' recommended installation procedures so as to preserve any warranties with respect thereto, free and clear of all liens or encumbrances and within the time set forth in the Contract Documents. Contractor does further agree that on the date of Substantial Completion, the Project shall comply with all applicable building laws, ordinances, rules and regulations known, or which should in the exercise of reasonable care be known, to Contractor, and that all utility services necessary for the operation of the Project shall have been provided to the Project within the time for completion of construction.

§ 8.7.3 Interpretation. The Contract Documents have been carefully reviewed and negotiated by both parties at arm's length, and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Section headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 8.7.4 If the Contractor fails, neglects or refuses to make prompt payment for labor, materials, equipment or other services furnished to the Contractor or a Subcontractor by any person in connection with the Project as such claim becomes due, the Owner may pay the claim and charge the amount of the payment against funds due or to become due the Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 8.7.5 This Contract is subject to the State of Oregon Bureau of Labor and Industries Prevailing Wage Rates, and Contractor shall pay or cause to be paid all workers accordingly. For this contract, the 'prevailing rate of wage' as published by the Oregon Bureau of Labor and Industries are the Prevailing Wage Rates for Public Works Contracts in Oregon effective July 5, 2026. Such rates may be found at the Bureau's web site www.boli.state.or.us as in effect on the Publication Date.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below. Any Contractor or subcontractor proposals referenced as part of the Contract Documents are incorporated solely for: (i) any statement of fees and schedule that is otherwise consistent with the terms of this Agreement and (ii) any statement of services and scope of Work that is consistent with the remainder of this Agreement, or that provides additional Work without adjustment to the Contract Sum or Contract Time. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the other terms of this Agreement, such proposed conflicting terms are void and are expressly and wholly subject to the terms of this Agreement. In the event of overlap

or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

§ 9.1.1 The Agreement is this executed and modified AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction, as modified herein. References to the AIA Document A201™-2017 mean the General Conditions.

§ 9.1.3 The Specifications are the Specifications for ITB 26-0001 by Commercial Industrial Design Architecture, Inc. dated xx , 2026.

§ 9.1.4 The Drawings are the Drawings for ITB 26-0001 by Commercial Industrial Design Architecture, Inc. dated June 24, 2026.

§ 9.1.5 The Addenda, is Addendum #1 dated xx 2026.

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

- Exhibit A: Construction Documents List
- Exhibit B: Forms of Claim Waivers and Releases
- Exhibit C: Contract Provisions from ORS Chapters 279A and 279C, the Attorney General Model Public Contracting Rules and Other Laws
- Exhibit D: Statement of Work-Owner's Solicitation ITB 26-0001 including issued Addenda
- Exhibit E: Insurance Requirements- OCIP Manual
- Exhibit F: 's Bid dated August 13, 2026
- Exhibit G: Contractor Background Checks/District Access

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

Beaverton School District

Ross Builders Northwest, LLC.

District Representative Date

Signature of Person Authorized to Bind Contractor Date

Department Administrator Date

Printed Name and Title

Associate Superintendent Operations & Support Services (Required if over 150K) Date

Telephone Number

Business Services Purchasing Date

e-Mail Address

Init.

(Paragraphs deleted)

Not a valid contract until all signatures are complete.

(Paragraphs deleted)



Additions and Deletions Report for AIA® Document A101® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

AGREEMENT made as of the day of ~~in the year~~ date of full execution by the Owner
(In words, indicate day, month and year.)

...

(~~Name, legal status, address and other information~~)
Beaverton School District #48J
1260 NW Waterhouse Avenue
Beaverton, OR 97006

and the Contractor:
(~~Name, legal status, address and other information~~)

CCB #

...

(~~Name, location and detailed description~~)Southridge High School – Athletic Facility
Southridge High School
9625 SW 125th Avenue
Beaverton, Oregon 97008

...

(~~Name, legal status, address and other information~~)
Commercial Industrial Design Architecture, Inc.
15895 SW 72nd Avenue, Suite 200
Portland, Oregon 97224
503.226.1285

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9 ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A – INSURANCE AND BONDS

...

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this ~~Agreement~~, Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract

represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, ~~representations, representations~~ or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

...

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.1 The Contractor shall fully execute the Work described in the Contract Documents or incidental, necessary, or reasonably inferable therefrom, except as specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.2 THE OWNER'S RELIANCE ON THE CONTRACTOR AND SUBCONTRACTORS

§ 2.2.1 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner and Contractor acknowledge and agree that (1) all Work performed by the Contractor and the Subcontractors shall be performed in the interests of the Owner and for its benefit, (2) the Contractor and the Subcontractors are authorized by the Owner to exercise their own independent, professional and trade judgments in performing their contractual obligations pursuant to this Section 2.2 on behalf of the Owner, (3) the Owner will be relying on the Contractor and the Subcontractors to perform their obligations consistent with this Section 2.2 and (4), as a result, the Contractor and Subcontractors at all tiers shall owe a duty to the Owner to exercise reasonable care and to avoid negligence in performing their obligations under the Contract and on the Project. The Contractor shall incorporate, and shall cause to be incorporated, into all subcontracts with Subcontractors a provision equivalent to this Section 2.2.

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

The date of this Agreement.

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

Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

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

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§ 3.3 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than January 15, 2027 and Final Completion of the entire Work not later than January 27, 2027 (collectively, the "Contract Time"). In addition to achieving Substantial Completion and Final Completion by the dates required herein, the Contractor shall achieve sufficient completion of the Work so that Owner has full access to the Premises for the purpose of Owner's installation of furniture, fixtures, cabling and equipment that are not included in the Work not later than 10 days prior to the earlier of the required or actual Substantial Completion date ("Access Completion").

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

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

~~[] By the following date: The Contractor shall perform the Work diligently and continuously consistent with the Contract Time and Construction Schedule. Time is of the essence in the performance of the Work.~~

~~§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:~~

~~**§ 3.4 ACCELERATION OF THE WORK**~~

~~§ 3.4.1 If during the course of construction the Owner or Architect determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Construction Schedule, the Owner shall have the right to order the Contractor to take corrective measures as necessary to restore the progress of the construction to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) finishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Contractor pursuant to this Section 3.4.1 shall be paid by the Contractor.~~

~~§ 3.4.2 In the circumstances referenced in Section 3.4.1, and without limiting the Owner's rights under that Section, upon demand by the Owner the Contractor shall prepare and submit to the Owner and Architect a Recovery Schedule, in a form and providing sufficient detail to explain and display how the Contractor intends to reschedule the Work to regain compliance with the Construction Schedule during an agreed Recovery Period.~~

~~§ 3.4.2.1 Within seven (7) days after the Contractor's receipt of the Owner's demand for a Recovery Schedule, the Contractor shall present the Recovery Schedule to the Owner and Architect. The Recovery Schedule shall represent the Contractor's best judgment as to how the Work should be made to comply with the Construction Schedule within the agreed Recovery Period. The Recovery Schedule shall be prepared to a similar level of detail as the Contractor's construction schedule.~~

~~§ 3.4.2.2 Five (5) days prior to the expiration of the agreed Recovery Period, the Owner, Architect and Contractor shall confer to determine whether the Contractor has regained compliance with the Construction Schedule. If in the opinion of the Owner the Contractor is still not in compliance with the Construction Schedule, the Contractor shall prepare another Recovery Schedule pursuant to Sections 3.4.2 and 3.4.2.1, to take effect during the immediate subsequent agreed Recovery Period. If in the opinion of the Owner the Contractor has regained compliance with the Construction Schedule, the use of the Construction Schedule shall be resumed.~~

~~§ 3.5 Nothing in this Article 3 or any other provision of this Agreement shall be construed or applied to prevent or bar the Owner from directing the Contractor to accelerate the Work pursuant to the General Conditions.~~

Portion of Work

Substantial Completion Date

~~§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.~~

...

~~§ 4.2 Alternates The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner: None~~

~~§ 4.2.1 Alternates, if any, included in the Contract Sum:~~

Item

Price

~~§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)~~

Item

Price

Conditions for Acceptance

~~§ 4.3 Allowances, if any, included in the Contract Sum: Unit prices, if any: _____
(Identify each allowance.)~~

Unless expressly stated otherwise herein, unit prices cover the entire cost of material, labor, equipment, shipping, insurance, installation, and overhead, fees and profit.

Item	Price
------	-------

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Allowances included in the Contract Sum, if any:

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Damages

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

§ 4.5.1 The Contractor acknowledges that the Owner will incur significant damages if the Project is not completed within the Contract Time, including without limitation, damages in the form of: inability to use the Project and all related facilities (i.e., "loss of use"); delay costs for completion of portions of the Project or related projects to be constructed by the Owner or the Owner's separate contractors; or costs of extended services of the Owner's project management staff, outside construction management firms, Architect, any separate contractors and consultants, and others performing work or services related to the Project. In consideration of the factors set out in this Section 4.5.1, the Contractor acknowledges and agrees that time is particularly of the essence in the Contractor's performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Access Completion, Substantial Completion and Final Completion of the Work, and the approved Construction Schedule. The Owner will incur serious and substantial special, incidental and consequential damages if Access Completion, Substantial Completion and Final Completion of the Work do not occur within the respective specified dates. It would be difficult if not impossible to determine the amount of such damages. Consequently, provisions for liquidated damages as a reasonable estimate of loss are included in the Contract Documents. Such liquidated damages are a reasonable estimate of actual damages from loss of use delay and are not a penalty. The Owner's right to liquidated damages for delay is not affected by partial completion, occupancy, or beneficial occupancy. If the Work is to be performed in phases, with separate dates set forth elsewhere in the Contract Documents, then the liquidated damages of this Section shall apply separately to each such phase. The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation the right to collect actual damages in any case where liquidated damages are unenforceable or otherwise unavailable. The provisions shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors or under the indemnification and warranty provisions of this Contract, that are not breaches expressly covered by liquidated damages.

§ 4.5.2 Loss of Use Liquidated Damages

§ 4.5.2.1 The Owner and Contractor acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion, or Access Completion is not achieved by the required date for Access Completion, the amount of the Owner's actual loss of use damages (as described in Section 4.5.1 above) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Access Completion or Substantial Completion is not achieved by the agreed date of Access Completion or Substantial Completion (as the case may be) as may be adjusted pursuant to the Contract Documents, the Contractor shall pay to the Owner as liquidated damages for the loss of use of the Project the following amounts: the sum of Two hundred fifty dollars (\$250.00) for each partial day or full day of delay beyond the deadline for Access Completion or Substantial Completion. [Liquidated damages shall be the greater of the two numbers, so for example if Access Completion is 3 days late and Substantial Completion is 2 days late, 3 days of liquidated damages shall apply.]

§ 4.5.2.2 The parties further acknowledge and agree that the Contractor's obligation to pay liquidated damages under this Section 4.5.2 shall be in lieu of the obligation to pay actual delay damages for the loss of use damages in connection with Access Completion and Substantial Completion. The parties agree that the daily rate agreed to above is reasonable in comparison to the approximate scope of actual delay damages for loss of use that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for Access Completion and/or Substantial Completion loss of use delay damages and that the Owner reserves the right to claim other types of damages against Contractor resulting from delays, including but not limited to other delay damages. The Contractor's obligation to pay liquidated damages for the applicable period shall not require Owner's establishment of any actual damages for such delay.

§ 4.5.2.3 Withholding of Liquidated Damages

The Owner may withhold liquidated damages from any progress or final payment.

§ 5.1 Progress Payments**PROGRESS PAYMENTS**

§ 5.1.1 Based upon Applications for Payment submitted to the Owner and Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. Payments shall be made in accordance with the Oregon Prompt Payment Act, ORS 279C.570.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

month:

§ 5.1.3 Provided that ~~an a complete and correct~~ Application for Payment is received by the Owner and Architect not later than the first (1st) day of a month, the Owner shall make payment of the approved amount certified to the Contractor not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Owner and Architect after the application date fixed above, ~~payment of the amount certified shall be made shall be made of the approved amount~~ by the Owner not later than ~~(—) days after the Architect receives the Application for Payment.~~

~~(Federal, state or local laws may require payment within a certain period of time.)~~thirty (30) days after the Owner and Architect receive the Application for Payment.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor and approved by the Owner in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such ~~form,~~ form and supported by such data to substantiate its ~~accuracy, as the Architect may require.~~ accuracy as the Architect or the Owner may require. ~~This schedule of values~~ The current schedule of values as approved by the Owner shall be used as a basis for reviewing the Contractor's Applications for Payment.

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.3 That portion of Construction Change Directives that the ~~Architect~~Owner determines, in the ~~Architect's~~Owner's ~~professional~~judgment, to be reasonably justified.

...

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect or the Owner may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and

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§ 5.1.7.1 For each progress payment made prior to ~~Substantial~~Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

five percent (5%) of each progress payment (unless otherwise required by law).

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Upon Final Completion of the Work and fulfillment of all requirements for Final Completion and release of retainage, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017. Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site. In accordance with ORS 279C.570, the Owner and Contractor shall endeavor to agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements. Unless otherwise agreed in writing with the Owner, the Contractor agrees to withhold as retainage from each first-tier Subcontractor five percent (5%) of the amount of each progress payment to such first-tier Subcontractor, until completion of the Work, and to otherwise apply such retainage in accordance with the applicable Subcontract to protect the interests of the Owner.

§ 5.1.10 The Owner may require Contractor to provide any form of retainage as allowed under ORS 279.560. If the Owner requires the Contractor to deposit a surety bond for the retainage obligations set forth in this Agreement, then payments made to Contractor under pay applications shall be in accordance with ORS 279C.560(7). In this event, references in this contract to payments withheld from pay applications as retainage shall be interpreted to refer to the amount of money that would have been withheld as retainage were retainage to have been held in a retainage account.

§ 5.2 Final Payment FINAL PAYMENT

...

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, after final payment as provided in Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which arise or extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect, the Architect and approved by the Owner; and
- .3 the Contractor has fully complied with the General Conditions and all other requirements of the Contract Documents for final payment.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than ~~30~~thirty (30) days after the issuance of the Architect's final Certificate for ~~Payment, or as follows:~~

Payment.

§ 5.3 Interest

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

(Insert rate of interest agreed upon, if any.)

~~—%~~at the rate required under Oregon law.

...

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.2 of the General Conditions, the method of binding dispute resolution shall pursuant to Section 15.3 of the General Conditions be at the Owner's sole option either (i) arbitration or (ii) litigation in a court of competent jurisdiction.

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

— Arbitration pursuant to Section 15.4 of AIA Document A201–2017

— Litigation in a court of competent jurisdiction

— Other *(Specify)*

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

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of ~~AIA Document A201–2017~~the General Conditions.

§ 7.1.1 ~~If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:~~

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

~~§ 7.2~~ The Work may be suspended by the Owner as provided in Article 14 of ~~AIA Document A201-2017~~ the General Conditions.

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~~§ 8.1~~ Where reference is made in this Agreement to a provision of ~~AIA Document A201-2017~~ the General Conditions or another Contract Document, the reference refers to that provision as amended therein or as amended or supplemented by other provisions of the Contract Documents.

~~§ 8.2~~ The Owner's ~~representative~~ Representative:
(~~Name, address, email address, and other information~~)

Peter Madaus
Purchasing Manager
Beaverton School District #48J
16550 SW Merlo Road
Beaverton, OR 97003
Telephone: (503) 356-4555

~~§ 8.3~~ The Contractor's ~~representative~~:
(~~Name, address, email address, and other information~~)
Representative:

~~§ 8.4~~ ~~Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.~~ Either party may change their representative by written notice to the other party. The Contractor's Representative shall not be replaced without ten (10) days written notice to and the consent of the Owner. If the Owner approves replacement of the Contractor's Representative, the Owner shall have the right to approve the replacement Contractor's Representative. The Owner shall have the right, which shall be exercised in a reasonable fashion, to require replacement of the Contractor's Representative. The Owner may replace the Owner's Representative at its discretion.

~~§ 8.5~~ Contractor's Project Manager shall be:

~~§ 8.6~~ Contractor's Project Superintendent shall be:

...

~~§ 8.5.1~~ The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™ 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

~~§ 8.5.2~~ The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents.

~~§ 8.6~~ Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below: **The Owner's Project Manager.**

Chris Hansen, Project Manager
16550 SW Merlo Road

~~(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)~~ Beaverton, Oregon 97003
christopher_hansen@beaverton.k12.or.us
503.356.4321

~~§ 8.6.1~~ The Owner's Representative and the Contractor's Representative shall have authority to bind the Owner and Contractor, respectively, regarding all matters related to the Contract. The Owner's Project Manager shall represent

the Owner's interest throughout the Project. The Owner's Project Manager shall not have the authority to bind the Owner regarding any matter relating to the Contract.

§ 8.7 Other provisions:Provisions:

§ 8.7.1 The Contractor represents and warrants to the Owner, in addition to the other representations and warranties contained in the Contract Documents and as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution of this Agreement and the Final Completion of the Work, as follows:

- .1 that the Contractor is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform and complete the Work as described in the Contract Documents and to otherwise perform its obligations under the Contract Documents;
- .2 that the Contractor is able to furnish the labor, services, materials, equipment, facilities, supervision, Project management and other services necessary and required to perform and complete the Work and to otherwise perform its obligations under the Contract Documents, and has sufficient experience and competence to do so;
- .3 that the Contractor is authorized to do business in the state where the Project is located and is properly licensed and registered by all necessary governmental and quasi-public authorities having jurisdiction over the Contractor, the Work and the Project; and
- .4 that the Contractor's execution of this Agreement and its performance of the Contract is within its duly authorized powers.

§ 8.7.2 The Contractor hereby agrees that the Project will be completed substantially in accordance with building permits and any other permits related to development of the Project, the Contract Documents and unless otherwise provided in the Contract Documents all manufacturers' or suppliers' recommended installation procedures so as to preserve any warranties with respect thereto, free and clear of all liens or encumbrances and within the time set forth in the Contract Documents. Contractor does further agree that on the date of Substantial Completion, the Project shall comply with all applicable building laws, ordinances, rules and regulations known, or which should in the exercise of reasonable care be known, to Contractor, and that all utility services necessary for the operation of the Project shall have been provided to the Project within the time for completion of construction.

§ 8.7.3 Interpretation. The Contract Documents have been carefully reviewed and negotiated by both parties at arm's length, and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Section headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 8.7.4 If the Contractor fails, neglects or refuses to make prompt payment for labor, materials, equipment or other services furnished to the Contractor or a Subcontractor by any person in connection with the Project as such claim becomes due, the Owner may pay the claim and charge the amount of the payment against funds due or to become due the Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 8.7.5 This Contract is subject to the State of Oregon Bureau of Labor and Industries Prevailing Wage Rates, and Contractor shall pay or cause to be paid all workers accordingly. For this contract, the 'prevailing rate of wage' as published by the Oregon Bureau of Labor and Industries are the Prevailing Wage Rates for Public Works Contracts in Oregon effective July 5, 2026. Such rates may be found at the Bureau's web site www.boli.state.or.us as in effect on the Publication Date.

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§ 9.1 This Agreement is comprised of the following documents:The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below. Any Contractor or subcontractor proposals referenced as part of the Contract Documents are incorporated solely for: (i) any statement of fees and schedule that is otherwise consistent with the terms of this Agreement and (ii) any statement of services and scope of Work that is consistent with the remainder of this Agreement, or that provides additional Work without adjustment to the Contract Sum or Contract Time. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the other terms of this Agreement, such proposed conflicting terms are void and are expressly and wholly subject to the terms of

this Agreement. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

§ 9.1.1 The Agreement is this executed and modified AIA Document A101™-2017, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are the General Conditions of the Contract for Construction, as modified herein. References to the AIA Document A201™-2017 mean the General Conditions.

§ 9.1.3 The Specifications are the Specifications for ITB 26-0001 by Commercial Industrial Design Architecture, Inc. dated xx , 202.

§ 9.1.4 The Drawings are the Drawings for ITB 26-0001 by Commercial Industrial Design Architecture, Inc. dated June 24, 2026.

§ 9.1.5 The Addenda, is Addendum #1 dated xx 2026.

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

Exhibit A: Construction Documents List

~~.1 AIA Document A101™ 2017, Standard Form of Agreement Between Owner and Contractor~~ **Exhibit**

B: Forms of Claim Waivers and Releases

~~.2 AIA Document A101™ 2017, Exhibit A, Insurance and Bonds~~ **Exhibit C: Contract Provisions from ORS Chapters 279A and 279C, the Attorney General Model Public Contracting Rules and Other Laws**

~~.3 AIA Document A201™ 2017, General Conditions of the Contract for Construction~~ **Exhibit D: Statement of Work-Owner's Solicitation ITB 26-0001 including issued Addenda**

Exhibit E: Insurance Requirements- OCIP Manual

~~.4 Building information modeling exhibit, dated as indicated below:~~ **Exhibit F: 's Bid dated August 13, 2026**

(Insert the date of the building information modeling exhibit incorporated into this Agreement.) **Exhibit G:**

Contractor Background Checks/District Access

~~.5 Drawings~~ This Agreement entered into as of the day and year first written above.

Number

Title

Date

Beaverton School District

Ross Builders Northwest, LLC.

District Representative

Date

Signature of Person Authorized to Bind Contractor

Date

Department Administrator

Date

Printed Name and Title

Associate Superintendent Operations & Support Services

Date

Telephone Number

(Required if over 150K)

Business Services Purchasing

Date

e-Mail Address

~~.6~~ Specifications

Section	Title	Date	Pages
----------------	--------------	-------------	--------------

~~.7~~ Addenda, if any:

Number	Date	Pages
---------------	-------------	--------------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

~~.8~~ Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

AIA Document E204™ 2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204 2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
--------------	-------------	--------------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
-----------------	--------------	-------------	--------------

~~.9~~ Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™ 2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

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

~~Not a valid contract until all signatures are complete.~~

OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

(Printed name and title)



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:03:47 on 07/06/2026 under Order No. 20250151053 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

Southridge High School – Athletic Facility

Southridge High School
9625 SW 125th Avenue
Beaverton, Oregon 97008

THE OWNER:

Beaverton School District #48J
1260 NW Waterhouse Avenue
Beaverton, OR 97007

THE ARCHITECT:

Commercial Industrial Design Architecture, Inc.
15895 SW 72nd Avenue, Suite 200
Portland, Oregon 97224
503.226.1285

- 1 GENERAL PROVISIONS
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- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
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- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

/

User Notes:

(1484409138)

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



Init.

/

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

(Paragraphs deleted)

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, signed by both parties, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. Submittals are not Contract Documents unless and until they are formalized as a Change Order.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior or contemporaneous 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 (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.2.1 Notwithstanding Section 1.1.2, the Owner is (1) a third-party beneficiary of subcontracts, purchase orders and similar agreements between the Contractor and its Subcontractors and between Subcontractors and their Subcontractors, as set out in Section 5.3, and (2) a contingent assignee of such subcontracts, purchase orders and similar agreements, as set out in Section 5.4.

§ 1.1.3 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 and Subcontractors to fulfill the Contractor's obligations. The Work includes all work performed by Contractor and its Subcontractors at any tier on the Project prior to the date of this Contract, if any, and may constitute the whole or a part of the Project. The Work shall consist of all items set forth in, required by or reasonably inferable from Contract Documents in order to fully complete the Project, including, unless otherwise specifically excluded, all demolition and construction services, supervision, administration, coordination, tests, inspections, clean up, repairs and other items that are necessary and appropriate, together with the additional, collateral and incidental work and services required for completion of the Work as set forth in the Contract Documents. The Work may constitute the whole or part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective

professional services agreements (whether work made for hire or otherwise). Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Work includes, unless specifically excluded, all demolition and construction services, construction supervision, administration, coordination, acquisition of permits and approvals, tests, inspections, clean up, repairs, and other items that are necessary and appropriate to complete construction of the Work together with the additional collateral and incidental work and services required for completion of the Work as set forth in the Contract Documents. Contractor is responsible for performing and completing the Work in a manner that provides a complete and functional Project for the Owner, and the Work includes all materials and labor required for provision of such a Project.

§ 1.2.1.1 If any provision of this Contract at any time is determined to be invalid, void or otherwise unenforceable for any reason, then the remaining provisions or portions of provisions shall remain in full force and effect and the offending provision shall be given the broadest meaning and effect allowed by law. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Contract Documents, interpretations shall be based on the following order of precedence:

- .1 Modifications of the Contract, with those of later date having precedence over those of earlier date, and with those of the same date having precedence based upon Clauses .2 through .6 of this Section 1.2.4;
- .2 the Agreement;
- .3 these General Conditions;
- .4 addenda, with those of later date having precedence over those of earlier date;
- .5 the Drawings, with those in larger scale having precedence over those in smaller scale, and with notes and schedules thereon having precedence over the remainder; and
- .6 the Specifications.
- .7 Owner's Solicitation

§ 1.2.5 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Drawings, or between or among the Specifications, remaining after application of Section 1.2.4, those Drawings or Specifications of later date shall have precedence over those of earlier date. Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern. Work described in the specifications that is not specifically located on the drawings is nonetheless included in the Work. Items reasonably inferred from the Drawings but not in the Drawings (e.g., missing doorknobs, electrical connections to HVAC, etc.) shall be deemed part of the Drawings. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation. In conflicts between the drawings and specifications, the drawings shall govern the specifications for quantity and location; the specifications shall govern the drawings for quality and performance. Figured or written dimensions govern scale dimensions, and large scale Drawings govern small scale Drawings; provided that where the Contract Documents provide for different or conflicting standards or requirements as to any portion of the Work, Contractor shall be obligated to provide the better quality, greater quantity, or comply with the more stringent requirements. In the event

that work is shown on Drawings but not contained in Specifications or contained in the Specifications and not shown on the Drawings, it will be assumed the work as shown shall be provided at no change in the Contract Sum or Contract Time, according to the Drawings and/or Specifications. The Contractor shall not be entitled to an increase in the Contract Sum or Time arising out of an error or conflict where the Contractor failed adequately to review the Contract Documents and timely report the error or conflict to the Owner and the Architect. If a conflict, inconsistency, discrepancy or ambiguity nonetheless remains, the Contractor shall provide written notice thereof to the Architect and the Owner. Thereafter, unless otherwise ordered in writing by the Architect, the Contractor shall provide the better quality of, and the greater quantity of, the Work. The provisions of this Section 1.2.5 shall apply only to conflicts, inconsistencies, discrepancies or ambiguities in express requirements of the Drawings and Specifications and not to interpretations thereof by the Owner or the Architect.

§ 1.2.6 Where a conflict in Contract Document requirements occurs between the Specifications and Drawings or between Drawings only and clarification is not secured in writing prior to the Contractor's bid date or execution of this Agreement, whichever is earlier, the Contractor and its subcontractors at all tiers assume the responsibility and bear the risk that the bid assumption differs from the actual requirements of the Project. The Architect shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements, and subject to the approval of the Owner, the Contractor shall perform the Work consistent with the Architect's decision without adjustment of the Contract Sum or Contract Time.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles and identified references to Sections and Clauses in the document, or (3) the titles of other documents published by the American Institute of the Architects or by Owner.

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

§ 1.5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor and its Sub-Contractors may retain one record set. Unless otherwise indicated, the Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications, and unless otherwise agreed with the Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner (the Contractor acknowledges the Architect's consent also may be required and if so the Contractor shall procure such consent).

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

(Paragraphs deleted)

§ 1.7 Transmission of Data in Digital Form

If the parties intend to transmit Drawings or Specifications or any other information or documentation in digital form, they shall comply with the Owner's identified protocols or, in the absence of such protocol, shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.8 Execution of Contract Documents

The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Contractor is responsible for identifying such unsigned Document prior to initiating the Work.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. Changes to the Contract involving modifications to the Contract Time or Contract Sum must be signed by an authorized representative of the Owner. The term "the Owner" means the Owner or the Owner's authorized representative. The only entity or person authorized to act for the Owner means the authorized representative outlined above, including any substituted authorized representative. Teachers, staff, a principal, custodians or others at the school who are not the Owner's authorized representatives are not authorized to act for Owner as to any matter regarding this Contract.

§ 2.1.2 Owner shall have the right, but not the obligation, to have a representative on-site (who need not be the Owner's Representative identified above) to observe the progress of the Work. The presence of the Owner's representative shall in no way relieve the Contractor of Contractor's obligations to supervise the Work so that the Work is in conformity with the Contract Documents. The presence of Owner's representative on-site shall not be deemed in any respect to constitute an approval or concurrence by Owner that any portion of the Work has been properly executed, installed or completed in accordance with the Contract Documents, nor an assumption of any duty for the means and methods of performance of the Work. Owner's representative shall be entitled to make notes or audio or video recordings of conditions and activities observed and shall have the right to inspect and review activity reports, Contractor's logs or other information available on-site, or at Contractor's offices, provided that Owner Representative shall not materially delay the progress of the Work in undertaking such activities.

§ 2.2 Information Provided by the Owner

§ 2.2.1 The Owner has furnished the information describing physical characteristics, legal limitations and utility locations for the site of the Project to the extent indicated in the Invitation to Bid. Such items are informational and are not representations. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.2 Where the Owner has submitted financial, strategic, planning, or non-public information or has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after fourteen (14) days' notice to the Owner, only where disclosure is required by law, by a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information on a need-to-know basis to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project, on condition that they agree, in advance, in writing, to maintain the confidentiality of such information.

(Paragraphs deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor or Subcontractors under the Contract Documents or applicable law, including those required under Section 3.7.1, the Owner or the Architect shall secure and the Owner shall pay for the building permit, development fees, plan check fees, system development charges, road

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approach and right-of-way permits, air discharge permits and other similar necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect, but who need not be licensed to practice architecture.

§ 2.3.4 Contractor shall confirm the location of each utility, shall excavate and where necessary dispose of each onsite utility and shall cap offsite utility as required by the Work and as may be included in the Specifications. At the Owner's request, Contractor shall make available to the Owner the results of any site investigation, test borings, analyses, studies, or other tests conducted by or in possession of Contractor or any of its agents. The Contractor shall confirm indicated dimensions and other aspects of existing conditions at the Project site as necessary for the proper performance of the Work. The Contractor may rely only on the accuracy of the technical information contained in surveys and other reports furnished by the Owner, and only to the extent Contractor does not have knowledge of information to the contrary. Contractor shall exercise special care in executing the subsurface work in proximity of known subsurface utilities, improvements and easements.

§ 2.3.4.1 The Contractor shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Contractor shall coordinate with utility and other involved third-party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 2.3.5 The Owner shall furnish to the Contractor one (1) reproducible copy of the Drawings and Specifications at no cost to the Contractor. The Contractor's cost of reproducing or obtaining additional copies of the Drawings and Specifications as are required for the performance of the Work shall be included in the Contract Sum.

§ 2.3.6 The Contractor agrees that the Owner shall have no obligation to deliver copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract or on the Project, and that the Owner's non-delivery of copies of such notices to the Contractor shall have no effect on the obligations of the Contractor to hold harmless and indemnify the Owner for mechanics', material suppliers', design professionals', construction or similar liens as required by the Contract or applicable law.

(Paragraphs deleted)

§ 2.4 The Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out 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 has been 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. This right shall be in addition to, and not in restriction of, the Owner's other rights under this Agreement and at law, and its exercise shall not excuse the Contractor from damages caused by breach of this Agreement or its responsibility for full performance of this Agreement.

§ 2.5 The Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to protect or 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 other remedies the Owner may have, correct such default or neglect. Pursuant to Section 9.5.1, a Certificate for Payment may be withheld or nullified in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies or protecting the Work, including but not limited to the Owner's attorneys' fees and related costs, disbursements and the Owner's expenses and compensation for the Architect's or the Owner's

consultants additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to protect the Work or correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, nor excuse any default by Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Owner's Audit Rights

§ 2.6.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and the Architect at regular intervals, using Contractor's job-cost tracking system.

§ 2.6.2 The Contractor's records, which shall include but not be limited to accounting records, written policies and procedures, subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Contract shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the Owner's agents or authorized representatives. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract and records relating to the performance of the Work. The Contractor shall preserve such records for a period of at least three years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract

§ 2.6.3 For the purpose of such audits, inspections, examinations and evaluations, the Owner's agents or authorized representatives shall have access to said records from the commencement of the Contract for the duration of the Work and thereafter.

§ 2.7 The Owner's agents or authorized representatives shall have access to all of the Contractor's facilities and databases where such records are located, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this section.

§ 2.8 Nonwaiver of Rights By the Owner

No action or inaction on the part of the Owner at any time in the exercise of any right or remedies conferred upon it under this Contract shall be deemed to be a waiver on the part of the Owner of any of its rights or remedies.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed in the jurisdiction where the Project is located, and shall cause all of its subcontractors at all tiers to be so lawfully licensed when required for performance of their portion of the Work. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.1.1 Unless they leave the employ of the Contractor, the Contractor's Superintendent(s) and Project Manager(s) identified in or approved by the Owner under this Agreement shall serve in these positions throughout the duration of the Contractor's performance of the Contract except as approved otherwise in writing in advance by the Owner. Persons named to replace those set out above shall be approved in writing in advance by the Owner. The Owner's approvals for replacements as required by this Clause shall not unreasonably be withheld. The Project Manager and Superintendent shall, among other things, supervise and coordinate all Work on the Project and shall attend and participate in all meetings throughout the Project unless excused from such attendance by the Owner.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.4 The Contractor shall be and operate as an independent contractor under this Contract and in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. In no event shall the Contractor be authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner. The Contractor accepts the relationship of trust and confidence between Contractor and the Owner and agrees to furnish its best professional skill, judgment and efforts to accomplish the Work in an expeditious manner consistent with the best interests of the Owner. Contractor acknowledges that it has a relationship of special trust with the Owner, and that the Owner is relying on Contractor's expertise in entering into this Contract. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Contractor as an agent for or joint venturer with the Owner.

§ 3.1.5 The Contractor shall (a) record the progress of the Work; (b) submit to the Owner a written progress report every month; (c) submit to the Owner such reports and notifications as the Owner may reasonably request from time to time; and (d) keep a daily log of information reasonably relevant to the Work.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 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.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. The Contractor shall prevent the dislocation or destruction of reference points and shall employ a registered land surveyor currently licensed in Oregon for, and be responsible for accuracy of layout and elevations for the Work. The Contractor shall promptly report in writing to the Architect and 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 Architect may require. The Contractor shall do no work without applicable Drawings, Specifications, the Architect's Supplemental Instructions, or written modifications or, where required, approved Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner. Where conflicts that the Contractor knew or reasonably should have known have not been brought to the Architect's attention in a timely manner, the Contractor will be deemed to have elected the method(s) or material (s) necessary in the Architect's opinion to reconcile the conflict as included in the Contract Sum and Contract Time. Any design errors or omissions noted by the Contractor during this review shall be reported promptly by Contractor to the Owner and the Architect 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.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, except for design build Work or lawful orders of public authorities, but the Contractor shall promptly report in writing to the Architect and the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. 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 Architect and the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit a Change Order Proposal within fourteen (14) days of Architect's response ("Architect Initiated Change Proposal"). The Owner will approve or deny the Architect Initiated Change Proposal in accordance with the applicable terms of the Contract. The Contractor's failure to submit an Architect Initiated Change Proposal within the specified timeframe shall nullify the Contractor's right to submit a claim related to the associated work. If the Contractor fails to perform the obligations of Sections 3.2.2, 3.2.3, or 3.2.4 the Contractor shall pay such costs and

damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or the Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, except for unreported observed deficiencies or those items related to design-build or design-assist Work unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission, nonconformity or difference and failed to report it to the Architect and the Owner. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents without such notice to the Architect and the Owner, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

§ 3.2.4.1 Contractor shall confirm applicable requirements appearing in any easements, covenants and other record documents provided by Owner or otherwise discovered by Construction Manager and in the event of any discovered conflict between any such requirement and the Drawings and Specifications shall immediately notify the Owner and the Architect.

§ 3.2.4.2 Any investigations of hidden or subsurface conditions have been made for design purposes. The results of these investigations may be bound into or referenced in the Contract Documents for the convenience of the Contractor and Sub-contractors and are a part of the Contract Documents. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments not inferable from such investigations may not occur.

§ 3.2.4.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid by the Owner to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.5 Upon execution of any Early Work Amendments or Guaranteed Maximum Price Amendments hereunder, and notwithstanding any other provision of the Contract, the Contractor hereby specifically acknowledges that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein in order to enter into the Contract, and that the Drawings, the Specifications and all Addenda and other Contract Documents are sufficient to enable the Contractor to perform the Work outlined therein in accordance with applicable laws, statutes, regulations, and otherwise to fulfill all of its obligations hereunder. The Owner disclaims any warranty, express or implied, as to the adequacy of the Contract Documents. The Contractor further acknowledges that (a) it has visited and made a thorough examination of the jobsite and existing documentation, (b) it has examined all conditions affecting the Work, (c) it has reviewed necessary tests, surveys, studies and reports and all other conditions which might reasonably affect the progress of the Work as the Contractor deems advisable, and that it has satisfied itself by such review, (d) having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized, and (e) the Contract Sum includes payment for all Work that may be necessary to overcome unanticipated conditions that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized.

§ 3.2.6 By executing this Contract, the Contractor represents and acknowledges that the Contract Sum is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that it has carefully examined the contract documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work.

The failure of the Contractor to acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the Contract Sum. The Contractor acknowledges that having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 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. The Contractor shall review any such specific instructions and any construction or installation procedure specified in the Contract Documents, shall advise the Architect if following the instruction or procedure will affect any warranties. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. Contractor shall not proceed with that portion of the Work without further written instructions from the Owner or the Architect. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor shall perform no portion of the Work without Contract Documents, or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work, unless authorized to do so by written instructions of the Owner. Where specific instructions are given in a Contract Document, the Contractor shall review the instructions, including those of manufacturers, and promptly notify the Architect and the Owner in writing if the specified instruction or procedure deviates from accepted construction practice, or normal procedure, or will affect warranties, or other responsibilities of the Contractor. The Contractor's notification shall include reasonable alternatives that the Contractor, exercising Professional judgment, believes will accomplish the original intent of the Contract Documents.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors at any tier, design professionals performing services on behalf of the Contractor or Subcontractors, and their respective 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 at any tier. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no conditions shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times.

§ 3.3.4 Prior to the commencement of construction, the Contractor shall prepare and obtain the Owner's approval of a construction site management plan, which will take into account requirements contained in the Specifications, and the Owner's requirements and restrictions concerning access and parking for construction personnel, staging areas and material delivery times, traffic flow requirements of the Owner and local governmental authorities, and work hours, among other things.

§ 3.3.5 The Contractor shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the latest issue of the Drawings and Specifications. The Contractor shall be responsible for examination, inspection and quality surveillance of all Work performed by any Subcontractor of any tier, and for each Subcontractors' performance of such Work itself. The Contractor shall determine when it is necessary to perform and shall perform, or arrange for the performance of, tests (in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is

being completed in strict accordance with the Contract Documents. If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of Contractor's obligations hereunder.

§ 3.3.6 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. The Contractor shall establish and maintain existing lot lines, restrictions, and bench marks. The Contractor shall establish and maintain all other grades, lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. For new building construction or additions, the Contractor shall employ a professional land surveyor registered in the State of Oregon to establish building corners and floor elevations. The land surveyor shall also provide a stamped and signed drawing certifying the actual location of the building corners in reference to the lot lines and actual floor elevations as constructed. The Contractor shall report errors or inconsistencies to the Owner and the Architect before commencing Work and review placement of the improvements on the site with the Owner and the Architect after all lines are staked out and before foundation work is started.

§ 3.3.7 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, or their method or integration into the Work, Contractor shall have the duty to make inquiry of the Owner and the Architect as to what is required prior to performance of the Work. Absent Specifications to the contrary, the material that would normally be used to produce finished Work shall be considered a part of the Contract requirements.

§ 3.3.8 If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of Contractor's obligations hereunder.

§ 3.3.9 Contractor acknowledges that it is Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work, and Contractor shall use its best efforts to maintain labor peace by and/or among its employees and subcontractors for the duration of the project. In the event of a labor dispute related to this project, Contractor shall not be entitled to an increase in the Contract Sum or Contract Time if the dispute was caused by acts or omissions of Contractor, or Contractor's agents, Subcontractors or suppliers.

§ 3.4 Labor and Materials

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

§ 3.4.1.1 Contractor shall aim toward or above the District goal of 15% of the contract value for consulting services and construction contracts to be made to firms certified by either the state (Oregon Certification Office of Business Inclusion and Diversity, COBID, MWSVDVE), the Small Business Administration (SBA), or nationally (National Supplier Minority Supplier Development Council, NMSDC) as minority owned, women owned, service-disabled veteran owned, emerging small businesses, or socially or economically disadvantaged small businesses. Contractor shall provide a diverse workforce through employment and apprenticeship opportunities. For any bond program public improvement contract over \$200,000, an aggregate goal of 10% of labor hours performed by state registered apprentices is established in apprenticeable trades. These contracts also will require the contractor to participate in outreach and other efforts to create an apprenticeship program that reflects the diversity of the Beaverton/Portland metropolitan area.

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 If prior to performing a certain portion of the Work, the Contractor desires to submit a substitute product or method for that Work in lieu of what has been specified, the Contractor shall provide written notice to the Architect and the Owner setting forth the following information and documents:

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- .1 a full explanation of the proposed substitution and a submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operation procedures and other like information necessary for a complete evaluation of the substitution;
- .2 reasons the substitution is advantageous and necessary, including but not limited to the benefits to the Owner and the Work in the event the substitution is accepted;
- .3 the adjustment, if any, in the Contract Sum, in the event the substitution is accepted;
- .4 the adjustment, if any, in the Contract Time and the Contractor's Construction Schedule in the event the substitution is accepted;
- .5 an affidavit stating that (1) the proposed substitution meets all the requirements of the Drawings and Specifications and (2) the Contractor will perform or cause to be performed the warranty and correction of Work obligations with respect to the proposed substitution that would have been performed for the specified product or method; and
- .6 the impact, if any, on the Subcontractors or other contractors performing Work on the Project, in the event the substitution is accepted.

Proposals for substitutions shall be submitted to the Architect and the Owner in sufficient time to allow the Architect and the Owner no less than fourteen (14) days for review.

By making requests for substitutions, the Contractor represents, warrants and certifies that: (1) the Contractor has personally investigated the proposed substitute product; (2) the Contractor will provide the same materials and labor warranty for the substitution that the Contractor would for that specified unless approved otherwise; (3) the substitute product is of equal or better quality and useful life to the originally-specified product; (4) the cost data presented is complete and includes all related costs under the Contract Documents except the Architect's redesign costs, and (5) the Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects. The Contractor will be responsible for the reasonable costs of any time the Owner and/or the Architect expends in reviewing a Contractor substitution request. Should the Contractor or the Owner request substitution with a material or system of lesser quality and/or cost, if approved by the Owner, the Contractor shall compensate the Owner for the difference in cost through a deductive Change Order or Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order and civil and appropriate conduct among the Contractor's and Subcontractors' employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit at the site of the Work the use of alcohol, tobacco or cannabis, vaping, illegal use of drugs or other controlled substances, firearms or other weapons, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, or their respective contractors. The Contractor agrees to take prompt and effective corrective action in the event of violations of these standards of conduct. The Owner may require in writing the Contractor to immediately remove from the Work any employee or other person carrying out the Contract that the Owner considers objectionable. To the fullest extent permitted by Law, the Contractor shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by the Owner, nor shall such removal relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

§ 3.4.4 The Contractor shall coordinate, supervise and otherwise administer the Work so as to maintain labor harmony between and among the trades performing the Work and so as to avoid lockouts, strikes and other labor-related events or circumstances which delay or otherwise impact the Work.

§ 3.4.5 The Contractor agrees that each of its employees, subcontractors' employees and principals/owners involved in the Work may, at the option of the Owner, be subject to a security check, at any time, through the local police department or other venue. Notwithstanding the foregoing, Contractor, and not the Owner, remains solely responsible for performing background checks on, and screening for public safety all subcontractors at any tier and employees,

and, to the extent allowed by law, shall provide such screening methodologies and information to the Owner upon request.

§ 3.4.6 Contractor acknowledges that it is Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work, and Contractor shall use its best efforts to maintain labor peace by and/or among its employees and subcontractors at all tiers for the duration of the project. In the event of a labor dispute related to this project, Contractor shall not be entitled to an increase in the Contract Sum or Contract Time if the dispute was caused by acts or omissions of Contractor, or Contractor's agents, subcontractors at any tier or suppliers.

§ 3.4.7 If requested by the Owner, the Contractor and all Subcontractors' employees shall submit to fingerprinting and be subject to criminal background checks and any other rules and procedures of the Owner as a condition of entering the Project site.

§ 3.4.8 Contact with Students. "Unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision by the Owner. The Contractor will ensure that the Contractor, subcontractors and suppliers at any tier, and their officers, agents, and employees will have no direct unsupervised contact with students while on the Owner's property. The Contractor will work with the Owner to ensure compliance with this requirement. If the Contractor is unable to ensure through a security plan that none of its and its subcontractors and suppliers officers, agents, or employees will have direct, unsupervised contact with students in a particular circumstance or circumstances ("Unavoidably Unsupervised Workers"), the Contractor shall so notify the Owner prior to beginning any Work that could result in such contact. The Contractor will conduct a criminal background check of any such officer, agent, or employee. The Contractor also agrees, as to any of its subcontractors and/or suppliers and all employees, if any, that might have unsupervised contact with students, the Contractor will conduct or cause such subcontractor or supplier to conduct, such background checks, and identify the same to the Owner prior to their entry onto the Project. The Contractor shall pay any fees for the background check assessed by the Oregon Department of Education for processing the background check. In addition, the Contractor shall comply with all other Oregon Senate Bill 155 requirements and any requirements of the Owner related to Senate Bill 155, including, but not limited to, providing Owner requested information for all of the Contractor's or its subcontractors' or supplier's employees, volunteers, or agents, and providing such requested information for new employees, volunteers, or agents before they begin work. The Contractor will discuss any questions or concerns about these requirements with the Owner's designated Point of Contact before beginning Work. The Contractor shall, and shall cause all subcontractors and suppliers at all tiers to, comply with all applicable laws, rules, orders, regulations and governing procedures regarding Covid-19 and the Covid-19 pandemic, and shall supply the Owner with evidence of such compliance upon request. Compliance with this Section 3.4.8 shall not be grounds for any increase in compensation nor extension of the Contract Time. Failure of compliance by the Contractor or any subcontractor or supplier shall be grounds for immediate termination of this Contract by Owner for cause.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and the Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be performed in a good and workmanlike manner in accordance with manufacturer specifications where applicable, and will be free from defects, and that all materials and equipment selected by the Contractor or Subcontractor will be suitable for the purposes indicated in the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Notwithstanding the above, the contractor's warranty for all elements of the work shall hold regardless of normal wear and tear. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to any other warranties required by the Specifications or provided by law. The Contractor shall assign to the Owner all other warranties at the time of final completion of the Work.

§ 3.5.2 Without limitation of any remedy of the Owner, upon Substantial Completion of the Work or termination of the Contract, the Owner shall be entitled to enforce at its option any and all Subcontractor and manufacturer warranties relating to Work performed and materials and equipment furnished by such Subcontractors. The Contractor agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties and Subcontractor warranties. The Contractor also shall collect, assemble in a binder, and submit to the Owner, in a manner acceptable to

the Owner, written Subcontractor warranties, manufacturer warranties and related documents, including without limitation from Subcontractors performing Work and furnishing materials, equipment, appliances and other components of the Project. The Contractor shall assign to the Owner all other warranties at the time of final completion of the Work.

§ 3.5.3 The Contractor shall not be relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance and final payment. Contractor shall at Contractor's expense promptly pay and perform, to the reasonable satisfaction of the Owner, any repairs required of Contractor in fulfillment of the foregoing warranty obligations. Should Contractor fail to perform any maintenance or repair required of it pursuant to this Section 3.5 within seven (7) days of notice thereof from the Owner (provided no notice shall be required for emergency repairs), the Owner may make such repair and the Owner shall be entitled to recover directly from Contractor the reasonable cost thereof (including attorneys' fees) plus interest at the statutory rate thereon from the date of repair, immediately and upon demand by the Owner therefore.

§ 3.5.4 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use Business & Occupation, income, corporate activity tax and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Such taxes are included in the Contract Sum for lump sum contracts, and are included in the Cost of the Work for GMP contracts only if expressly so stated in the contract (otherwise they are included in Contractor's Fee). Contractor shall indemnify, defend and hold harmless the Owner from any liability for taxes and relating to the employees of Contractor, any Subcontractor or any Sub-subcontractor, including taxes and contributions required under the Federal Social Security Act and the unemployment compensation law or any similar law of any state. Contractor is advised that income taxes in Beaverton and surrounding areas may include, but not be limited to, taxation by the State of Oregon, by Washington County, and by Tri-Met.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise designated by the Owner, The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Without limitation to the foregoing, Contractor shall procure all certificates of inspection, use, occupancy, permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work including without limitation street use and street closure permits. Certificates of inspection, use and temporary certificate of occupancy shall be delivered to the Owner by Contractor prior to (and as a condition to) Substantial Completion of the Work of each Phase in sufficient time for occupation of the Phase in accordance with the Contract Documents, and the final certificate of occupancy prior to (and as a condition to) Final Completion. The Owner will reimburse the Contractor for the actual cost, without markup, or Fee of the building permit, permanent utility connection permits and fees, and permits required for construction of work in the public right-of-way and associated bonds or assurances outside the Contract Sum. The Owner may, at its election, retain a firm to perform and pay for the permitting jurisdictions required special inspections. Any other required permits including trade permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work shall be the responsibility of the Contractor and are included in the Contract Sum. Contractor shall deliver an electronic copy in a PDF format of the building permit and attachments to the Architect and the Owner as soon as it is issued. Upon final completion, the Contractor shall deliver to the Owner all original permits, licenses and certificates of occupancy with photocopies to the Architect.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 The Contractor shall be directly responsible for compliance therewith on the part of itself and its agents, employees, Subcontractors, Sub-subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of itself or its agents, employees, materialmen, Subcontractors or Sub-subcontractors to so comply.

Init.

(Paragraphs deleted)

§ 3.7.4 In addition to Contractor's indemnification and other obligations set forth in this Agreement, and its confirmation that Contractor is acting as an independent contractor, Contractor will defend, indemnify and save harmless the Owner and its Separate Contractors, consultants, and agents and employees of any of them against any and all settlement amounts and all liabilities, costs, losses, damages, fees (including attorney fees), and expenses in connection with any third-party legal proceeding (including administrative action, enforcement action, or other conduct or allegation by an individual, the Internal Revenue Service, or any state or local government agency or any other court, entity, or agency) asserting or predicated upon an alleged employment relationship or co- or joint employment relationship between any employees of Contractor or subcontractors at any tier (or such individual's or entity's employees or subcontractors) and any of the indemnified parties, or any obligation of the indemnified parties to pay or provide wages, withholding or employee benefits, including but not limited to such claims that assert or are predicated upon wrongdoing or alleged wrongdoing by the indemnified parties.

§ 3.7.5 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions; otherwise Contractor's Claim will be barred. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner or the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner or Architect shall promptly notify the Contractor in writing, stating the reasons. If either party disputes the Owner's or Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No increase to the Contract Sum or Contract Time shall be allowed if the Contractor knew of the concealed conditions prior to its executing the Contract or such conditions were reasonably discernable from the bidding documents or a careful review of the project site. If the Contractor encounters such a condition, and proceeds to perform any additional work or incur any additional jobsite costs in regard to such condition without prior written direction from the Owner, Contractor will be deemed to have acknowledged that such condition does not entitle Contractor to any additional compensation or extension of the Contract Time.

§ 3.7.6 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and the Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum and (if applicable) Guaranteed Maximum Price all allowances stated in the Contract Documents. Use of the Allowances requires the Owner's written approval. Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 The allowances shall cover the entire cost of the Work to perform or furnish the allowance items, including without limitation the following:

- .1 cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 costs for unloading and handling at the site, labor, installation costs, overhead, profit, general conditions and other.

Whenever given costs, as agreed to in writing by the Owner, are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between such actual agreed costs and the allowances under 3.8. The Contractor shall not perform any Work covered by an allowance before the execution by the Owner of a Change Order or Construction Change Directive incorporating the Drawings and Specifications related to the allowance item and any adjustment to the Contract Sum. In the event that the Contractor performs Work covered by an allowance before the execution by the Owner of a Change Order or Construction Change Directive, any costs incurred in excess of the allowance amount will be at Contractor's expense and without reimbursement from the Owner. Periodically, during the course of construction, representatives of the Contractor shall advise the Owner of the cost status of each allowance. The Contractor shall provide this information in a timely manner, but always prior to the termination of the allowance Work. The intent of this subparagraph is to identify possible cost overrun exposure and bring same to the attention of the Owner as soon as possible.

§ 3.8.3 Materials and equipment required under an allowance shall be proposed by Contractor and approved in writing by the Owner prior to procurement.

§ 3.9 Project Manager / Superintendent

§ 3.9.1 The Contractor shall employ a competent project manager and superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work as required by this Contract or as otherwise necessary or appropriate. The Project Manager and/or the Superintendent shall represent the Contractor, and communications given to the Project Manager and/or Superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 Unless the Superintendent and Project Manager are already identified in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent and project manager. Within 14 days of receipt of the information, the Owner or the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has objection to the proposed superintendent or project manager; or (2) requires additional time for review. Failure of the Owner or the Architect to provide notice within the 14-day period shall constitute notice of no objection.

§ 3.9.3 Unless otherwise agreed in writing, the Contractor shall cause the Superintendent to remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the contract in accordance with the Contract Documents, until Final Completion is attained.

§ 3.9.4 The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made timely objection. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.5 Within ten (10) days after issuance of the Notice to Proceed, the Contractor shall furnish to the Architect and the Owner a chain-of-command organizational chart which includes all supervisory personnel, including the Project Manager, the project engineer and the Superintendent, that the Contractor intends to use on the Work. The chart shall specify any limits of authority for each person, including but not limited to their ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, contract time, and issues affecting quality of the Work. The Contractor shall also provide the Owner with a list of telephone numbers for all key personnel of the Contractor and its principal Subcontractors at all tiers for purposes of contacting personnel as the Owner reasonably determines necessary. Contractor shall periodically update the list as necessary to ensure the Owner has the most current information.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly but in any event within twenty (20) days after being awarded the Contract, shall submit for the Owner's and the Architect's information a Contractor's construction schedule for the Work. Contractor shall prepare the schedule using the critical path method (CPM). The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays.

The construction schedule shall be updated by Contractor to reflect actual conditions on a period described elsewhere herein. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to adjust the schedule to correct the delay, including overtime and/or additional labor, if necessary. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule 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.

§ 3.10.1.1 From time to time as appropriate during the performance of the Work but not less often than monthly, the Contractor shall prepare and submit to the Owner and the Architect, for the Owner's approval, a current, updated Contractor's construction schedule reflecting any and all changes and revisions.

§ 3.10.1.2 The Contractor shall take such actions as are necessary to adhere to the approved Contractor's construction schedule then in effect, which actions shall include as appropriate, but not be limited to, providing additional labor, supervision, materials, equipment, tools, Subcontractors and other services and facilities. For purposes of whether any Change Orders or Construction Change Directives extend the contractual dates of Substantial Completion and Final Completion, any "float" or "slack" time for the whole or any part of the Work shall not be for the exclusive use or benefit of either the Owner or the Contractor but shall be reserved and apportioned by the Owner and Contractor in accordance with the needs of the Project. The Contractor shall not be entitled to make a Claim based upon an alleged inability to complete the Project early.

§ 3.10.2 The Contractor, promptly after being awarded the Contract, but no more than twenty (20) calendar days after award, and thereafter as necessary to maintain a current submittal schedule, shall prepare and submit a submittal schedule for the Owner's and the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and the Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules approved by the Owner and the Architect. The Contractor must include a response time of at least ten (10) days for the Architect's review and at least fourteen (14) days for review by the Architect's consultants. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Contractor's construction schedule, the Owner shall have the right to order the Contractor to take corrective measures as necessary to restore the progress of the construction to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) furnishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Contractor pursuant to this Section 3.10.4 shall be paid by the Contractor.

§ 3.10.5 Without limiting the Owner's rights, upon demand by the Owner the Contractor shall prepare and submit to the Owner and the Architect a "Recovery Schedule," in a form and providing sufficient detail to explain and display how the Contractor intends to reschedule those activities to regain compliance with the Contractor's construction schedule during an agreed Recovery Period. If required by the Owner, the Contractor shall include resource loading in the Recovery Schedule.

§ 3.10.5.1 Within seven (7) days after the Contractor's receipt of the Owner's demand for a Recovery Schedule, the Contractor shall present the Recovery Schedule to the Owner and the Architect. The Recovery Schedule shall represent the Contractor's best judgment as to how the Work should be made to comply with the Contractor's construction schedule within the agreed Recovery Period. The Recovery Schedule shall be prepared to a similar level of detail as the Contractor's construction schedule.

§ 3.10.6 **Progress Meetings** The Contractor shall participate in progress meetings held at least once every week or at more or less frequent intervals as may be described in the Contract Documents, with the Architect, the Owner,

subcontractors at all tiers and other appropriate consultants. The Contractor shall fully brief the Architect and the Owner on the progress of the Work.

§ 3.10.7 Reports

- .1 Progress Reports: Contractor shall prepare and deliver to the Owner at least monthly a progress report in a form and in sufficient detail as is reasonably acceptable to the Owner approved by the Owner. The progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefore and the new proposed schedule, as well as the number of days worked for each category of labor and the projected Work to be completed in the next succeeding month. The report shall include a listing and the status of all Change Orders, Modifications, bulletins, and other relevant documents, and shall detail any issues challenging completion of the Work on schedule and Contractor's solutions to same.
- .2 Additional Reports: Contractor shall prepare and deliver such additional reports as the Owner may reasonably request.
- .3 Logs: Contractor shall prepare and keep current, for the Architect's and the Owner's approval, logs or schedules reflecting the date the items were submitted, when a response is reasonably due and when receipt occurred of Requests for Information (RFI's), Change Order Requests (COR's), Change Orders (CO's) and submittals which shall be coordinated by Contractor with Contractor's construction schedule and which allows the Architect and the Owner reasonable time to review submittals or other such documents.
- .4 The Contractor shall use an electronic project management software satisfactory to the Owner for all Project records ("Electronic Management System"), to which the Owner and the Architect shall have electronic access at all times. Contractor shall post all logs to eBuilder or if eBuilder is not used, the Electronic Management System and give the Owner access to such logs and schedules at all times. Logs shall be kept on Excel spread sheets unless other format is approved by the Owner Representative.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site and updated at least weekly, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and otherwise marked to depict the as-built nature and configuration of the Work and the approved Shop Drawings, Product Data, Samples, and similar required submittals. Contractor also shall maintain at the Project site for the Owner and the Architect one current copy of all subcontracts with Subcontractors, RFIs, Requests For Change Proposals and Change Proposals. These shall be in electronic form or maintained under the Electronic Management System in addition to paper copy, available to the Architect and the Owner, and delivered to the Architect for submittal to the Owner no later than, and as a condition of, Final Completion of the Work as a record of the Work as constructed.

§ 3.11.1 The marked record Drawings and Specifications referenced shall be marked to show field decisions and selections affecting the Work, including but not limited to information regarding (1) approved or directed deviations from the Drawings and Specifications made during construction, (2) details of Work not previously shown or indicated, (3) changes to existing conditions or existing conditions found to differ from those shown on the Drawings or Specifications and (4) other information that the Architect or the Owner reasonably requests. The final set of the Contractor's marked Drawings and Specifications conforming to these standards ("As-Built") shall be presented to the Owner: (i) in reproducible hard copy (ii) in PDF format and (iii) in AutoCAD/.dwg format. Each hardcopy sheet shall be stamped "As-Built" and signed by the Contractor. The final marked Drawings and Specifications shall be delivered in the same formats as part of the As-Built.

§ 3.11.2 The location of all existing or new hidden piping, valves, and utilities, as located during the course of construction, shall be appropriately marked on plans. The approved permit set of plans shall also be available to the Architect and the Owner at the site.

§ 3.11.3 Contractor shall submit to the Architect an accurate and updated set of field drawings, in such format as the Architect may reasonably request, marked currently to record field changes and selections. Upon final completion of the Work the Contractor shall certify that the record documents reflect complete and accurate "as-built" conditions and shall deliver the documents and As-Built, as well as the approved permit set of plans in good condition to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Contractor shall indicate on the face of each As-Built drawing its concurrence that the as-built drawings are accurate. Satisfactory

maintenance and submission of up-to-date record drawings will be a requirement and condition for submission to the Owner of the As-Builts in the formats and meeting the standards of this Agreement will be a requirement and condition to final completion and release of retainage. Notwithstanding the completion of the As-Builts and any review and correction of the same by the Contractor, neither the Architect nor the Contractor shall be relieved of any responsibility each has under its contract with District for the execution and completion of Work in compliance with the Contract Documents.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve (including any approval of conforming with the submittal requirements as specified in the Contract Documents), and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall be responsible for all costs associated with Shop Drawings, Product Data and Samples submitted out of sequence through the fault of Contractor. Submittals which are not marked as reviewed and approved by the Contractor for conformance with the submittal requirements of the Contract Documents may be returned by the Architect without action.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and the Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved or release for use by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's or the Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and the Owner in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. Any corrections or modifications to Shop Drawings requested by the Architect shall be deemed accepted by the Contractor, without change in Contract Sum or Contract Time, unless the Contractor provides the Architect with written notice specifically identifying the deviation and impact before commencing any Work from such Shop Drawings. The Contractor shall make all corrections and modifications requested by the Architect and, when requested by the Architect, provide a corrected Submittal. Notwithstanding the foregoing, the Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's and the Owner's approval or review

thereof. The Contractor shall be solely responsible for errors or omissions in all submittals and Shop Drawings, whether or not the submittals and Shop Drawings have been reviewed or approved by the Architect or the Owner.

§ 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 that 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.

§ 3.12.10.1 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 an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. 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. Contractor shall cause such portions of the Work to be designed, engineered, and permitted, and to construct such Work in accordance with all such criteria, in accordance with all applicable laws and codes, and in a manner such that these systems are functioning and properly integrated into the remainder of the Work. Any of Contractor's (or any Subcontractor's) design or engineering professionals shall carry errors and omissions coverage of at least \$1,000,000 for the design and engineering of such Work. The premium for errors and omissions coverages is included in the Contract Sum. The Owner will be the Owner of all design and engineering documents so generated for the Work. They are not to be used by Contractor or its subcontractors on any other project and shall be given to the Owner or destroyed upon completion of the Work, at the Owner's discretion. Contractor shall cause shop drawings and designs for such Work to be submitted in a timely fashion to the Architect for review in accordance with the schedule requirements. 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 and accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and the Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect or the Owner will review and 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. Contractor shall submit a copy of all design documents prepared by such design professionals to the Owner and to the Architect. The Owner will have an irrevocable, perpetual license to use all design documents generated by Contractor or its Subcontractors at any tier. They are not to be used by Contractor or its Subcontractors on any other project and shall be given to the Owner upon completion of the Work.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

(Paragraphs deleted)

§ 3.12.11 Any corrections or modifications to Shop Drawings and other submittals made by the Architect shall be deemed acceptable by the Contractor, without change in the Contract Sum or Contract Time, unless said changes constitute changes to the Contract Documents and the Contractor provides the Architect with contrary written notice before commencing any such changed Work. In the absence of such notice, the Contractor shall make all corrections requested by the Architect and provide a corrected submittal without change in the Contract Sum or Contract Time.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, permits, rules and regulations, and lawful orders of public authorities, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. Portions of the site may be occupied and in use during

construction. Contractor shall maintain access and services to minimize disturbance to occupants and to allow the Owner to utilize the occupied portion of the site throughout the construction period. Without limitation, the Contractor shall at all times and at its expense fully comply with the requirements of all applicable laws pertaining to storm water discharges and mitigation requirements.

§ 3.13.1 The Owner shall have the exclusive rights to approve of any signs erected at the Project, including without limitation signs placed on cranes or other equipment, company names, advertising on trailers, or other signs. The Contractor and all Subcontractors shall notify the Owner before signs are erected and shall obtain approval of their placement. No signs or advertising media of any nature shall be permitted on the site of Work or enclosing structures without the written approval of the Owner. Any approved signs shall comply with the applicable laws, ordinances, and/or rules. Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representations of the Owner, except with prior specific written authorization from the Owner.

§ 3.13.2 Prior to the commencement of construction, the Contractor shall prepare and obtain the Owner's approval of a construction site management plan, which will take into account requirements contained in the Specifications, and the Owner's requirements and restrictions concerning access and parking for construction personnel, staging areas and material delivery times, traffic flow requirements of the Owner and local governmental authorities, and work hours, among other things.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.14.3 Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the Owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Contractor shall abide by such regulations and it shall pay for such work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area in a clean condition, free from accumulation of waste materials and rubbish, excavated materials and "tracking" caused by operations under the Contract, on a daily basis or such other period as is acceptable to the Owner. At completion of the Work, the Contractor shall remove from the site, the surrounding area and contiguous roads, streets and sidewalks waste materials, rubbish, the Contractor's and Subcontractor's tools, construction equipment, machinery, and surplus materials from and about the Project and clean all surfaces.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to immediate reimbursement from, or an offset of charges from the Contractor for the costs (internal or external) incurred by the Owner.

(Paragraphs deleted)

§ 3.15.3 The Contractor's obligations under this Section 3.15 shall include the proper disposal of all such waste materials, rubbish and disposable surplus materials consistent with and in compliance with all applicable laws, statutes, ordinances, codes, rules, regulations and lawful orders of public authorities, including without limitation those relating to hazardous materials and the environment.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, protect, defend and hold harmless, and reimburse the Owner, the Architect, the Architect's consultants, and the members, partners, officers, directors, agents, employees, volunteers, and successors of any of them from, for and against suits, actions, awards, penalties, liabilities, claims, damages, losses, costs, and expenses, direct and indirect, or consequential, whether directly incurred or from third parties, including but not limited to attorneys' fees, costs, design professional fees, consultant and expert witness fees and other costs incurred on such claims, and in proving the right to indemnification arising out of or resulting from performance of the Work, including but not limited to any such suit, action, award, penalty, liability, claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property in any event to the extent caused, in whole or in part, by (1) the negligent or other wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable or (2) the failure of such person or entities to perform in accordance with the Contract. The Contractor's obligation under this Article 3.18 shall include damage to the Owner's own property and the Project itself, 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 that would otherwise exist as to a party or person described in this Section 3.18. Contractor's duty of defense shall arise immediately upon assertion of any claim actually or allegedly covered by this indemnification provision, and, to the fullest extent allowed by law, shall be independent of any limitations upon Contractor's duty of indemnification.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor or supplier of any tier, their agents and anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 If any provision of this Contract is determined to require either party to indemnify, defend, reimburse, hold harmless or provide insurance to the other party (or that party's insurers or sureties) in a manner that would violate applicable law (including but not limited to ORS 30.140), then the offending provision shall be construed such that it is given the broadest meaning and effect allowed by law.

§ 3.18.4 The indemnities and other covenants of this Section 3.18 shall survive the termination of the Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Nothing herein shall require the Owner to designate the Architect. If no such party is designated, the Owner shall reserve, for itself or a third party under contract with the Owner, the administrative duties, rights, and responsibilities of the Architect herein.

§ 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. Notwithstanding any provision of the Contract to the contrary, the Contractor agrees that any matter which is subject to the review, interpretation, approval, consent or direction of the Architect shall also be subject to the review, interpretation, approval, consent or

direction of the Owner, whose opinions(s) shall govern and bind the Contractor in the event of any disagreement between the Owner (on the one hand) and the Architect (on the other hand).

§ 4.1.3 In the event of a termination of the Architect or a restriction of the duties, responsibilities or authority of the Architect as described in the Contract Documents, the Owner or a third party under contract with the Owner may carry out those duties, responsibilities and authority of the Architect; provided that all such duties, responsibilities and authorities that by law must be carried out by a licensed design professional shall be carried out by a licensed design professional.

§ 4.2 Administration of the Contract

§ 4.2.1 At the direction of the Owner, the Architect will provide administration of the Contract as described in the Contract Documents during construction until the date the Owner or the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

- .1 With the Owner's concurrence, the Architect may also provide administration from time to time during the period for correction of Work described in Section 12.2.

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

§ 4.2.2.1 The Contractor acknowledges that the Architect is not the Owner's agent and does not have authority to make any decision or give any direction to the Contractor that would impact the Contract Sum or Contract Time without the prior written approval of the Owner.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Architect nor the Owner will have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors at any tier, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

The Contractor shall endeavor to communicate through the Architect about matters arising out of or relating to the Contract; provided that the Owner and Contractor may communicate directly with each other at any time regarding the Project. Communications by and with the Architect's consultants shall be through the Architect with copies to be given to the Owner's Project Manager. Communications by and with Subcontractors and suppliers shall be through the Contractor, unless at that time the Owner believes it has cause to communicate with them directly or determines the Contractor is in breach of the Contract Documents. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.4.1 The Contractor shall provide the Owner with a direct copy of all written communications to or from the Architect, including all notes, requests, claims and potential changes in the Contract Sum or Time.

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

§ 4.2.6 The Owner and the Architect, after consultation with the Owner, will have authority to reject Work that is defective or does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary

or advisable, and after obtaining the Owner's permission in each instance, the Architect will have authority to require inspection or testing of the Work in accordance with Section 13, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Contractor shall provide submittals for review so as to cause no delay in the Work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for fabrication, installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the Contract Documents. The Architect's review is undertaken solely to satisfy its obligations to the Owner and shall not give rise to any claim by the Contractor or Subcontractors against the Architect or the Owner. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor should expect a submittal review cycle time of up to 14 days, although the Owner may in its discretion, at the request of Contractor, request that the Architect accelerate certain submittal reviews where these are shown to Owner to be necessary for the Project schedule. Neither the Owner nor the Architect can guarantee response times from governmental authorities.

§ 4.2.8 With the written approval of the Owner, the Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. At the Owner's request, the Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.5.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and the Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 At the Owner's written request, the Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until at least 15 days after written request is made for them accompanied by sufficient information for the determination.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

§ 4.2.13 The Architect's decisions on all matters will be final only if approved by the Owner. The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.14 In reviewing the quality and progress of the Work and submittals received from the Contractor, the Architect is acting solely for the convenience of the Owner. Neither the Owner nor the Architect has any responsibility to assist the Contractor in the supervision or performance of the Work. No action, approval or omission to act or failure to advise the Contractor as to any matter by the Owner or the Architect shall in any way relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 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 or to supply materials or equipment. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. Unless the context indicates otherwise, the term "Subcontractor" also includes subcontractors, suppliers and consultants of the Contractor at all tiers, including subcontractors, suppliers and consultants of other Subcontractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. "Subcontractors of any tier" mean Subcontractors and Sub-subcontractors.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

§ 5.2.1 Unless otherwise stated in the Contract Documents or already-submitted first-tier disclosure, the Contractor, as soon as practicable after Notice of Intent of award of the Contract (but not later than ten (10) days after the Notice of Intent), shall notify the Owner and the Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specifications Sections, and state the Work category followed by the name of the Subcontractor and/or fabricator (or "Contractor" where the portion of the Work is by the Contractor's own forces). The list shall be accompanied by evidence of any qualifications required within the technical Sections of the Project Manual and satisfactory to the Architect and the Owner. This list shall be updated monthly as part of the payment process if additional Subcontractors of any tier are engaged. No progress payment will become due until this information is so furnished. No action or inaction of the Owner or the Architect in response to receipt of the names of the proposed Subcontractors or suppliers of any tier shall constitute approval of any Subcontractor or supplier of any tier or of its performance. Within 14 days of receipt of the information, the Owner may notify the Contractor whether the Owner (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection. If the Owner concludes that a proposed Subcontractor has materially failed to perform satisfactorily (such as causing a material delay or an unsafe working environment) on one or more projects for the Owner within three years of the bidding date or that a proposed Subcontractor is otherwise not "responsible," at the Owner's request, objection will be deemed reasonable and the Contractor shall replace the Subcontractor. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the work or compliance with all of the requirements of the Contract within the Contract Sum or the Contract Time, except that the Owner will be responsible for the difference between the original Subcontractor's sub-bid and the replacement Subcontractor's sub-bid including any schedule impact. Notwithstanding the above, if the Owner finds the Subcontractor irresponsible based on past performance which was known to the Contractor or reasonably should have been known to the Contractor, then replacement with another Subcontractor shall not result in any change to Contract Sum and/or Contract Time.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or the Architect has made timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or the Architect has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or the Architect has no objection. Similarly, any objection that a proposed

Subcontractor or supplier of any tier is different from an entity listed with the Bid shall be deemed a reasonable objection. If the proposed but rejected Subcontractor was unreasonably objected to, and reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order or Change Directive shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required or the proposed Subcontractor or supplier of any tier is different from an entity listed with the Bid.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or the Architect makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being prosecuted in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. To the fullest extent permitted by Law, the Contractor shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by the Owner, nor shall such removal relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

(Paragraphs deleted)

§ 5.2.5 Notwithstanding the foregoing procedures, the Contractor may only engage and substitute first tier subcontractors as permitted by ORS 279C370, 279C.585, and 279C.590.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each first-tier Subcontractor, to the extent of the Work to be performed by the first-tier Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the first-tier Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the first-tier Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the first-tier Subcontractor, unless specifically provided otherwise in the subcontract, purchase order, and similar agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each first-tier Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed first-tier Subcontractor, prior to the execution of the subcontract, purchase order, or similar agreement, copies of the Contract Documents to which the first-tier Subcontractor will be bound, and, upon written request of the first-tier Subcontractor, identify to the first-tier Subcontractor terms and conditions of the proposed subcontract, purchase order, or similar agreement that may be at variance with the Contract Documents. First-tier Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any subcontractor on request.

§ 5.3.1 The Contractor shall pay each Subcontractor, upon receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's work, less the percentage retained. Contractor shall require each Subcontractor to make similar payments to its Sub-subcontractor. The Contractor shall defend, indemnify and hold harmless the Owner from any liens and Subcontractor claims, including all expenses and attorneys' fees.

§ 5.3.2 Each subcontract, purchase order, and similar agreement shall state that the Subcontractor agrees to the contingent assignment of the subcontract, purchase order, or similar agreement to the Owner, consistent with Section 5.4. Each subcontract, purchase order and similar agreement at every tier shall provide that the Owner is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the Owner shall have the right, but not the obligation, to assert claims directly against the Subcontractor for breach of contract, breach of express warranties, breach of implied warranties including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The Owner and Contractor acknowledge and agree that the purpose of this Section 5.3.2 is to enable the Owner at its discretion, in addition to the Contractor, to assert claims for damages and indemnification directly against Subcontractors that are or may be responsible for breach of the contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project.

§ 5.3.3 Contractor shall include with every Subcontract agreement the following language: "Subcontractor binds itself to Contractor and Owner, and is obligated to Contractor and Owner, in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. In the event of any dispute between the Owner and Contractor, Subcontractor shall be bound by all decisions, directives, interpretations and rulings of the Owner or the Architect, at Owner's option, including Owner's termination or suspension of Contractor."

§ 5.3.4 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier. No subcontracting of any of the Work shall relieve the Contractor its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract, purchase order and similar agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner and only for those subcontracts, purchase orders and similar subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. Contractor shall also assign to Owner, from time to time as Owner may request, all assignable guaranties, warranties and indemnities by any Subcontractor or Sub-subcontractor or any person providing material, equipment or services in connection with the Work. Upon such assignment to the Owner under this Section 5.4, the Owner may further assign these to a successor contractor or other entity.

§ 5.5 Subcontractors as Assignees and Third-Party Beneficiaries

§ 5.5.1 Nothing in this Article 5 or elsewhere in the Contract Documents shall be interpreted to (1) constitute an assignment of the Contractor's rights against the Owner to any Subcontractor or (2) make any Subcontractor a third-party beneficiary of the Contract.

§ 5.6 SUBCONTRACTOR CLAIMS

§ 5.6.1 The Contractor shall promptly pay (and secure the discharge of any liens or claims asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited, to any Subcontractors of any tier). The Contractor shall furnish to the Owner such releases of claims, payment, bond and surety claims, and other documents as required by Section 9.3 and as the Owner may request to evidence such payment and discharge. The Owner, at its option, may withhold payment, in whole or in part, to the Contractor until such documents are furnished.

§ 5.7 The requirements of this Article 5 are in addition to, and not in lieu of, any subcontracting requirements elsewhere in the Contract Documents.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project and to furnish materials or equipment for the Project with the Owner's own forces, and with Separate Contractors.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 Unless the Owner elects to do so, the Contractor shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor. The Owner shall require its own forces and Separate Contractors to cooperate with the Contractor with respect to such coordination. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual reasonable agreement. The construction schedules so established shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner (as to the Owner's own forces) or its Separate Contractors shall have the same rights that the Contractor has under the Conditions of the Contract.

§ 6.1.5 The cost of any materials or equipment to be provided by the Owner shall not be included in the Contract Sum, and no Contractor Fee (if applicable) shall apply to such cost. The cost of installing such materials or equipment shall be included in the Contract Sum to the extent the Contract Documents require the Contractor to install such materials or equipment as part of the Work. Handling and storage of any such materials or equipment supplied by the Owner and delivered to the site for installation by the Contractor shall be the responsibility of the Contractor.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. If the Contractor receives items from a separate contractor or from the Owner for storage, erection or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and the Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to so notify the Architect and the Owner of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not actually or readily apparent unless reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor 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.

(Paragraphs deleted)

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may (but shall not be obligated to) clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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§ 7.1.2 A Change Order shall be based upon agreement between the Owner and Contractor and at the Owner's discretion the Architect; a Construction Change Directive requires direction by the Owner and at the Owner's discretion the Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone. Change Orders shall be deemed to cover all costs and time impacts associated with the Work change including, but not limited to, all direct and indirect costs, and Contractor shall be entitled to no further compensation or time adjustments related to such Work.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Before effectuating a change the Contractor shall propose the amount of change in the Contract Sum, if any, and the amount of change in the Contract Time, if any, arising from a proposed change in the work in the form of a Change Order Proposal. The Contractor shall submit its responsible proposal within no longer than twenty one (21) days after a Change in Work, or request from the Owner or Architect, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. If the Contractor fails to respond within this time or an agreed to extension thereof, the Contractor shall be liable for any delays or costs to other Work associated with accepting or denying the change. The Owner may accept the proposal in writing, in which case, it will be deemed a Change Order, and the Contractor shall commence the change in the Work immediately in accordance with the proposal. The Owner shall include the accepted proposal in the next available formal Change Order. The Owner may reject the proposal, in which case the Owner may either not effectuate the change or may order the change through a Construction Change Directive or an order for a minor change in the Work.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect, the Owner or Contractor and signed by the Owner, Contractor, and (at the Owner's election) the Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The form of Change Orders shall be AIA Document G701, Change Order, or as approved by the Owner

§ 7.2.3 If the Change Order 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. At a minimum, the Contractor shall submit an itemized breakdown of the cost and/or time required by the Change in the Work, including but not limited to, the following:
 - .a Material quantities and costs.
 - .b Direct labor hours and hourly rates for specific work or operation to be performed.
 - .c Equipment costs or rental charges.
 - .d Specified overhead and profit.
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 As provided in Section 7.5; or
- .4 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .5 As provided in Section 7.3.5.

§ 7.2.4 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, the construction schedule, and the Contract Time.

§ 7.2.5 In general, unless otherwise limited in the A101 or this A201, pricing for Change Orders shall include the same mark-up percentages that were in effect when the Contract was awarded, as outlined in Section 7.5.6 and Section 7.5.6.1. The cost or credit to the Owner resulting from a change in the Work shall be determined, based on the type of pricing for the Contract involved.

§ 7.2.6 Accurate Change Order Pricing Information: Contractor agrees that it is responsible for submitting accurate cost and pricing data to Owner to support its Fixed Price, Unit Price, and/or Cost-Plus Change Order Proposals or other Contract price adjustments under the Contract. Contractor further agrees to submit Change Order proposals with cost and pricing data, which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of change orders.

§ 7.2.7 Right to Verify Change Order Pricing Information: Contractor agrees that Owner, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor's records (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contract Price

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner or at the Owner's election, the Architect, and signed by the Owner and at the Owner's election, the Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract 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
- .4 As provided in Section 7.3.4 and 7.5.

§ 7.3.4

(Paragraphs deleted)

Unit prices are inclusive of all costs for the unit price Work, including but not limited to costs of labor, services, materials, equipment, supervision, insurance, bonds and general conditions, as well as applicable taxes and overhead and profit for that Work. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable cost expenditures and cost savings of those performing the Work attributable to the change, including but not limited to, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Item .3 of Section 7.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data.

§ 7.3.5.1 Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.5, shall be limited to the following, subject to the limitations of Section 7.5:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change (excluding Contractor's Corporate Activity Tax); and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5.2 As to CM/GC contracts only, the terms used in Section 7.3.5.1, including but not limited to Items .1 through .5, shall be subject to the provisions of Articles 4 and 5 of the Agreement.

§ 7.3.6 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.7 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, but no longer than seven (7) days of receipt, the Contractor shall advise the Owner and the Architect of the Contractor's agreement or disagreement with the cost or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. If the Contractor does not timely disagree with the adjustments, the Construction Change Directive will be deemed an agreed "Change Order." The Contractor's notice shall reasonably specify the reasons for its disagreement and the amount or other terms that it proposes. Without such timely written notice, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, in strict accordance with this Paragraph and other applicable provisions of the Contract Documents.

§ 7.3.8 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.9 If the Contractor timely disagrees with the proposed method for adjustment in the Contract Sum and the parties do not otherwise come to terms on adjustment, or if cost is to be determined under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and the Architect may prescribe, an itemized accounting together with appropriate supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, materials and subcontract costs. Labor and materials shall be itemized in the manner described in Section 7.5. When cost items in excess of \$2,500 arise from Subcontractors of any tier, these items shall also be itemized and presented to the Owner. Approval may not be given without such itemization. Failure to provide data within seven (7) days of the Owner's request or approved extension thereof shall constitute waiver of any Claim for changes in the Contract Time or Contract Sum. The Owner shall have the right to audit and copy the books and records of the Contractor and of any Subcontractor or supplier of any tier seeking a change in the Contract Sum.

§ 7.3.10 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be the larger of the reasonable value of the deletion or change, or the actual net decrease in cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.11 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.12 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such

agreement shall be effective immediately and the Architect or Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.13 Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the progress schedule directly caused thereby.

§ 7.4 Minor Changes in the Work

The Architect and the Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's or Owner's order for minor changes must be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall immediately notify the Architect and Owner, with its identification of the adjustment. If the Contractor performs the Work set forth in the Architect's or Owner's order for a minor change without prior written notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 PRICING COMPONENTS

§ 7.5.1 The total cost of any changed Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components:

- .1 Basic wages: The hourly wage (without markup, fringe benefits or labor burden) not to exceed that specified in the applicable "Prevailing Wage Publication" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. The premium portion of overtime wages is not included unless pre-approved by the Owner.
- .2 Fringe benefits: Fringe benefits paid by the Contractor as established by the Oregon Bureau of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable. Costs paid or incurred by the Contractor for vacations, per diem, bonuses, stock options, or discretionary payments to employees are not reimbursable.
- .3 Workers' insurances: Direct contributions to the State of Oregon as industrial insurance; medical aid; and supplemental pension by class and rates established by the Oregon Bureau of Labor and Industries.
- .4 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Architect. Discounts and rebates based on prompt payment shall be included.

§ 7.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, or the actual rate paid to an unrelated third party as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Architect prior to performing the work. If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the changed Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright.

§ 7.5.4 Cost of change in insurance or bond premium. This is defined as:

- .1 Contractors' liability insurance: The cost (expressed as a percentage) of any changes in the Contractor's liability insurance arising directly from the changed Work; and
- .2 Payment and performance bond: The cost (expressed as a percentage) of the change in the Contractor's premium for the Contractor's bond arising directly from the changed Work.

Upon request, the Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

§ 7.5.5 Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined as the lesser of the manner stated in their Subcontract, or in the manner as prescribed in this Section 7.5 (and, as may be further limited pursuant to the A101 Agreement). Payments to subcontractors or suppliers that are affiliates of Contractor for change work shall not exceed market rates for the services provided.

§ 7.5.6 Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineers, project foreman, estimator, superintendent and their vehicles), taxes (including income and Corporate Activity Tax), warranty, safety costs, quality control/assurance, purchasing, small or hand tool or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim preparation, and delay and impact costs of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. Change fees shall be capped as provided in Section § 7.5.6.1 of this A201 (modified). If a change in the Work involves both additive and deductive items, the appropriate net Fee allowed will be added to the net positive difference of the items. If the net difference is negative, net negative Fee will be included in the negative figure as a further deduction.

§ 7.5.6.1. The total aggregate amount of Fee allowed on Work performed by Contractor's own forces shall be limited to Contractor's original Fee percentage of the allowed costs of the change in the Work, but not more than 10% of the allowed costs of the change in the Work. The Contractor also shall receive the Fee identified in clause (2) below (or if less, Contractor's original fee percentage not exceeding 5%) on the amount owed directly to a Subcontractor or Supplier for materials supplied or work properly performed by that Subcontractor or Supplier.

- .1 The Contractor shall receive as Overhead and Profit its Fee percentage of the cost of any materials or work performed by the Contractor's or its Affiliates' own forces or that labor performed or materials supplied by subcontractors; provided total Contractor Overhead and Profit charges cumulatively at all tiers shall not exceed 20%.
- .2 Each Subcontractor at any tier (including lower tier subcontractor involved, but excluding an Affiliates of Contractor) shall receive a maximum of 10% of the cost of any materials or work directly performed by its own forces, and a maximum of 5% of the cost of any materials and labor performed by its sub-tier subcontractors.

If a change in the Work involves both additive and deductive items, the appropriate net Fee allowed will be added to the net positive difference of the items. If the net difference is negative, net negative Fee will be included in the negative figure as a further deduction.

§ 7.5.7 The total cost of any change, including a Claim under Article 15, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article 15), of the items in this Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost of the work in the locality of the Project or the cost of the work in the current editions of R.S. Means Company, Inc. Building Construction cost Data as adjusted to local costs and conditions. The Owner or Architect may confer directly with Subcontractors or suppliers of any tier concerning any item chargeable to the Owner under this Article to confirm balances due and to obtain statements or lien waivers.

§ 7.6 CHANGE PROPOSALS

Within the time limits set out in this Section 7.6, after receipt of a Request For Change Order Proposal, Construction Change Directive, or when a Change in Work occurs, the Contractor shall submit to the Owner and the Architect a written Change Order Proposal setting out any proposed adjustment in the Contract Sum or Contract Time, or both, to which the Contractor believes it (1) would be entitled as a result of the change in the Work proposed in the Request For Change Order Proposal or (2) is entitled as a result of the change in the Work directed by the Construction Change

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Directive. Such Change Order Proposal may be in the form of a lump sum proposal (with adequate cost substantiation as required by the Owner and calculations showing the amount of markups on costs), or a unit price proposal, or a combination thereof, for a proposed increase in the Contract Sum, and in similar form for a proposed extension of the Contract Time, and otherwise shall be in such form and in such detail as the Owner or the Architect may require. Such Change Order Proposal shall be submitted as soon as practicable after the Contractor's receipt of the Request For Change Order Proposal, Construction Change Directive, or when a Change in Work occurs.

§ 7.7 Contractor shall not be entitled to a Change Order for any change in the Work unless a Change Order has been signed by the Owner, a Construction Change Directive has been issued, a Change Proposal has been approved by the Owner in writing, or a similar written Authorization has been issued by the Owner, prior to initiation of such Work.

ARTICLE 8 TIME

§ 8.1 Definitions

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

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date satisfying the requirements of the Architect in Section 9.8.

§ 8.1.4 The date of Final Completion is the date satisfying the requirements of the Contract Documents, including in Section 9.10.

§ 8.1.5 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "working day" shall mean any calendar day except Saturdays, Sundays, and Legal Holidays at the place of building.

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and the Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the applicable Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or the Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, not caused or contributed to by Contractor, Subcontractors, or any person or entity for whose acts or omissions any of them are responsible, fire, unusual delay in deliveries beyond the Contractor's reasonable control, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes not reasonably foreseeable on the date the Work commenced and which are beyond the Contractor's control and not caused by the acts or omissions of Contractor or any Subcontractor or Sub-subcontractor; or (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that 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. The Contractor shall be required to use best efforts to mitigate both the necessity of the delay and the period of the delay. Extension shall not exceed the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby, but in no circumstance more than a day for day increase due to the number of days of legitimate occurrence as defined above, as the Owner may determine consistent with the provisions of the Contract Documents.

§ 8.3.1.1 No extensions of the Contract Time shall be allowed for delays or suspensions to the extent caused by the negligent or other wrongful acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract.

§ 8.3.1.2 Any such extension of the Contract Time shall be net of any contingency, weather delay, or "float" time allowance included in the Contractor's construction schedule. If more than one event causes concurrent delays, and the cause of at least one of those events is a cause of delay that would not entitle the Contractor to an extension of time, then to the extent of such concurrency, the Contractor shall not be entitled to an extension of time.

§ 8.3.2 All claims for extension of time shall be made in writing to the Owner no more than seven (7) days after the commencement of the delay; otherwise they shall be deemed waived and barred. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and shall notify the Owner within ten (10) days after the event causing the delay has ceased. Claims relating to time otherwise shall be made in accordance with applicable provisions of Article 15. The Owner's or Architect's awareness of the occurrence of the delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

§ 8.3.4 To the fullest extent allowed by law, when the Contract Time has been extended (i) such extension of time shall be the Contractor's sole remedy for such delay, and the Contractor shall not be entitled to any delay, equitable adjustment or impact damages or other increase in compensation due to such extension, and (ii) the Contractor agrees to make no monetary claim under any legal theory for delay, interference or hindrance of any kind in the performance of this Contract for any reason, and (iii) agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work. This Section 8.3.4 shall not apply to the extent of unreasonable delay occasioned by any act or omission of the Owner or anyone acting by or through the Owner.

§ 8.3.5 To the fullest extent allowed by law, the Contractor may recover an increase in the Contract Sum or Contract Time from the Owner for the Owner-directed changes only if the actions or inactions of the Owner or persons acting therefor were the actual cause of the delay. The Contractor shall not be entitled to an equitable adjustment or an increase in the Contract Sum or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence.

§ 8.3.6 In addition to the other limits stated in Section 8.3, to the fullest extent allowed by law, the Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, altitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar theories of damages.

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.

(Paragraph deleted)

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect or the Owner. If a schedule of values is attached as an exhibit to this Contract, it shall be considered the schedule of values for the purposes of this Contract. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and the Owner and supported by such data to substantiate its accuracy as the Architect or the Owner may require, and unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application. At least the number of days before the date established for each progress payment

established in this Agreement, The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, as required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or the Architect require, such as copies of requisitions, and releases and waivers from Contractor, Subcontractors and suppliers in the form of Exhibit B, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Draft Application: On or about the 25th of each month, the Contractor shall submit to the Architect and the Owner, a report on the current progress of the Work as compared to the Contractor's Construction Schedule, and a draft, itemized Application for Payment for work performed during the prior calendar month. This draft shall not constitute a payment request or formal Application for Payment. The Contractor, the Owner, and the Architect shall confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Owner or the Architect may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished. The Application shall also state that prevailing wages have been paid in accordance with the mailed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractor of any tier from the Owner's payment the prior month have been made. THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, unless otherwise noted on the application. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.2 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders; provided that the Owner may withhold payment of disputed Construction Change Directive amounts.

§ 9.3.1.3 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. An Application for Payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.4 The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification For Payment, supported by AIA Document G703, Continuation Sheet.

§ 9.3.1.5 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Architect and the Owner:

- .1 Duly executed lien and claim waivers in the forms attached as Exhibit B to the Agreement, executed acknowledged, and sworn by the Contractor, showing: all first-tier Subcontractors with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for payment to each such first-tier Subcontractor, and the amounts to be paid to and retained by the Contractor from such progress payment. The waiver and release forms submitted by the Contractor shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.
- .2 Duly executed lien and claim waivers in the forms attached as Exhibit B to the Agreement executed acknowledged, and sworn by all first-tier Subcontractors (and any Sub-subcontractors as required by the Owner) showing: all lower-tier Subcontractors with whom the first-tier Subcontractor has entered into subcontracts, the amount of each such subcontract, the amount requested for payment to each such lower-tier Subcontractor, and the amounts to be paid to and retained by the first-tier Subcontractor from such progress payment. The lien and claim waiver forms submitted by first-tier Subcontractors shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of project specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing in advance by the Owner, on such terms as the Owner may require, 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 subject to the Owner's approval and 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.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than upon physical incorporation into the construction at the site or the time of payment, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for payment or Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within a reasonable period after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and the Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and the Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Furthermore, the issuance of a Certificate for Payment will not excuse Contractor from (1) defects in the quality or quantity of the Work, (2) Contractor's responsibility for construction means, methods, techniques, sequences or procedures, (3) deficiencies in requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, (4) Contractor's duty to properly use money previously paid on account of the Contract Sum or (5) any other obligation of Contractor under the Contract Documents.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and the Owner as provided in Section 9.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective or nonconforming Work not remedied; 150% of the estimated value of such defective Work may be withheld;

- .2 third party claims, including but not limited to construction lien claims and bond claims, filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, services, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or third party;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8 delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Contractor's Construction Schedule requirements;
- .9 failure of the Contractor to submit updates of the Contractor's construction schedule as required by Section 3.10.1.1;
- .10 failure to submit affidavits pertaining to wages paid as required by statute;
- .11 failure of the Contractor to provide satisfactions of claims of mechanics', material suppliers', design professionals', construction or similar liens or claims;
- .12 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .13 failure of the Contractor to provide waivers and releases from the Contractor and Subcontractors of any tier;
- .14 liquidated damages; or
- .15 any other grounds for withholding under this Contract or at law.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect the payment in its records. Such payment will not relieve the Contractor or its surety. Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 The Owner will have the same rights of withholding as the Architect, under Section 9.5.1, regardless of whether the Architect withholds.

§ 9.5.6 To the fullest extent allowed by law, Contractor shall have no right to stop the Work if Contractor timely is paid for all undisputed invoices, and if so paid, Contractor shall proceed with the performance of its obligations hereunder with reservation of all rights and remedies it may have at law or in equity with respect to disputed invoices.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, absent any material breaches by Contractor and/or the Owner's good-faith belief that a withholding of payment is necessary to protect the Owner from Contractor's failure to perform its obligations hereunder.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not receive payment for any cause which is not the fault of a particular subcontractor, but does receive payment for work done by the particular subcontractor, the Contractor shall pay that subcontractor on demand,

made at any time after which such payment to the Contractor would have been made, for its satisfactorily completed work of such subcontractor, less the retained percentage.

§ 9.6.2.1 No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 9.6.2.2 Should the Contractor withhold payment from a first-tier Subcontractor due to a bona fide dispute, the Contractor shall notify the Owner. The Owner may then withhold such funds from the Contractor until the dispute is resolved; provided that this Section 9.6.2 shall not be construed or applied to prevent the Contractor from receiving payment from the Owner for Work performed by the Contractor or by another Subcontractor when such Work is the subject of a back-charge by the Contractor against the Subcontractor involved in the bona fide dispute. In accordance with ORS Chapter 279C, unless payment is subject to a good-faith dispute as defined in ORS Chapter 279C, if Contractor or any first-tier Subcontractor fails, neglects, or refuses to make payment to person or entity furnishing labor or materials for this Project within thirty (30) days after receipt of payment from the Owner, the Contractor or first-tier Subcontractor shall owe the person or entity the amount due plus interest charges commencing at end of ten (10) day period that payment is due, unless payment is subject to good faith dispute as defined in ORS Chapter 279C. The rate of interest charged shall be equal to three (3) times the discount rate on ninety (90) day commercial paper in effect at Federal Reserve Bank on the date thirty (30) days after date payment was received from the Owner, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived. Additionally, if Contractor or any Subcontractor fails, neglects, or refuses to pay person or entity furnishing labor or material for the Project, the person or entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS Chapter 279C. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and the Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor the Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials or equipment, or any combination of the foregoing under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Upon reasonable evidence of the unjustified nonpayment of one or more Subcontractors by the Contractor, the Owner may, after giving ten (10) days' notice and opportunity to cure to the Contractor, make payment of amounts due to Subcontractors by direct payments or by means of multiple-payee checks. Upon request of the Owner, the Contractor shall timely furnish to the Owner such information as the Owner reasonably will need to make such direct or multiple-payee check payments, including but not limited to the names and addresses of the first-tier Subcontractor payees and the amounts due to each.

§ 9.6.9 The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner may notify the Contractor. Should any Subcontractor, supplier or other person make, record or file, or maintain any action on or respecting a claim of construction lien, mechanic's lien, stop notice or lis pendens, relating to the Work, then the Contractor shall immediately and at its sole expense cause the same to be removed, extinguished and expunged.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, Subcontractors, or anyone else for whose acts or omissions any of them are responsible, within ten (10) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor the required undisputed amount within the earlier of 30 days after receipt of the properly submitted Application for Payment and supporting documents from the Contractor or 15 days after the payment is approved by the Owner the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon fourteen (14) additional days' written notice to the Owner and the Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. Contractor shall have no right to stop or suspend the Work, withhold services or Work, or terminate this Agreement if Contractor timely is paid all undisputed amounts after applicable withholdings, and if so paid, Contractor shall proceed with the performance of its obligations hereunder with reservation of rights, but subject to the other terms of this Agreement regarding assertion of Claims.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the latest of (a) the stage in the progress of the Work when the Work or designated portion thereof that the Owner agrees to accept separately is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including without limitation issuance of a certificate of occupancy or passage of any necessary governmental inspection; or (b) the date of the Owner's receipt of the Certificate of Substantial Completion from the Architect. The Work will be considered not Substantially Complete if the Owner determines that appropriate cleaning has not occurred. The only remaining Work after Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not interfere with or hamper the Owner's or its occupants' normal operations. Without limitation, no building or facility will be considered to have reached Substantial Completion unless all utilities and systems (mechanical, electrical, etc.) are connected, commissioned, and operating as required for normal use including balancing of the HVAC system, any receiving area and areas for loading and unloading are completed, the Contractor has completed all of the building systems training procedures with the Owner and the building or facility is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or designated portion thereof alone does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change liquidated damages owed to the Owner and the Owner can perform "move-in" activities without interruption or risk of damages to people or property.

§ 9.8.1.1 In addition to the other requirements for Substantial Completion, to achieve Substantial Completion, all Work other than incidental corrective or Punchlist Work and final cleaning shall have been completed, including but not limited to the following:

- .1 Obtain temporary or final certificate of occupancy (if necessary for occupancy) and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose, including without limitation, permits, pressure vessel permits, elevator permits, all specialty permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- .2 Submit the Contractor's Punchlist of items to be completed or corrected and written request for inspection.

- .3 Complete final start-up, testing, and instruction and training sessions on all major building systems, including but not limited to HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks, lighting controls and elevators.

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

§ 9.8.3 Upon receipt of the Contractor's punch list, the Owner, Contractor and the Architect will jointly make an inspection to determine whether the Work or designated portion thereof the Owner agrees to accept separately, is substantially complete. If the Owner's and the Architect's inspection discloses any item, whether or not included on the Contractor's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner, Contractor and the Architect to determine Substantial Completion. In the event the Architect is required to make more than two (2) observations to determine Substantial Completion because of the Contractor's fault, the Contractor shall reimburse the Owner for compensation for the Architect's services and expenses incurred in conducting the third (3rd) and subsequent such observations. If upon observation of the Work or designated portion thereof pursuant to this Section 9.8.3 there is not agreement between or among the Owner, Contractor and the Architect as to whether Substantial Completion has been achieved, the stage of the progress of the Work shall be determined by decision of the Architect.

§ 9.8.4 When the Work or designated portion thereof, which the Owner agrees to accept separately, is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. With respect to components or portions of the Work for which Substantial Completion is achieved after the date of Substantial Completion of the Work as a whole, such warranties shall commence on the dates of Substantial Completion of such components or portions.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. The Owner may, but is not obligated to, require consent of surety as an additional condition to payment. In addition to retention of retainage, such payment shall be adjusted for a value of 150% of Work that is incomplete or not in accordance with the requirements of the Contract Documents. No further payment will be due or owing until the payment at Final Completion.

§ 9.8.6 Commissioning of Critical Systems: The following systems of the Work, and any other systems designated in the Contract Documents, are considered "Critical Systems":

- .1 HVAC system;
- .2 Electrical system;
- .3 Data communication system(s);
- .4 Intercom system
- .5 Life safety system(s);
- .6 Security system
- .7 Access control system.

When the Contractor considers that the Critical Systems are up and running and ready for normal operation as specified for each phase, the Contractor shall so notify the Architect and Owner in writing a minimum of 14 days prior to the Date of Substantial Completion for that portion or phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection of these systems to determine whether the Critical Systems are complete and ready for normal operation. If the Architect's or Owner's inspection discloses that the Critical Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Substantial Completion, complete or correct such item upon

notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Critical Systems and pay the costs associated with the re-inspections, including fees of the Architect and its consultants. When the Critical Systems are ready for operation, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Warranties on the Critical Systems required by the Contract Documents shall commence on the later of the Date of Commissioning or Date of Substantial Completion, unless otherwise provided in the Contract Documents. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may upon written notice to the Contractor, take possession of, occupy or use any completed or partially completed portion of the Work at any stage and time, when it is legal to do so. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of any of its obligations under the Contract. If the Contractor fails to complete the Work within the Contract Time, the Owner may take possession of, use or operate all or any part of the Work without an increase in the Contract Sum.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. A reasonable sum may be withheld by Owner until Contractor delivers to Owner record Drawings, Specifications, Addenda, Change Orders and other Modifications, and the warranties, instructions, and maintenance manuals required by the Specifications, and a final statement of the cost of the Work allocated in accordance with the budget and in a form approved by Owner.

§ 9.9.3 Unless otherwise agreed upon in writing by the Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents, nor start the period for correction of Work mentioned in Section 12.2.2, nor establish Substantial Completion of the portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of any of its obligations under the Contract.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Contractor and the Architect will jointly and promptly make such inspection. When the Owner and the Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. In the event the Architect or any consultant is required to make more than two (2) observations to determine Final Completion, the contractor shall reimburse the Owner for compensation for the Architect's and consultant's services and expenses incurred in conducting the third (3rd) and subsequent such observations. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all fees and expenses incurred by the Owner for services performed after the required Final Completion date of all the Work due to the delay of the Contractor, whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.1 The term "Final Completion" as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved and the Architect's and engineers' punch list work completed, (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work for its intended purpose and (3) the Contractor has performed all of its obligations under the Contract except for those obligations that, by their nature, extend beyond Final Completion, including without limitation:

- .1 Submit for review final O&M manuals, as-builts, and warranties. Warranties to state start of warranty is established by the posted date of Substantial Completion.

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- .2 Turn over all extra stock to the Owner.
- .3 Make final changeover of locks and transmit new keys to the Owner and advise the Owner of the changeover in security provisions.
- .4 Discontinue or change over and remove temporary facilities and services from the Project site.
- .5 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- .6 Complete building commissioning as required by the Specifications.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner; (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties; (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; (7) all warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, as-built drawings and other documents or items required by the Contract Documents; (8) originals of all permits, licenses and certificates, together with a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health departments and utility owners, provided to Owner with a copy of all closed or signed off permits; (9) proof satisfactory to Owner that the Contractor has fully complied with the requirements of ORS 279C.845(7); (10) Certification that the materials in the Work are "lead-free" and asbestos-free;" and, (11) if the Contractor is not domiciled in or registered to do business in the State of Oregon, confirmation the Contractor has complied with the requirements of ORS 279A.120; (10) as-built Drawings in CAD format acceptable to the Owner to the extent required by the Specifications or this Agreement; and (11) all other documents and items required by the Contract Documents to be provided as a condition of achieving Final Completion. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Owner may (1) retain funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount; or (2) accept from the Contractor, a bond or other security satisfactory to the Owner, in its sole discretion, to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including but not limited to all costs, disbursements, expenses and reasonable attorneys' fees.

§ 9.10.2.1 In addition to other documentation required by the Architect and the Owner as a condition of final payment, the application for final payment shall be accompanied by final waivers and releases of claims, executed by the Contractor and Subcontractors. The forms of the waivers and releases shall be as set out in Exhibit B.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor, a Subcontractor or anyone for whom they are responsible, or by issuance of Change Orders affecting final completion, and the Owner and the Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.3.1 If the Owner elects to make such payment in advance of Final Completion, the Owner may retain an amount no less than one hundred fifty percent (150%) of the value of such Work for the Contractor to finally complete the Work, as determined by the Architect.

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(Paragraphs deleted)

Acceptance of final payment by the Contractor, a Subcontractor, or a 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. The execution of a Change Order shall constitute a waiver of Claims by the Contractor and all subcontractors arising out of the work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. General reservations of rights will be deemed waived and void.

(Paragraphs deleted)

§ 9.11 Records

The Contractor shall maintain books, records, documents, and other evidence pertaining to the costs incurred by the Contractor in connection with or related to the Contract ("records") to such extent and in such detail as will properly reflect and fully support all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. In the event of a claim or dispute, the Contractor agrees to make available at the office of the Contractor at all reasonable times all records for inspection, audit and reproduction by the Owner and its representatives. These requirements shall be applicable to and included in each Subcontract and purchase order issued with respect to the Work, except fixed price Subcontracts where the price is \$25,000 or less.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the entirety of the Work.

§ 10.1.1 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof will:

- .1 Relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation;
- .2 Impose any obligation upon the Owner or the Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; and
- .3 Impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other person or entity.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees and others performing labor or services or furnishing materials or equipment on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property and structures 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; and
- .4 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors.

§ 10.2.2 The Contractor shall comply with, and give notices required by, and otherwise shall comply with applicable laws, statutes, ordinances, codes, rules, regulations, permits, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including but not limited to posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and give the Owner and the Architect reasonable prior notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Section 10.2 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Section 10.2. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the negligent or other wrongful acts or omissions of the Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's Superintendent unless otherwise designated by the Contractor in writing to the Owner and the Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

(Paragraphs deleted)

§ 10.2.8 The Contractor shall immediately report to the Owner and the Architect all accidents arising out of or in connection with the Work which cause death, serious personal injury or substantial or significant property damage. The Contractor shall promptly thereafter submit a written report of such accident, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported by the Contractor immediately by telephone or messenger to the Owner.

§ 10.2.9 The Contractor shall, and shall require its Subcontractors to: be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying; furnish approved hard hats, other personal protective equipment as required, approved first aid supplies, the name of an individual on each shift who has completed the OSHA Supervisory Training Course and a posted list of emergency facilities; take prompt action to correct any hazardous conditions reported; comply with the requirements of the Occupational Safety and Health Act ("OSHA") and all other applicable federal, state and local worker safety laws, rules and regulations, including all standards and regulations which have been promulgated by the governmental authorities which administer such Acts and said requirements, standards and regulations are incorporated herein by reference. The Contractor shall be directly responsible for compliance therewith on the part itself and of its agents, employees, Subcontractors, Sub-subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of itself or its agents, employees, materialmen, Subcontractors or Sub-subcontractors to so comply. Contractor shall provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumber's torches and other flame and spark producing apparatus and comply with NFPA Standard No. 51B, as amended, or its replacement. The Contractor shall submit its Safety Plan for the Project in hardcopy form as a submittal to the Owner to demonstrate the general level of safety program he will conduct and his general adherence to good safety practices. The Owner's review, comment upon, approval or disapproval of such Safety Plan or any portion thereof shall not relieve Contractor for full responsibility for Project safety.

§ 10.2.10 The Contractor, in all cases, shall comply with OSHA, EPA and all other Governmental Workplace Requirements. The term "Governmental Workplace Requirements" as used in the Contract Documents shall mean building, traffic, environmental, occupancy health, accessibility for disabled and other applicable laws, statutes, ordinances, regulations or decrees, of any federal, state, county, municipal or other governmental or quasi-governmental authority or agency pertaining (a) to the Project, (b) to the use and operation of the Project for their intended purposes, or (c) if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (a) or (b), then to the subject matter described in the Section in which the term is used.

§ 10.2.11 Injury or Damage to Person or Property

If the Contractor 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 the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding seventy-two (72) hours after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

§ 10.2.12 Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents. Contractor shall erect and maintain perimeter fencing around the entire Project site for the duration of the Work, and shall otherwise secure the Project site for the entire duration of the project until Substantial Completion and demobilization.

§ 10.2.13 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion. Contractor shall maintain Work materials and equipment free from damage from rain, wind, storms, frost or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, Contractor shall cease Work and immediately notify the Owner and the Architect of such cessation. Contractor shall not permit open fires or smoking on the Project site.

§ 10.3 Hazardous Materials and Substances [Not applicable to asbestos/hazardous materials abatement contractors]

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and the Architect of the condition orally and in writing.

§ 10.3.1.1 As used in this Article 10, the term "hazardous material" shall mean and include any "hazardous substance" as defined in the federal Comprehensive Environmental Response Compensation Liability Act (CERCLA), any "hazardous waste" as defined in the federal Resource Conservation Recovery Act (RCRA), and similar terms as used in applicable federal, state and local statutes, rules and regulations.

§ 10.3.2 In the event the Contractor ceases the Work under any of the circumstances described in Section 10.3.1, the Owner in consultation with the Architect and Contractor shall arrange at the Owner's cost for such governmental reviews, professional services and laboratory and other analyses as are reasonably necessary to determine the presence or absence of the suspected hazardous material, wetland condition or archeological site. In so doing, the Owner shall inform the Architect and Contractor of the nature of the governmental reviews, professional services and laboratory and other analyses that the Owner intends to arrange, and the identity of the agencies, firms and individuals the Owner intends to involve. If the Contractor has a reasonable objection to the nature of the reviews, services or analyses that the Owner intends to arrange, or to the identity of the agencies, firms or individuals that the Owner intends to involve, the Owner and Contractor shall negotiate in good faith and with expediency to determine alternative means or parties to perform the reviews, services or analyses. The Contractor shall cooperate in good faith with the Owner, the Architect, the Architect's consultants, the Owner's separate consultants and contractors and other agencies, firms and individuals that perform services or work at the Project site to analyze, control, remediate, render harmless or protect the suspected hazardous material, wetland condition or archeological site. Upon a determination based on such completed reviews, services or analyses as are reasonably necessary that the suspected hazardous material in fact does not exist, or has been controlled, remediated, rendered harmless or protected, the Owner shall transmit a written order to the Contractor to resume the construction of the Work in the affected area. Upon receipt of such order, the Contractor shall resume the Work as ordered. The Contractor shall be entitled to an extension of the Contract Time to the extent the Contractor is delayed in the progress of the Work by cessation of the Work under Section 10.3.1. If the Contractor claims additional costs as a result of such cessation of the Work, it shall make a Claim pursuant to Article 15.

§ 10.3.3 The Contractor shall not permit or allow any Hazardous Substance to be deposited, disposed, placed, generated, buried, discharged, manufactured, refined, transported, treated, handled or located on or about the Project. Except as reasonably required for and are in quantities appropriate to the performance of the Work then being done, the Contractor shall exercise oversight over the use and storage of such Hazardous Substances and compliance with Governmental Requirements applicable to such use and storage. The Contractor shall store all hazardous materials safely, whether or not required by the Contract Documents. To the extent required by applicable Governmental Requirements, the Contractor shall have Material Safety Data Sheets (MSDS) for all Hazardous Substances used in the workplace and make them available to employees who are potentially exposed to those Hazardous Substances. The MSDS and other information shall be available at the jobsite with two (2) full copies of all information to be turned over to the Owner as it is received. The Contractor will be solely responsible for compliance with any "Right to Know" law relating to notice to its employees and others concerning Hazardous Substances to which they could be exposed in the course or the conduct of the Work, including the labeling of such materials, the filing of any necessary reports relating thereto, and related requirements. The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances, or by the failure of Contractor to perform as required by this Section 10.3.

§ 10.3.4 The Contractor shall indemnify and reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 If, without negligence on the part of the Contractor, Subcontractor, or anyone for whose acts or omissions any of them are responsible, the Contractor is held liable by a government agency 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 reimburse the Contractor for all cost and expense thereby incurred.

(Paragraph deleted)

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

§ 10.5 SPILL RESPONSIBILITY

§ 10.5.1 The Contractor is responsible for any and all releases of water and environmental pollution during performance of the Contract which occur as a result of, or are contributed to by, itself or the actions of its agents, employees, or Subcontractors. The Contractor agrees to promptly remediate such releases to satisfaction of the Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner.

§ 10.5.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

- .1 properly handle, use and dispose of all environmental pollutants and hazardous materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- .2 be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous materials that the Contractor has brought onto the Work site; and
- .3 promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

§ 10.5.3 The Contractor shall be liable for any and all costs, expenses, damages, claims, fines, penalties, reimbursements, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) water or any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Contractor's (i) fault or (ii) failure to perform in accordance with

the Contract Documents, permits, or applicable law. Nothing in this Section 10.5 shall limit the Contractor's liability or responsibility under any other provision of the Contract Documents.

§ 10.5.4 The Contractor shall report all violations or reportable quantity releases or violations described in this Section 10.5 to applicable federal, state, and local regulatory and emergency response agencies. Upon discovery, regardless of quantity, the Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to the Owner within forty-eight (48) hours of the telephonic report. Such written report shall contain, at a minimum:

- .1 Description of items released (identity, quantity, manifest number, and all other documentation required by law);
- .2 Whether amount of items released is EPA/DOE reportable and, if so, when it was reported;
- .3 Exact time and location of release, including a description of the area involved;
- .4 Containment procedures initiated;
- .5 Summary of communications about the release the Contractor has had with members of the press or state officials other than the Owner;
- .6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue; and
- .7 Personnel injuries, if any, resulting from, or aggravated by, the release.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase and maintain, and cause Subcontractors to purchase and maintain, insurance as set forth in Exhibit E.

(Paragraphs deleted)

§ 11.2 THE OWNER'S LIABILITY INSURANCE

§ 11.2.1 Refer to Exhibit E for the required Coverages, Deductibles, Builders Risk, Subrogation Waiver and information and requirements of the Contractor and subcontractors.

(Paragraphs deleted)

§ 11.3 PERFORMANCE, RETENTION, AND PAYMENT BOND

§ 11.3.1 The Contractor shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The Contract shall include a Retention bond equal to five (5) percent of the contract sum. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The bonding company must be listed on the most current US Government Treasury list, Department Circular 570 or approved PRIOR TO BID SUBMISSION by Owner. The cost of the bonds shall be included in the Contract Sum. The bonds shall be submitted on form acceptable to Owner, be in compliance with the requirements of ORS 279C, and shall name Owner, and others required by statute, as beneficiary. Failure to adhere to these requirements may be grounds for rejection of the bid or cancellation by Owner of this Agreement.

§ 11.3.2 Any Change Order, Construction Change Directive, order for a minor change in the Work or other modification of the Contractor's obligations under the Contract shall not be subject to inspection or approval by any surety on any required bond. The surety on such bond, by issuing the bond, expressly waives its right to approve any such Change Order, Construction Change Directive or order and consents to any modification of the Contractor's obligations hereunder.

§ 11.3.3 The Contractor shall deliver the required bonds to the Owner prior to or with the signed (by the contractor) Agreement to the Owner Representative at the address of the first page of this Agreement; or if these are General Conditions to a CM/GC Agreement, at the time required by statute. The Contract shall not be executed by the Owner until the bonds have been received and validated.

§ 11.3.4 POWER OF ATTORNEY

The Contractor shall require the Attorney-in-fact that executes the required bonds on behalf of the surety to affix thereto a certified and current copy of their power of attorney. The surety on any required bond shall be bound by the arbitration or litigation of any disputes between and among the Owner, Contractor, Subcontractors, Subcontractors'

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sureties, the Architect, the Architect's consultants, the Owner's separate contractors and consultants, and other third parties in the same way and to the same extent that the Contractor shall be bound. The surety shall be bound by the decisions and award of the arbitrator(s) or court in the same way and to the same extent that the Contractor shall be bound.

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

§ 11.3.6 If a payment bond and/or performance bond is required by the Owner under the Contract, the Owner may require that the Contractor subcontract only with Subcontractors who agree to file suit against such bond(s) in the event the Contractor fails to meet its payment or performance obligations to the Subcontractor, as the Subcontractor's exclusive remedy against the Owner, the Project or the Land. This requirement shall not apply if Contractor has not made payments to Subcontractors for the sole reason that the Owner has not paid the Contractor per the terms of the Agreement.

(Paragraphs deleted)

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or the Architect, be uncovered for the Owner's or the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Owner or the Architect has not specifically requested to examine prior to its being covered, the Architect or the Owner may request to see such Work and it shall be uncovered by the Contractor subject to approval of the Owner. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Amendment, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense without reimbursement from the Owner.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or the Owner as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and the Owner's attorneys' fees and related costs, disbursements and expenses made necessary thereby, shall be at the Contractor's expense without reimbursement from the Owner. Roadways, pavements and curbs that are broken, damaged, settled or otherwise defective as a result of receiving, handling, storage of materials or the performance of any Work under the Contract Documents shall be fully restored to the satisfaction of the Owner.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, (i) within one year after the date of Substantial Completion of the entire Work; (ii) within two years after the date of Substantial Completion of the Work, as to those components of the Work that include, alter or affect any portion of the building envelope and penetration components; or (iii) within the period established by the terms of an applicable special warranty required by the Contract Documents or by law; or (iv) after the date for commencement of warranties established under Section 9.9.1, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall correct it at the Contractor's expense without reimbursement from the Owner promptly after receipt of written notice from the Owner to do so. 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 on grounds of breach of warranty. The obligations of Contractor under this Section 12.2 shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages. If the Contractor fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or the Architect, the Owner may correct it

in accordance with Section 2.5. If payment of the Contract Sum has already been made by the Owner then upon demand the Contractor shall reimburse the Owner pursuant to Section 2.5. Without voiding specified warranties or relieving the Contractor of its responsibilities under this Section 12.2.2, the Owner reserves the right to make repairs as necessary to maintain the structure and its contents and operability. In addition to nonconforming Work otherwise needing to be corrected and completed:

- .1 If, in the Owner's opinion, the nonconforming Work either prevents the use of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), Contractor shall initiate corrective work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete corrective action within 48 hours.
- .2 If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, affects internal security, or limits the use of the facility (e.g. loss of heat in a single classroom, failure of one or more plumbing fixtures, interior door locks not working, etc.), Contractor shall initiate corrective work on site within two working days and shall complete corrective action within 5 working days.
- .3 If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed, (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.), the Contractor shall initiate corrective work on site within 14 calendar days and shall complete corrective action within 28 calendar days.

§ 12.2.2.2 The period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion of the Work as a whole by the period of time between Substantial Completion of the Work as a whole and the actual completion of that portion of the Work. For example, if a portion of the Work is completed 15 days after Substantial Completion, the period of correction shall commence as to such Work 15 days after Substantial Completion.

§ 12.2.2.3 The period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, for such corrective Work for that period of time that equals the amount of time after Substantial Completion of the Work as a whole that the corrected portions of the Work were defective or nonconforming. Such extensions shall be applicable only to corrected portions of the Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is defective or not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or applicable law. Establishment of the period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time nor shall otherwise be deemed to limit the time within which the obligation to comply with the Contract Documents or applicable law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Prior to the first anniversary of Substantial Completion, the Contractor shall walk the project together with the Owner to identify items requiring to be corrected by the Contractor. The Contractor shall be responsible for scheduling this meeting, or shall attend such meeting together with relevant Subcontractors if scheduled by the Owner.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is defective or not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been

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made. The Owner shall never be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases the Owner shall be entitled to full removal and correction of defective or non-conforming Work.

§ 12.4 EFFECT OF OBSERVATIONS AND APPROVALS OF THE WORK

§ 12.4.1 The Contractor shall not be relieved from its obligations to perform the Work pursuant to the Contract Documents, or from responsibility for defects or nonconformities in the Work, either by the observations or reviews of the Work by the Owner, the Architect or other persons or entities or by other inspections, tests or approvals of the Work by any agency, entity or person.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. The Contractor shall not assign its rights or obligations under the Contract in whole or in part, for any purpose, except to Subcontractors approved pursuant to the Contract, without the prior written consent of the Owner. If the Contractor makes or attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract and such assignment shall be null, void and of no force or effect.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing bonds or construction financing for the Project or to a successor school owner or another government agency. In such event, the Contractor shall execute all consents and other documents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The Contractor's sole remedy for claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to the Contract Documents or breach thereof, except claims which have been waived, is the dispute resolution procedure of Article 15.

§ 13.3.2 No action or failure to act by the Owner or the Architect shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.3.3 Notwithstanding any provision in this Contract to the contrary, in the event requirements of the Owner's lender or bond financing source, if any, regarding the conditions, calculation or timing of progress payments differ from those set forth in this Contract, Contractor shall cooperate to comply with such requirements provided the same are not unduly burdensome to Contractor.

§ 13.3.4 If the majority of the Ownership or the control of the Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, determines the Owner cannot itself reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty days written notice of termination and the opportunity for the Contractor to cure prior to termination.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall schedule and make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections, or

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approvals that do not become requirements until after bids are received or negotiations concluded, unless the test, inspection or approval arises from the fault of the Contractor or a Subcontractor or supplier, except as provided in Section 13.4.3. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, the Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and the Architect of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. If the Contractor arranges for an inspection and the inspector is required to wait, to leave without inspection, to perform a partial inspection, to return to complete or re-inspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within 30 days of billing, the Owner may pay the charges directly and back charge the Contractor on the next progress payment the amount plus a 10% handling fee.

§ 13.4.4 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 Owner and the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.4.7 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failure to inspect or test by the Owner, the Owner's representative, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as specified by ORS 279C.570 from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located for public improvement contracts.

§ 13.6 TIME ACCRUAL OF CLAIMS

For claims by the Owner against Contractor based on the so-called "discovery rule," the applicable period of limitations or claims shall not commence to run and any alleged cause of action shall not be deemed to have accrued, whether such claims or actions involve strict liability, indemnity, intentional tort or other tort, breach of contract, breach of implied or express warranty, or any other legal or equitable theory, unless and until the party making the claim is fully aware of all three (3) of the following: (a) the identity of the party(ies) responsible; (b) the magnitude of the damage or the injury; and (c) the cause(s) of the damage or injury, provided this Section 13.6 shall not act to accelerate the accrual of any claim. The discovery rule provided herein applies in lieu of any other applicable statute or related case law. This provision does not accelerate the accrual of any claim earlier than what accrual would have been in the absence of this provision.

§ 13.7 EXCULPATORY PROVISION No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against any affiliate, partner, member, officer, director, trustee or beneficiary of the Owner on account of any agreement contained in the Agreement or any other Contract Documents, whether expressed or

implied. Liability with respect to the entry and performance of this Agreement and all other Contract Documents, however it may arise, with respect to the Owner shall be asserted and enforced only against the Owner, and Contractor shall have no recourse to any assets of any affiliate, partner, member, director, officer, employee, trustee, beneficiary or other representative of the Owner. Any and all personal liability, if any, beyond that which may be asserted against the Owner is expressly waived and released by Contractor and by all persons or entities claiming by, through and under Contractor.

§ 13.8 INTERPRETATION

The Contract Documents have been carefully reviewed by Contractor and its counsel and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Paragraph headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 13.9 SURVIVAL

§ 13.9.1 If the full performance of an obligation is not required prior to the termination of this Contract, such obligation shall survive the termination and be fully enforceable thereafter. In addition, except as otherwise waived or barred, all rights and obligations set out in the Contract shall survive completion of the Project or termination of the Contract (1) as to the parties rights and obligations that arose before such completion of the Project or termination and (2) as is necessary to give effect to rights and obligations that arise after such completion of the Project or termination but derive from a breach or performance failure that occurred prior to such completion or termination.

§ 13.10 WAIVER, AMENDMENT AND EXTENSION; RIGHTS

No waiver, amendment, extension or variation in the terms of the Contract Documents shall be valid against the Owner unless in writing and signed by the Owner and then only to the extent specifically set forth in the writing. No failure or delay on the part of Owner in exercising any right, power or privilege under the Contract Documents, nor any course of dealing between the parties, will waive, amend or vary the terms of the Contract Documents. The Owner's rights and remedies provided by the Contract are cumulative and the use of any one right or remedy by the Owner shall not preclude or waive the right to use any or all other remedies. The Owner's rights and remedies are given in addition to any other rights the Owner may have by law, statute, ordinance or otherwise.

§ 13.11 EXTENT OF CONTRACT

The terms of the Contract Documents are intended by the parties to be a final expression of their understanding with respect to the Project and may not be contradicted by evidence of any prior or contemporaneous statements or understandings. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in a writing signed by the parties hereto.

§ 13.12 SEVERABILITY

§ 13.12.1 This Contract is deemed to incorporate all provisions as required by law. Such incorporated provisions will have priority over any conflicting provision herein. Should any provision of the Contract, at any time, be in conflict with any law, statute, code, ordinance, rule, regulation or lawful order of a public authority, or be unenforceable or inoperative for any reason, then the remaining provisions of the Contract nonetheless shall continue in full force and effect and the court shall give the offending provision the fullest meaning and effect allowed by law.

§ 13.13 COUNTERPARTS

This Contract may be executed in counterparts, a complete set of which shall be considered an original.

§ 13.14 AUTHORITY

The Contractor represents and warrants that he or she or it has the full right, power, legal capacity and authority to enter into and perform the Contractor's respective obligations hereunder, and that such obligations shall be binding upon the Contractor without the requirement of the approval or consent of any other person or entity in connection herewith. Each person signing the Contract on behalf of the Contractor represents and warrants that he or she has the full right, power, legal capacity and authority to sign the Contract on behalf of the Contractor.

§ 13.15 REPRESENTATIONS

Contractor represents that (1) it has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) it has reviewed, analyzed, and has current knowledge of the site; and (3) it has reviewed, analyzed, and has found sufficient for completion of the Work the Contract Documents. Contractor

acknowledges and warrants that any exceptions to this representation have been specifically identified in the Contract Documents.

§ 13.16 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit one hard copy and two electronic media copies (on memory stick, CD or DVD and in standard Microsoft or Adobe format) of completed operation and maintenance manuals for review by the Owner's Representative prior to submission of any pay request for more than ninety percent (90%) of the work. No payments beyond ninety percent (90%) will be made by the Owner until the O & M Manual has been received. The O & M Manual shall contain a complete set of all submittals; all product data as required by the specifications; training information; a telephone list of consultants, manufacturers, installer and suppliers; manufacturer's printed data; balance reports; record and shop drawings; schematic diagrams of systems; appropriate equipment indices; warranties; bonds; etc. The Owner's Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, complete and approved sets of O & M Manuals shall be delivered to the Owner's Representative by the Contractor.

§ 13.17 Training

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Representative training sessions for all equipment and systems, as required in the individual specifications sections. The Contractor shall schedule training sessions at least two (2) weeks in advance of the date of training to allow the Owner's personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment. A condition to final payment shall be the Contractor's delivery to the Owner's Representative of a written log showing all training as having been provided and accepted by the Owner for all systems and equipment involved, signed by the Owner.

§ 13.18 Compliance with All Governmental Laws and Regulations. The Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and this Agreement. ORS Chapters 279A and 279C and the Attorney General's Model Public Contracting Rules (as such rules may have been modified by the Owner) ("Rules") contain certain requirements for public contracts, including but not limited to certain required contract provisions. Required contract provisions are attached as Exhibit F and are incorporated herein by this reference. Furthermore, Contractor and the Owner agree to comply with all requirements of ORS Chapter 279A and 279C, the Rules and all other applicable laws and regulations (collectively "Laws"), whether or not such applicable provisions are included in Exhibit F and whether or not such provisions are excised in Exhibit F. In the event of a conflict between any applicable Law and the provisions of this Contract, including Exhibit F, the Law shall prevail and control.

§ 13.19 Contractor hereby agrees that the Project will be completed substantially in accordance with building permits and any other permits related to development of the Project, the Contract Documents and unless otherwise provided in the Contract Documents all manufacturers' or suppliers' recommended installation procedures so as to preserve any warranties with respect thereto, free and clear of all liens or encumbrances and within the time set forth in the Contract Documents. Contractor does further agree that on the date of Substantial Completion, the Project shall comply with all applicable building laws, ordinances, rules and regulations known, or which should in the exercise of reasonable care be known, to Contractor, and that all utility services necessary for the operation of the Project shall have been provided to the Project within the time for completion of construction.

§ 13.20 If the Contractor fails, neglects or refuses to make prompt payment for labor, materials, equipment or other services furnished to the Contractor or a Subcontractor by any person in connection with the Project as such claim becomes due, the Owner may pay the claim and charge the amount of the payment against funds due or to become due the Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 13.21 This Contract is subject to the State of Oregon Bureau of Labor and Industries Prevailing Wage Rates, and Contractor shall pay or cause to be paid all workers accordingly.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of one-hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1 and the Owner has not cured such matters within seven (7) days after the date of Contractor's notice to the Owner, or because the Owner has not made payment on an approved Certificate for Payment (other than disputed sums) within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of entire days scheduled for the Work completion, or 180 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 (7) days' written notice to the Owner, and if the Owner fails to cure such reason during the seven (7) day period, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work executed, and costs incurred by reason of such termination. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.

§ 14.1.4 Notwithstanding any provision of the Contract seemingly to the contrary, to the fullest extent allowed by law, Contractor shall not stop or suspend the Work or terminate this Contract in the event the Owner withholds any disputed payment, so long as the Owner continues to make undisputed payments for which the Architect has issued a Certificate of Payment.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 fails to abide by or disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority having jurisdiction;
- .4 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .5 fails to comply with the current Contractor's construction schedule;
- .6 is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
- .7 submits one or more Applications for Payment that the Contractor overstates the amount to be paid, by the Owner; or
- .8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, at least one (1) business day's written notice, terminate the Contract in whole or in part and may end employment of the Contractor and may:

- .1 Exclude the Contractor from the site and take possession of all or a portion of materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of some or all subcontracts pursuant to Section 5.4; and

- .3 Finish the Work or a portion thereof by whatever reasonable means and method the Owner may deem expedient. Upon written 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.

§ 14.2.3 When the Owner terminates the Contract in whole or in part for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the Owner completes the Work and costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived exceeded the unpaid Contract Sum, such excess shall be paid by the Contractor to the Owner. Contractor shall be responsible and shall pay all the Owners' claims for costs and damages upon demand, pending reconciliation pursuant to this Section 14.2.4. The amount to be paid to the Contractor or the Owner, as the case may be, shall be determined and, at the Owner's option, certified by the Architect upon application by the Owner. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event the Owner terminates the Contract for cause under this Section 14.2 and such termination subsequently is determined in a final arbitrated award or a final judgment to have been wrongful, the termination shall automatically be converted to a termination for the Owner's convenience pursuant to Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1 on all Work executed only. Adjustment of the Contract Sum shall be consistent with the terms of the Contract Documents, provided to the fullest extent allowed by law Contractor waives all claims for additional profit as a result of such suspension. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the Contract in whole or in part for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, and also except for Work not covered by the termination, terminate all existing subcontracts and purchase orders and similar agreements and enter into no further subcontracts and purchase orders, and similar agreements.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to section 14.5.

§ 14.4.4 If the Owner terminates for cause, the Owner at any time may, by notice to Contractor, convert the termination to a termination for convenience. In the event the Owner terminates for cause and it is determined that the Owner did not have sufficient cause for termination, such termination shall be deemed at the Owner's convenience under this Section. Termination for convenience shall not impair the Owner's other rights, including its rights and

remedies for any breach of this Contract. In no event shall Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Contract by the Owner, with or without cause.

§ 14.5 TERMINATION AND SUSPENSION BY THE OWNER

§ 14.5.1 In the event the Owner terminates the Contract in part under Section 14.2 or 14.4 or suspends the Contract in part under Section 14.3, the Contractor shall cooperate with the Owner and all other persons and entities performing work or services on the Project as necessary and required to facilitate the efficient and proper performance and completion of (1) the overall Project, if the Owner completes the entire Project, or (2) the portion of the Project the Owner completes, if the Owner completes less than the entire Project. In the event of a termination, the Owner expressly reserves the right to recover damages arising out of or related to Contractor's performance of the Contract, regardless of whether (a) such performance occurred before or after the effective date of termination or (b) the Owner provided Contractor with the opportunity to cure. Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 Stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
- .3 Procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 Assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, in which case the Owner shall have the right, in its discretion, to accept such assignments or any of them, and settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 With the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 Transfer title and deliver to the entity or entities designated by the Owner the fabricated or un-fabricated parts, Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 Use its best efforts to sell any property of the types referred to in Section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 Take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 Continue performance only to the extent not terminated.

§ 14.5.2 The Contractor shall, from the effective Date of Termination until the expiration of three (3) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work.

§ 14.5.3 In arriving at any amount due the Contractor after termination, in addition to any other permitted deductions, the following deductions shall be made:

- .1 All un-liquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;
- .2 Any claim pursued under the Contract which the Owner may have against the Contractor, including without limitation liquidated damages;
- .3 An amount necessary to protect the Owner against outstanding or potential liens or claims;
- .4 The agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of section 14.5.1.7, and not otherwise recovered by or credited to the Owner.

§ 14.5.4 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a claim for equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim

by the Contractor for an equitable adjustment under this section must be asserted within thirty days from the effective date of the partial termination or it shall be deemed barred.

§ 14.5.5 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under the Contract Documents.

§ 14.5.6 The Owner may have costs reimbursable under this Article 14 audited and certified by accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.7 To the fullest extent allowed by law, the damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

§ 14.5.8 A default by the Contractor under this Contract shall, at the election of the Owner, constitute a default under any other contract between Contractor (or a Contractor affiliate) and the Owner ("Other Construction Contract"). A default by Contractor or such Contractor affiliate under any Other Construction Contract shall, at the election of the Owner, also constitute a default under this Contract. In such event, Owner, at its sole election, may (i) as to default under the Other Construction Contract, terminate or excise its other rights and remedies under this Contract, as if such default under the Other Construction Contract is also a default of this Contract, and/or (ii) as to default under this Contract, terminate or excise its other rights and remedies under the Other Construction Contract, as if such default under this Contract is also a default of the Other Construction Contract.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

(Paragraphs deleted)

§ 15.1.2 Claims

Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement. Contractor waives all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor shall be initiated by written notice to the other party. Unless a different period for assertion of particular Claims is specifically identified in this Agreement, Contractor must give written notice of any Claim to the Owner not later than seven (7) days after occurrence of the event giving rise to the Claim or Contractor first becomes aware of the Claim, whichever is sooner, or the Claim shall be deemed forever time barred and waived. Contractor's notice shall provide sufficient detail to enable the Owner to investigate the matter, and shall include a clear description of the Claim, the proposed change in the Contract Sum and/or Contract Time of the Claim, and data supporting the Claim. Failure to properly submit the notice of Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and Subcontractors of any tier) is entitled. Prior to the initiation of a dispute resolution procedure, the Owner or its representatives shall have the right to audit and copy any Subcontractor or supplier of any tier whose claim is part of or included in the Claim. All Claims shall be addressed to:

Purchasing Manager
Beaverton School District #48J
16550 SW Merlo Road
Beaverton, OR 97003
Telephone: (503) 356-4555

In addition, a copy of the Claim notice shall be sent concurrently to the Owner's Project Manager and the Owner's Administrator for Facilities Development at the above address. All unresolved Contractor Claims shall be deemed waived and released by Contractor unless Contractor has strictly complied with the time limits of the Contract Documents.

(Paragraphs deleted)

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents. The Architect will prepare Amendments, Change Orders and issue Certificates for Payment in accordance with the decisions of the Owner.

(Paragraphs deleted)

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Notice under Section 15.1.3 shall contain sufficient detail and substantiating data to permit evaluation of the Claim by the Owner. No such Claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4, provided written notice is given as soon as possible after addressing the emergency.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time, and a schedule analysis based upon the approved Contractor's construction schedule, showing the impact of the cause or event on the critical path of the approved Contractor's construction schedule. No Claim under this Section 15.1.6 shall be valid unless so made. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path for the scheduled construction in a manner that could not be avoided by rescheduling and that either the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred or the adverse effect on the scheduled construction would have occurred whether or not the Work was on schedule, or by implementing measures to protect against the weather so that the Work could proceed. No claim for additional time will be granted where the scheduled construction adversely affected was not on the critical path or was within the schedule float or contingency (or would have been in float or contingency had Contractor appropriately rescheduled Work on account of weather conditions), or could be avoided by Contractor through temporary weather protection measures. Claims for additional time will not be granted where the delays for which the Contractor is responsible result in moving Work into an adverse weather season. The Contractor shall provide copies of weather reports to the Owner and the Architect, produced from 'NOAA'- National Oceanic & Atmospheric Administration' for dates affected, as well as, a ten (10) year historical average report for same period of time. In addition, the Contractor must submit a revised construction schedule to the Owner and the Architect showing critical path activities affected by the delay. A rain, snow, ice, windstorm, high water, or other natural phenomenon for the specific locality of the Work (a "Weather Event"), which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that only a Weather Event exceeding one-hundred twenty-five percent (125%) of the weekly, 10-year historical average for the general locality of the Work shall be considered abnormal for purposes of this Section 15.1.6.2. The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Project site shall be considered the official agency of record for weather information. Approved time extensions for abnormal weather conditions shall be deemed excusable and non-compensable.

(Paragraphs deleted)

§ 15.2 Initial Decision

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§ 15.2.1 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.2 If a claim, dispute or other matter in question relates to or is the subject of a bond, the party asserting such matter may proceed in accordance with applicable Oregon law to comply with the bond notice or filing deadlines prior to resolution of the matter by the Owner. Contractor shall make its employees and principals, as well as its work and project records, available to the Owner upon the Owner's request, in the event that there is any dispute concerning the compliance of the Work with the Agreement or the Contract Documents. The availability of such personnel and documentation shall be provided without the necessity of a subpoena, request for production or similar legal process. In the event that the Owner is required to utilize some form of legal process to obtain such ability, the Owner shall be entitled to recover its reasonable attorney fees and the costs expended in obtaining access to such personnel and documentation, regardless of whether the Owner is the prevailing party in connection with any later dispute resolution, mediation, arbitration, or litigation regarding such matters.

(Paragraphs deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall, at the election of the Owner, be subject to mediation as a condition precedent to binding dispute resolution. If the Owner has given written notice to Contractor requiring mediation of the claim, Contractor may not commence dispute resolution proceedings against the Owner until the mediation is concluded, except as is necessary to avoid a time bar from commencement of dispute resolution proceedings under this Contract or applicable law the Owner may commence binding dispute resolution at any time.

§ 15.3.2 At the Owner's election, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, or the Arbitration Service of Portland in accordance with its applicable Mediation Procedures in effect on the date of the Agreement as selected by the Owner ("Arbitration Service"). A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending attempted 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 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraph deleted)

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement (otherwise, litigation shall be the means of binding dispute resolution), any Claim subject to, but not resolved by, mediation (if the Owner elected to mediate) shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service in accordance with the applicable Arbitration Rules of the Arbitration Service in effect on the date of the Agreement. There shall only be one arbitrator regardless of the amount in dispute. The arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A 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 party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.1.2 In addition to the other time limits and requirements for notification of and assertion of Claims by the Contractor under the Agreement or at law, any arbitration or other legal proceeding on a Contractor Claim must be initiated by Contractor within the earlier of (a) one hundred twenty (120) days after Substantial Completion as designated in writing by the Owner or (b) sixty (60) days after Final Acceptance, or the Claim will be considered waived and time-barred. This requirement cannot be waived except by an explicit written waiver signed by the Owner. The pendency of mediation shall toll these deadlines unless and until the Owner terminates mediation.

§ 15.4.2 The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 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.

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the Arbitration Service or other applicable arbitration rules, Owner (and with the Owner's prior written consent, the Contractor) may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a 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). In addition, at the Owner's election, the Contractor agrees to joinder in any arbitration or litigation proceeding in which the Owner is a party with third parties in which the Owner or such third party alleges indemnification or contribution from the Contractor, any of its Subcontractors of any tier, any one directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors of any tier will, in the subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such subcontractor(s).

§ 15.4.4.2 Subject to the rules of the Arbitration Service or other applicable arbitration rules, the Owner (and with Owner's prior written consent, the Contractor) 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 any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Contractor grants to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and the Contractor under this Agreement; provided such joinder or consolidation much also be consented to in writing by the Owner.

§ 15.4.4.4 Contractor's agreements with its Subcontractors of any tier and material suppliers shall require such Subcontractors and material suppliers, upon demand by Owner, to participate in the mediation and (if applicable) arbitration herein, in accordance with the procedures set forth in this Agreement, and to be bound thereby.

§ 15.4.4.5 Notwithstanding the foregoing, the Owner does not agree to joinder in any separate proceeding in which Contractor is a party, without the Owner's written consent. Upon demand by the Owner, claims between the Owner and Contractor, the Owner and the Architect, Contractor and the Architect or Contractor and its subcontractors and suppliers shall be submitted in a single arbitration, and Contractor agrees to joinder in such arbitration.

§ 15.4.4.6 If another involved party will not consent to arbitration or cannot be joined, the Owner, in its sole discretion, has the option to elect consolidated litigation in court to resolve the dispute. The venue for such litigation shall be in the place where the Project is located, and the outcome shall be decided by the judge only (bench trial). Both parties expressly waive their right to a jury trial. If another involved party will not consent to a bench trial, the Owner, in its sole discretion, has the option to elect a consolidated jury trial. The agreements contained in this Section 15.4 shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Any award rendered by an arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The arbitrator is specifically empowered to award attorneys' fees and costs to the extent allowed by

contract or law. It is understood that the purpose of this Section 15.4.4.5 is to allow the Owner to determine the best means of achieving a single consolidated proceeding that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (1) a consolidated arbitration of all significant parties, if possible; or (2) alternatively, a consolidated bench trial of all significant parties, if possible; or (3) alternatively, and as a last resort, a consolidated jury trial of all significant parties.

§ 15.4.4.7 With respect to any claim for allegedly defective work or warranty item asserted against the Owner by any occupant or user of any portion of the Project, or their assignee, successor or subrogee, through court action or arbitration ("Defect Claims"), the Owner shall have the right to join the Contractor in the proceeding. In the event a proceeding under this Agreement is pending relating to a matter of common fact in the Defect Claim proceeding, the Owner may stay such proceeding under this Agreement shall be stayed pending resolution of the Defect Claim proceeding to the extent allowed by law.

§ 15.5 DISPUTE EXPENSES

§ 15.5.1 In the event of any dispute relating to this Agreement the Work or the Project, whether such dispute is resolved through arbitration or through judicial process, the prevailing party shall recover from the other party, the prevailing party's "Dispute Expenses" incurred in arbitration, at trial or on appeal or review from a decision or determination in arbitration or following trial, including without limitation any proceeding under the US Bankruptcy Code. For purposes of this Agreement, the term "Dispute Expenses" shall include a recovery for the following items of expense: reasonable attorney and paralegal fees, reasonable fees for expert witnesses and consultants, costs for providing discovery materials, costs for creation of mediation or trial materials (including, without limitation, photographs, exhibits, analyses, diagrams, or plans) and a reasonable reimbursement for employed staff time incurred with respect to handling any such claim to completion. All the foregoing items shall be in addition to any statutory award of costs and fees provided under Oregon law. The foregoing provisions recognize the significant expenditure of public funds by the Owner under this Agreement and the necessity of the Owner to recoup expenses associated with recovering public money for breaches of this Agreement, for non-complying Work or for warranty or contractual claims.

Additions and Deletions Report for

AIA® Document A201® – 2017

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PAGE 1

~~(Name and location or address)~~

Southridge High School – Athletic Facility

Southridge High School
9625 SW 125th Avenue
Beaverton, Oregon 97008

...

~~(Name, legal status and address)~~

Beaverton School District #48J
1260 NW Waterhouse Avenue
Beaverton, OR 97007

...

~~(Name, legal status and address)~~

Commercial Industrial Design Architecture, Inc.
15895 SW 72nd Avenue, Suite 200
Portland, Oregon 97224

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§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 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 (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the

Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 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.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, signed by both parties, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. Submittals are not Contract Documents unless and until they are formalized as a Change Order.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior or contemporaneous 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 (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

§ 1.1.2.1 Notwithstanding Section 1.1.2, the Owner is (1) a third-party beneficiary of subcontracts, purchase orders and similar agreements between the Contractor and its Subcontractors and between Subcontractors and their Subcontractors, as set out in Section 5.3, and (2) a contingent assignee of such subcontracts, purchase orders and similar agreements, as set out in Section 5.4.

§ 1.1.3 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 and Subcontractors to fulfill the Contractor's obligations. The Work includes all work performed by Contractor and its Subcontractors at any tier on the Project prior to the date of this Contract, if any, and may constitute the whole or a part of the Project. The Work shall consist of all items set forth in, required by or reasonably inferable from Contract Documents in order to fully complete the Project, including, unless otherwise specifically excluded, all demolition and construction services, supervision, administration, coordination, tests, inspections, clean up, repairs and other items that are necessary and appropriate, together with the additional, collateral and incidental work and services required for completion of the Work as set forth in the Contract Documents. The Work may constitute the whole or part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

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

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. The Work includes, unless specifically excluded, all demolition and construction services, construction supervision, administration, coordination, acquisition of permits and approvals, tests, inspections, clean up, repairs, and other items that are necessary and appropriate to complete construction of the Work together with the additional collateral and incidental work and services required for completion of the Work as set forth in the Contract Documents. Contractor is responsible for performing and completing the Work in a manner that provides a complete and functional Project for the Owner, and the Work includes all materials and labor required for provision of such a Project.

§ 1.2.1.1 If any provision of this Contract at any time is determined to be invalid, void or otherwise unenforceable for any reason, then the remaining provisions or portions of provisions shall remain in full force and effect and the offending provision shall be given the broadest meaning and effect allowed by law. The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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§ 1.2.4 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Contract Documents, interpretations shall be based on the following order of precedence:

- .1 Modifications of the Contract, with those of later date having precedence over those of earlier date, and with those of the same date having precedence based upon Clauses .2 through .6 of this Section 1.2.4;
- .2 the Agreement;
- .3 these General Conditions;

- .4 addenda, with those of later date having precedence over those of earlier date;
- .5 the Drawings, with those in larger scale having precedence over those in smaller scale, and with notes and schedules thereon having precedence over the remainder; and
- .6 the Specifications.
- .7 Owner's Solicitation

§ 1.2.5 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Drawings, or between or among the Specifications, remaining after application of Section 1.2.4, those Drawings or Specifications of later date shall have precedence over those of earlier date. Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern. Work described in the specifications that is not specifically located on the drawings is nonetheless included in the Work. Items reasonably inferred from the Drawings but not in the Drawings (e.g., missing doorknobs, electrical connections to HVAC, etc.) shall be deemed part of the Drawings. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation. In conflicts between the drawings and specifications, the drawings shall govern the specifications for quantity and location; the specifications shall govern the drawings for quality and performance. Figured or written dimensions govern scale dimensions, and large scale Drawings govern small scale Drawings; provided that where the Contract Documents provide for different or conflicting standards or requirements as to any portion of the Work, Contractor shall be obligated to provide the better quality, greater quantity, or comply with the more stringent requirements. In the event that work is shown on Drawings but not contained in Specifications or contained in the Specifications and not shown on the Drawings, it will be assumed the work as shown shall be provided at no change in the Contract Sum or Contract Time, according to the Drawings and/or Specifications. The Contractor shall not be entitled to an increase in the Contract Sum or Time arising out of an error or conflict where the Contractor failed adequately to review the Contract Documents and timely report the error or conflict to the Owner and the Architect. If a conflict, inconsistency, discrepancy or ambiguity nonetheless remains, the Contractor shall provide written notice thereof to the Architect and the Owner. Thereafter, unless otherwise ordered in writing by the Architect, the Contractor shall provide the better quality of, and the greater quantity of, the Work. The provisions of this Section 1.2.5 shall apply only to conflicts, inconsistencies, discrepancies or ambiguities in express requirements of the Drawings and Specifications and not to interpretations thereof by the Owner or the Architect.

§ 1.2.6 Where a conflict in Contract Document requirements occurs between the Specifications and Drawings or between Drawings only and clarification is not secured in writing prior to the Contractor's bid date or execution of this Agreement, whichever is earlier, the Contractor and its subcontractors at all tiers assume the responsibility and bear the risk that the bid assumption differs from the actual requirements of the Project. The Architect shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements, and subject to the approval of the Owner, the Contractor shall perform the Work consistent with the Architect's decision without adjustment of the Contract Sum or Contract Time.

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered ~~articles~~, articles and identified references to Sections and Clauses in the document, or (3) the titles of other documents published by the American Institute of ~~Architects~~, the Architects or by Owner.

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§ 1.5.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor and its Sub-Contractors may retain one record set. Unless otherwise indicated, the Architect and the Architect's consultants shall be deemed the authors ~~and owners~~ of their respective Instruments of Service, including the Drawings and Specifications, and ~~retain all common law, statutory, and other reserved rights in their Instruments of Service~~, unless otherwise agreed with the Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the ~~Architect's or Architect's consultants'~~ reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely

and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants. Owner (the Contractor acknowledges the Architect's consent also may be required and if so the Contractor shall procure such consent).

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§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

§ 1.7 Transmission of Data in Digital Form

If the parties intend to transmit Drawings or Specifications or any other information or documentation in digital form, they shall comply with the Owner's identified protocols or, in the absence of such protocol, shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.8 Execution of Contract Documents

The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Contractor is responsible for identifying such unsigned Document prior to initiating the Work.

...

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" Changes to the Contract involving modifications to the Contract Time or Contract Sum must be signed by an authorized representative of the Owner. The term "the Owner" means the Owner or the Owner's authorized representative. The only entity or person authorized to act for the Owner means the authorized representative outlined above, including any substituted authorized representative. Teachers, staff, a principal, custodians or others at the school who are not the Owner's authorized representatives are not authorized to act for Owner as to any matter regarding this Contract.

§ 2.1.2 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. Owner shall have the right, but not the obligation, to have a representative on-site (who need not be the Owner's Representative identified above) to observe the progress of the Work. The presence of the Owner's representative shall in no way relieve the Contractor of Contractor's obligations to supervise the Work so that the Work is in conformity with the Contract Documents. The presence of Owner's representative on-site shall not be deemed in any respect to constitute an approval or concurrence by Owner that any portion of the Work has been properly executed, installed or completed in accordance with the Contract Documents, nor an assumption of any duty for the means and methods of performance of the Work. Owner's representative shall be entitled to make notes or audio or video recordings of conditions and activities observed and shall have the right to inspect and review activity reports, Contractor's logs or other information available on-site, or at Contractor's offices, provided that Owner Representative shall not materially delay the progress of the Work in undertaking such activities.

§ 2.2 Evidence of the Owner's Financial Arrangements Information Provided by the Owner

§ 2.2.1 ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~ The Owner has furnished the information describing physical characteristics, legal limitations and utility locations for the site of the Project to the extent indicated in the Invitation to Bid. Such items are informational and are not representations. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.2 ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents. Where the Owner has submitted financial, strategic, planning, or non-public information or has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after fourteen (14) days' notice to the Owner, only where disclosure is required by law, by a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information on a need-to-know basis to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project, on condition that they agree, in advance, in writing, to maintain the confidentiality of such information.~~

§ 2.2.3 ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

§ 2.2.4 ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

§ 2.3.1 ~~Except for permits and fees that are the responsibility of the Contractor or Subcontractors under the Contract Documents, Documents or applicable law, including those required under Section 3.7.1, the Owner or the Architect shall secure and the Owner shall pay for the building permit, development fees, plan check fees, system development charges, road approach and right-of-way permits, air discharge permits and other similar necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.~~

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§ 2.3.3 ~~If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect. Architect, but who need not be licensed to practice architecture.~~

§ 2.3.4 ~~The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. 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. Contractor shall confirm the location of each utility, shall excavate and where necessary dispose of each onsite utility and shall cap offsite utility as required by the Work and as may be included in the Specifications. At the Owner's request, Contractor shall make available to the Owner the results of any site investigation, test borings, analyses, studies, or other tests conducted by or in possession of Contractor or any of its agents. The Contractor shall confirm indicated dimensions and other aspects of existing conditions at the Project site as necessary for the proper performance of the Work. The Contractor may rely only on the accuracy of the technical information contained in surveys and other reports furnished by the Owner, and only to the extent Contractor does not have knowledge of information to the contrary. Contractor shall exercise special care in executing the subsurface work in proximity of known subsurface utilities, improvements and easements.

§ 2.3.4.1 The Contractor shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Contractor shall coordinate with utility and other involved third-party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. to the Contractor one (1) reproducible copy of the Drawings and Specifications at no cost to the Contractor. The Contractor's cost of reproducing or obtaining additional copies of the Drawings and Specifications as are required for the performance of the Work shall be included in the Contract Sum.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. The Contractor agrees that the Owner shall have no obligation to deliver copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract or on the Project, and that the Owner's non-delivery of copies of such notices to the Contractor shall have no effect on the obligations of the Contractor to hold harmless and indemnify the Owner for mechanics', material suppliers', design professionals', construction or similar liens as required by the Contract or applicable law.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out 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 has been 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, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.4 The Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out 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 has been 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. This right shall be in addition to, and not in restriction of, the Owner's other rights under this Agreement and at law, and its exercise shall not excuse the Contractor from damages caused by breach of this Agreement or its responsibility for full performance of this Agreement.

§ 2.5 The Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to protect or 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 other remedies the Owner may have, correct such default or neglect. Pursuant to Section 9.5.1, a Certificate for Payment may be withheld or nullified in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies or protecting the Work, including but not limited to the Owner's attorneys' fees and related costs, disbursements and the Owner's expenses and compensation for the Architect's or the Owner's consultants additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to protect the Work or correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, nor excuse any default by Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Owner's Audit Rights

§ 2.6.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and the Architect at regular intervals, using Contractor's job-cost tracking system.

§ 2.6.2 The Contractor's records, which shall include but not be limited to accounting records, written policies and procedures, subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Contract shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by the Owner's agents or authorized representatives. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract and records relating to the performance of the Work. The Contractor shall preserve such records for a period of at least three years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract

§ 2.6.3 For the purpose of such audits, inspections, examinations and evaluations, the Owner's agents or authorized representatives shall have access to said records from the commencement of the Contract for the duration of the Work and thereafter.

§ 2.7 The Owner's agents or authorized representatives shall have access to all of the Contractor's facilities and databases where such records are located, and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this section.

§ 2.8 Nonwaiver of Rights By the Owner

No action or inaction on the part of the Owner at any time in the exercise of any right or remedies conferred upon it under this Contract shall be deemed to be a waiver on the part of the Owner of any of its rights or remedies.

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§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully ~~licensed, if required-~~ licensed in the jurisdiction where the Project is ~~located-~~ located, and shall cause all of its subcontractors at all tiers to be so lawfully licensed when required for performance of their portion of the Work. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.1.1 Unless they leave the employ of the Contractor, the Contractor's Superintendent(s) and Project Manager(s) identified in or approved by the Owner under this Agreement shall serve in these positions throughout the duration of the Contractor's performance of the Contract except as approved otherwise in writing in advance by the Owner. Persons named to replace those set out above shall be approved in writing in advance by the Owner. The Owner's approvals for replacements as required by this Clause shall not unreasonably be withheld. The Project Manager and Superintendent shall, among other things, supervise and coordinate all Work on the Project and shall attend and participate in all meetings throughout the Project unless excused from such attendance by the Owner.

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§ 3.1.4 The Contractor shall be and operate as an independent contractor under this Contract and in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. In no event shall the Contractor be authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner. The Contractor accepts the relationship of trust and confidence between Contractor and the Owner and agrees to furnish its best professional skill, judgment and efforts to accomplish the Work in an expeditious manner consistent with the best interests of the Owner. Contractor acknowledges that it has a relationship of special trust with the Owner, and that the Owner is relying on Contractor's expertise in entering into this Contract. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Contractor as an agent for or joint venturer with the Owner.

§ 3.1.5 The Contractor shall (a) record the progress of the Work; (b) submit to the Owner a written progress report every month; (c) submit to the Owner such reports and notifications as the Owner may reasonably request from time to time; and (d) keep a daily log of information reasonably relevant to the Work.

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. ~~These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect-it and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. The Contractor shall prevent the dislocation or destruction of reference points and shall employ a registered land surveyor currently licensed in Oregon for, and be responsible for accuracy of layout and elevations for the Work. The Contractor shall promptly report in writing to the Architect and 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 Architect may require. ~~The Contractor shall do no work without applicable Drawings, Specifications, the Architect's Supplemental Instructions, or written modifications or, where required, approved Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner. Where conflicts that the Contractor knew or reasonably should have known have not been brought to the Architect's attention in a timely manner, the Contractor will be deemed to have elected the method(s) or material (s) necessary in the Architect's opinion to reconcile the conflict as included in the Contract Sum and Contract Time. Any design errors or omissions noted by the Contractor during this review shall be reported promptly by Contractor to the Owner and the Architect 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, professional unless otherwise specifically provided in the Contract Documents.~~~~

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, except for design build Work or lawful orders of public authorities,

but the Contractor shall promptly report in writing to the Architect and the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. 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 Architect and the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit ~~Claims as provided in Article 15.~~ a Change Order Proposal within fourteen (14) days of Architect's response ("Architect Initiated Change Proposal"). The Owner will approve or deny the Architect Initiated Change Proposal in accordance with the applicable terms of the Contract. The Contractor's failure to submit an Architect Initiated Change Proposal within the specified timeframe shall nullify the Contractor's right to submit a claim related to the associated work. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, Sections 3.2.2, 3.2.3, or 3.2.4 the Contractor shall pay such costs and damages to the ~~Owner, subject to Section 15.1.7,~~ Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or the Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities~~ authorities, except for unreported observed deficiencies or those items related to design-build or design-assist Work unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission, nonconformity or difference and failed to report it to the Architect and the Owner. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents without such notice to the Architect and the Owner, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

§ 3.2.4.1 Contractor shall confirm applicable requirements appearing in any easements, covenants and other record documents provided by Owner or otherwise discovered by Construction Manager and in the event of any discovered conflict between any such requirement and the Drawings and Specifications shall immediately notify the Owner and the Architect.

§ 3.2.4.2 Any investigations of hidden or subsurface conditions have been made for design purposes. The results of these investigations may be bound into or referenced in the Contract Documents for the convenience of the Contractor and Sub-contractors and are a part of the Contract Documents. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments not inferable from such investigations may not occur.

§ 3.2.4.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid by the Owner to the Architect for the Architect to evaluate and respond to the Contractor's requests for information, where such information was available to the Contractor from a study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.2.5 Upon execution of any Early Work Amendments or Guaranteed Maximum Price Amendments hereunder, and notwithstanding any other provision of the Contract, the Contractor hereby specifically acknowledges that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein in order to enter into the Contract, and that the Drawings, the Specifications and all Addenda and other Contract Documents are sufficient to enable the Contractor to perform the Work outlined therein in accordance with applicable laws, statutes, regulations, and otherwise to fulfill all of its obligations hereunder. The Owner disclaims any warranty, express or implied, as to the adequacy of the Contract Documents. The Contractor further acknowledges that (a) it has visited and made a thorough examination of the jobsite and existing documentation, (b) it has examined all conditions affecting the Work, (c) it has reviewed necessary tests, surveys, studies and reports and all other conditions which might reasonably affect the progress of the Work as the Contractor deems advisable, and that it has satisfied itself by such review, (d) having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized, and (e) the Contract Sum includes payment for all Work that may be necessary to overcome unanticipated conditions that a

Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized.

§ 3.2.6 By executing this Contract, the Contractor represents and acknowledges that the Contract Sum is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that it has carefully examined the contract documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods, supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor to acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the Contract Sum. The Contractor acknowledges that having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized.

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§ 3.3.1 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. The Contractor shall review any such specific instructions and any construction or installation procedure specified in the Contract Documents, shall advise the Architect if following the instruction or procedure will affect any warranties. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. Contractor shall not proceed with that portion of the Work without further written instructions from the Owner or the Architect. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor shall perform no portion of the Work without Contract Documents, or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work, unless authorized to do so by written instructions of the Owner. Where specific instructions are given in a Contract Document, the Contractor shall review the instructions, including those of manufacturers, and promptly notify the Architect and the Owner in writing if the specified instruction or procedure deviates from accepted construction practice, or normal procedure, or will affect warranties, or other responsibilities of the Contractor. The Contractor's notification shall include reasonable alternatives that the Contractor, exercising Professional judgment, believes will accomplish the original intent of the Contract Documents.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors at any tier, design professionals performing services on behalf of the Contractor or Subcontractors, and their respective 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. Subcontractors at any tier. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no conditions shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times.

§ 3.3.4 Prior to the commencement of construction, the Contractor shall prepare and obtain the Owner's approval of a construction site management plan, which will take into account requirements contained in the Specifications, and the Owner's requirements and restrictions concerning access and parking for construction personnel, staging areas and material delivery times, traffic flow requirements of the Owner and local governmental authorities, and work hours, among other things.

§ 3.3.5 The Contractor shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the latest issue of the Drawings and Specifications. The Contractor shall be responsible for examination, inspection and quality surveillance of all Work performed by any Subcontractor of any tier, and for each Subcontractors' performance of such Work itself. The Contractor shall determine when it is necessary to perform and shall perform, or arrange for the performance of, tests (in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents. If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of Contractor's obligations hereunder.

§ 3.3.6 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. The Contractor shall establish and maintain existing lot lines, restrictions, and bench marks. The Contractor shall establish and maintain all other grades, lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. For new building construction or additions, the Contractor shall employ a professional land surveyor registered in the State of Oregon to establish building corners and floor elevations. The land surveyor shall also provide a stamped and signed drawing certifying the actual location of the building corners in reference to the lot lines and actual floor elevations as constructed. The Contractor shall report errors or inconsistencies to the Owner and the Architect before commencing Work and review placement of the improvements on the site with the Owner and the Architect after all lines are staked out and before foundation work is started.

§ 3.3.7 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, or their method or integration into the Work, Contractor shall have the duty to make inquiry of the Owner and the Architect as to what is required prior to performance of the Work. Absent Specifications to the contrary, the material that would normally be used to produce finished Work shall be considered a part of the Contract requirements.

§ 3.3.8 If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of Contractor's obligations hereunder.

§ 3.3.9 Contractor acknowledges that it is Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work, and Contractor shall use its best efforts to maintain labor peace by and/or among its employees and subcontractors for the duration of the project. In the event of a labor dispute related to this project, Contractor shall not be entitled to an increase in the Contract Sum or Contract Time if the dispute was caused by acts or omissions of Contractor, or Contractor's agents, Subcontractors or suppliers.

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§ 3.4.1.1 Contractor shall aim toward or above the District goal of 15% of the contract value for consulting services and construction contracts to be made to firms certified by either the state (Oregon Certification Office of Business Inclusion and Diversity, COBID, MWSDVE), the Small Business Administration (SBA), or nationally (National Supplier Minority Supplier Development Council, NMSDC) as minority owned, women owned, service-disabled veteran owned, emerging small businesses, or socially or economically disadvantaged small businesses. Contractor shall provide a diverse workforce through employment and apprenticeship opportunities. For any bond program public improvement contract over \$200,000, an aggregate goal of 10% of labor hours performed by state registered apprentices is established in apprenticeable trades. These contracts also will require the contractor to participate in outreach and other efforts to create an apprenticeship program that reflects the diversity of the Beaverton/Portland metropolitan area.

§ 3.4.2.1 If prior to performing a certain portion of the Work, the Contractor desires to submit a substitute product or method for that Work in lieu of what has been specified, the Contractor shall provide written notice to the Architect and the Owner setting forth the following information and documents:

- .1 a full explanation of the proposed substitution and a submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operation procedures and other like information necessary for a complete evaluation of the substitution;
- .2 reasons the substitution is advantageous and necessary, including but not limited to the benefits to the Owner and the Work in the event the substitution is accepted;
- .3 the adjustment, if any, in the Contract Sum, in the event the substitution is accepted;
- .4 the adjustment, if any, in the Contract Time and the Contractor's Construction Schedule in the event the substitution is accepted;
- .5 an affidavit stating that (1) the proposed substitution meets all the requirements of the Drawings and Specifications and (2) the Contractor will perform or cause to be performed the warranty and correction of Work obligations with respect to the proposed substitution that would have been performed for the specified product or method; and
- .6 the impact, if any, on the Subcontractors or other contractors performing Work on the Project, in the event the substitution is accepted.

Proposals for substitutions shall be submitted to the Architect and the Owner in sufficient time to allow the Architect and the Owner no less than fourteen (14) days for review.

By making requests for substitutions, the Contractor represents, warrants and certifies that: (1) the Contractor has personally investigated the proposed substitute product; (2) the Contractor will provide the same materials and labor warranty for the substitution that the Contractor would for that specified unless approved otherwise; (3) the substitute product is of equal or better quality and useful life to the originally-specified product; (4) the cost data presented is complete and includes all related costs under the Contract Documents except the Architect's redesign costs, and (5) the Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects. The Contractor will be responsible for the reasonable costs of any time the Owner and/or the Architect expends in reviewing a Contractor substitution request. Should the Contractor or the Owner request substitution with a material or system of lesser quality and/or cost, if approved by the Owner, the Contractor shall compensate the Owner for the difference in cost through a deductive Change Order or Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order and civil and appropriate conduct among the Contractor's and Subcontractors' employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit at the site of the Work the use of alcohol, tobacco or cannabis, vaping, illegal use of drugs or other controlled substances, firearms or other weapons, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, or their respective contractors. The Contractor agrees to take prompt and effective corrective action in the event of violations of these standards of conduct. The Owner may require in writing the Contractor to immediately remove from the Work any employee or other person carrying out the Contract that the Owner considers objectionable. To the fullest extent permitted by Law, the Contractor shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by the Owner, nor shall such removal relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

§ 3.4.4 The Contractor shall coordinate, supervise and otherwise administer the Work so as to maintain labor harmony between and among the trades performing the Work and so as to avoid lockouts, strikes and other labor-related events or circumstances which delay or otherwise impact the Work.

§ 3.4.5 The Contractor agrees that each of its employees, subcontractors' employees and principals/owners involved in the Work may, at the option of the Owner, be subject to a security check, at any time, through the local police department or other venue. Notwithstanding the foregoing, Contractor, and not the Owner, remains solely responsible for performing background checks on, and screening for public safety all subcontractors at any tier and employees, and, to the extent allowed by law, shall provide such screening methodologies and information to the Owner upon request.

§ 3.4.6 Contractor acknowledges that it is Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work, and Contractor shall use its best efforts to maintain labor peace by and/or among its employees and subcontractors at all tiers for the duration of the project. In the event of a labor dispute related to this project, Contractor shall not be entitled to an increase in the Contract Sum or Contract Time if the dispute was caused by acts or omissions of Contractor, or Contractor's agents, subcontractors at any tier or suppliers.

§ 3.4.7 If requested by the Owner, the Contractor and all Subcontractors' employees shall submit to fingerprinting and be subject to criminal background checks and any other rules and procedures of the Owner as a condition of entering the Project site.

§ 3.4.8 Contact with Students. "Unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision by the Owner. The Contractor will ensure that the Contractor, subcontractors and suppliers at any tier, and their officers, agents, and employees will have no direct unsupervised contact with students while on the Owner's property. The Contractor will work with the Owner to ensure compliance with this requirement. If the Contractor is unable to ensure through a security plan that none of its and its subcontractors and suppliers officers, agents, or employees will have direct, unsupervised contact with students in a particular circumstance or circumstances ("Unavoidably Unsupervised Workers"), the Contractor shall so notify the Owner prior to beginning any Work that could result in such contact. The Contractor will conduct a criminal background check of any such officer, agent, or employee. The Contractor also agrees, as to any of its subcontractors and/or suppliers and all employees, if any, that might have unsupervised contact with students, the Contractor will conduct or cause such subcontractor or supplier to conduct, such background checks, and identify the same to the Owner prior to their entry onto the Project. The Contractor shall pay any fees for the background check assessed by the Oregon Department of Education for processing the background check. In addition, the Contractor shall comply with all other Oregon Senate Bill 155 requirements and any requirements of the Owner related to Senate Bill 155, including, but not limited to, providing Owner requested information for all of the Contractor's or its subcontractors' or supplier's employees, volunteers, or agents, and providing such requested information for new employees, volunteers, or agents before they begin work. The Contractor will discuss any questions or concerns about these requirements with the Owner's designated Point of Contact before beginning Work. The Contractor shall, and shall cause all subcontractors and suppliers at all tiers to, comply with all applicable laws, rules, orders, regulations and governing procedures regarding Covid-19 and the Covid-19 pandemic, and shall supply the Owner with evidence of such compliance upon request. Compliance with this Section 3.4.8 shall not be grounds for any increase in compensation nor extension of the Contract Time. Failure of compliance by the Contractor or any subcontractor or supplier shall be grounds for immediate termination of this Contract by Owner for cause.

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§ 3.5.1 The Contractor warrants to the Owner and the Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents. Documents, will be performed in a good and workmanlike manner in accordance with manufacturer specifications where applicable, and will be free from defects, ~~except for those inherent in the quality of the Work the Contract Documents require or permit~~ and that all materials and equipment selected by the Contractor or Subcontractor will be suitable for the purposes indicated in the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. ~~If required by the Architect, Notwithstanding the above, the contractor's~~ warranty for all elements of the work shall hold regardless of normal wear and tear. ~~If required by the Architect or the Owner,~~ the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to any other warranties required by the Specifications or provided by law. The Contractor shall assign to the Owner all other warranties at the time of final completion of the Work.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. Without limitation of any remedy of the Owner, upon Substantial Completion of the Work or termination of the Contract, the Owner shall be entitled to enforce at its option any and all Subcontractor and manufacturer warranties relating to Work performed and materials and equipment furnished by such Subcontractors. The Contractor agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties and Subcontractor warranties. The Contractor also shall collect, assemble in a binder, and submit to the Owner, in a manner acceptable to the Owner, written Subcontractor warranties, manufacturer warranties and related documents, including without limitation from Subcontractors performing Work and furnishing materials, equipment, appliances and other components of the Project. The Contractor shall assign to the Owner all other warranties at the time of final completion of the Work.

§ 3.5.3 The Contractor shall not be relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance and final payment. Contractor shall at Contractor's expense promptly pay and perform, to the reasonable satisfaction of the Owner, any repairs required of Contractor in fulfillment of the foregoing warranty obligations. Should Contractor fail to perform any maintenance or repair required of it pursuant to this Section 3.5 within seven (7) days of notice thereof from the Owner (provided no notice shall be required for emergency repairs), the Owner may make such repair and the Owner shall be entitled to recover directly from Contractor the reasonable cost thereof (including attorneys' fees) plus interest at the statutory rate thereon from the date of repair, immediately and upon demand by the Owner therefore.

§ 3.5.4 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.

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The Contractor shall pay sales, consumer, use Business & Occupation, income, corporate activity tax and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Such taxes are included in the Contract Sum for lump sum contracts, and are included in the Cost of the Work for GMP contracts only if expressly so stated in the contract (otherwise they are included in Contractor's Fee). Contractor shall indemnify, defend and hold harmless the Owner from any liability for taxes and relating to the employees of Contractor, any Subcontractor or any Sub-subcontractor, including taxes and contributions required under the Federal Social Security Act and the unemployment compensation law or any similar law of any state. Contractor is advised that income taxes in Beaverton and surrounding areas may include, but not be limited to, taxation by the State of Oregon, by Washington County, and by Tri-Met.

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§ 3.7.1 Unless otherwise provided in the Contract Documents, the designated by the Owner, The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Without limitation to the foregoing, Contractor shall procure all certificates of inspection, use, occupancy, permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work including without limitation street use and street closure permits. Certificates of inspection, use and temporary certificate of occupancy shall be delivered to the Owner by Contractor prior to (and as a condition to) Substantial Completion of the Work of each Phase in sufficient time for occupation of the Phase in accordance with the Contract Documents, and the final certificate of occupancy prior to (and as a condition to) Final Completion. The Owner will reimburse the Contractor for the actual cost, without markup, or Fee of the building permit, permanent utility connection permits and fees, and permits required for construction of work in the public right-of-way and associated bonds or assurances outside the Contract Sum. The Owner may, at its election, retain a firm to perform and pay for the permitting jurisdictions required special inspections. Any other required permits including trade permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work shall be the responsibility of the Contractor and are included in the Contract Sum. Contractor shall deliver an electronic copy in a PDF format of the building permit and attachments to the Architect and the Owner as soon as it is issued. Upon final completion, the Contractor

shall deliver to the Owner all original permits, licenses and certificates of occupancy with photocopies to the Architect.

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§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. The Contractor shall be directly responsible for compliance therewith on the part of itself and its agents, employees, Subcontractors, Sub-subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of itself or its agents, employees, materialmen, Subcontractors or Sub-subcontractors to so comply.

§ 3.7.4 ~~Concealed or Unknown Conditions~~

~~If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.~~

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.4 In addition to Contractor's indemnification and other obligations set forth in this Agreement, and its confirmation that Contractor is acting as an independent contractor, Contractor will defend, indemnify and save harmless the Owner and its Separate Contractors, consultants, and agents and employees of any of them against any and all settlement amounts and all liabilities, costs, losses, damages, fees (including attorney fees), and expenses in connection with any third-party legal proceeding (including administrative action, enforcement action, or other conduct or allegation by an individual, the Internal Revenue Service, or any state or local government agency or any other court, entity, or agency) asserting or predicated upon an alleged employment relationship or co- or joint employment relationship between any employees of Contractor or subcontractors at any tier (or such individual's or entity's employees or subcontractors) and any of the indemnified parties, or any obligation of the indemnified parties to pay or provide wages, withholding or employee benefits, including but not limited to such claims that assert or are predicated upon wrongdoing or alleged wrongdoing by the indemnified parties.

§ 3.7.5 ~~Concealed or Unknown Conditions~~

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions; otherwise Contractor's Claim will be barred. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner or the Architect determines

that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner or Architect shall promptly notify the Contractor in writing, stating the reasons. If either party disputes the Owner's or Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No increase to the Contract Sum or Contract Time shall be allowed if the Contractor knew of the concealed conditions prior to its executing the Contract or such conditions were reasonably discernable from the bidding documents or a careful review of the project site. If the Contractor encounters such a condition, and proceeds to perform any additional work or incur any additional jobsite costs in regard to such condition without prior written direction from the Owner, Contractor will be deemed to have acknowledged that such condition does not entitle Contractor to any additional compensation or extension of the Contract Time.

§ 3.7.6 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and the Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8.1 The Contractor shall include in the Contract Sum and (if applicable) Guaranteed Maximum Price all allowances stated in the Contract Documents. Use of the Allowances requires the Owner's written approval. Whenever the cost is more or less than the Allowance, the Contract Sum shall be adjusted accordingly by Change Order. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

~~.1~~ — allowances shall cover the The allowances shall cover the entire cost of the Work to perform or furnish the allowance items, including without limitation the following:

- .1 cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- ~~.3~~ — whenever costs general conditions and other.

Whenever given costs, as agreed to in writing by the Owner, are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect ~~(1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2,~~ the difference between such actual agreed costs and the allowances under 3.8. The Contractor shall not perform any Work covered by an allowance before the execution by the Owner of a Change Order or Construction Change Directive incorporating the Drawings and Specifications related to the allowance item and any adjustment to the Contract Sum. In the event that the Contractor performs Work covered by an allowance before the execution by the Owner of a Change Order or Construction Change Directive, any costs incurred in excess of the allowance amount will be at Contractor's expense and without reimbursement from the Owner. Periodically, during the course of construction, representatives of the Contractor shall advise the Owner of the cost status of each allowance. The Contractor shall provide this information in a timely manner, but always prior to the termination of the allowance Work. The intent of this subparagraph is to identify possible cost overrun exposure and bring same to the attention of the Owner as soon as possible.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness required under an allowance shall be proposed by Contractor and approved in writing by the Owner prior to procurement.

§ 3.9 Project Manager / Superintendent

§ 3.9.1 The Contractor shall employ a competent project manager and superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. ~~The superintendent~~ Work as required by this

Contract or as otherwise necessary or appropriate. The Project Manager and/or the Superintendent shall represent the Contractor, and communications given to the ~~superintendent~~ Project Manager and/or Superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The ~~Unless the Superintendent and Project Manager are already identified in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed ~~superintendent~~ superintendent and project manager. Within 14 days of receipt of the information, the Owner or the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or project manager; or (2) requires additional time for review. Failure of the Owner or the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.~~

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Unless otherwise agreed in writing, the Contractor shall cause the Superintendent to remain on the Project site whenever Subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the contract in accordance with the Contract Documents, until Final Completion is attained.

§ 3.9.4 The Contractor shall not employ a proposed superintendent or project manager to whom the Owner or Architect has made timely objection. The Contractor shall not change the Superintendent or Project Manager without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.9.5 Within ten (10) days after issuance of the Notice to Proceed, the Contractor shall furnish to the Architect and the Owner a chain-of-command organizational chart which includes all supervisory personnel, including the Project Manager, the project engineer and the Superintendent, that the Contractor intends to use on the Work. The chart shall specify any limits of authority for each person, including but not limited to their ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, contract time, and issues affecting quality of the Work. The Contractor shall also provide the Owner with a list of telephone numbers for all key personnel of the Contractor and its principal Subcontractors at all tiers for purposes of contacting personnel as the Owner reasonably determines necessary. Contractor shall periodically update the list as necessary to ensure the Owner has the most current information.

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§ 3.10.1 The Contractor, promptly ~~but in any event within twenty (20) days~~ after being awarded the Contract, shall submit for the Owner's and the Architect's information a Contractor's construction schedule for the Work. Contractor shall prepare the schedule using the critical path method (CPM). The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The construction schedule shall be updated by Contractor to reflect actual conditions on a period described elsewhere herein. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to adjust the schedule to correct the delay, including overtime and/or additional labor, if necessary. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule 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.

§ 3.10.1.1 From time to time as appropriate during the performance of the Work but not less often than monthly, the Contractor shall prepare and submit to the Owner and the Architect, for the Owner's approval, a current, updated Contractor's construction schedule reflecting any and all changes and revisions.

§ 3.10.1.2 The Contractor shall take such actions as are necessary to adhere to the approved Contractor's construction schedule then in effect, which actions shall include as appropriate, but not be limited to, providing additional labor, supervision, materials, equipment, tools, Subcontractors and other services and facilities. For purposes of whether any

Change Orders or Construction Change Directives extend the contractual dates of Substantial Completion and Final Completion, any "float" or "slack" time for the whole or any part of the Work shall not be for the exclusive use or benefit of either the Owner or the Contractor but shall be reserved and apportioned by the Owner and Contractor in accordance with the needs of the Project. The Contractor shall not be entitled to make a Claim based upon an alleged inability to complete the Project early.

§ 3.10.2 The Contractor, promptly after being awarded the ~~Contract~~ Contract, but no more than twenty (20) calendar days after award, and thereafter as necessary to maintain a current submittal schedule, shall prepare and submit a submittal schedule for the Owner's and the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and the Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect approved by the Owner and the Architect. The Contractor must include a response time of at least ten (10) days for the Architect's review and at least fourteen (14) days for review by the Architect's consultants. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies.

§ 3.10.4 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Contractor's construction schedule, the Owner shall have the right to order the Contractor to take corrective measures as necessary to restore the progress of the construction to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) furnishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Contractor pursuant to this Section 3.10.4 shall be paid by the Contractor.

§ 3.10.5 Without limiting the Owner's rights, upon demand by the Owner the Contractor shall prepare and submit to the Owner and the Architect a "Recovery Schedule," in a form and providing sufficient detail to explain and display how the Contractor intends to reschedule those activities to regain compliance with the Contractor's construction schedule during an agreed Recovery Period. If required by the Owner, the Contractor shall include resource loading in the Recovery Schedule.

§ 3.10.5.1 Within seven (7) days after the Contractor's receipt of the Owner's demand for a Recovery Schedule, the Contractor shall present the Recovery Schedule to the Owner and the Architect. The Recovery Schedule shall represent the Contractor's best judgment as to how the Work should be made to comply with the Contractor's construction schedule within the agreed Recovery Period. The Recovery Schedule shall be prepared to a similar level of detail as the Contractor's construction schedule.

§ 3.10.6 Progress Meetings The Contractor shall participate in progress meetings held at least once every week or at more or less frequent intervals as may be described in the Contract Documents, with the Architect, the Owner, subcontractors at all tiers and other appropriate consultants. The Contractor shall fully brief the Architect and the Owner on the progress of the Work.

§ 3.10.7 Reports

- .1 Progress Reports:** Contractor shall prepare and deliver to the Owner at least monthly a progress report in a form and in sufficient detail as is reasonably acceptable to the Owner approved by the Owner. The progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefore and the new proposed schedule, as well as the number of days worked for each category of labor and the projected Work to be completed in the next succeeding month. The report shall include a listing and the status of all Change Orders, Modifications, bulletins, and other relevant documents, and shall detail any issues challenging completion of the Work on schedule and Contractor's solutions to same.
- .2 Additional Reports:** Contractor shall prepare and deliver such additional reports as the Owner may reasonably request.

- .3 Logs: Contractor shall prepare and keep current, for the Architect's and the Owner's approval, logs or schedules reflecting the date the items were submitted, when a response is reasonably due and when receipt occurred of Requests for Information (RFI's), Change Order Requests (COR's), Change Orders (CO's) and submittals which shall be coordinated by Contractor with Contractor's construction schedule and which allows the Architect and the Owner reasonable time to review submittals or other such documents.
- .4 The Contractor shall use an electronic project management software satisfactory to the Owner for all Project records ("Electronic Management System"), to which the Owner and the Architect shall have electronic access at all times. Contractor shall post all logs to eBuilder or if eBuilder is not used, the Electronic Management System and give the Owner access to such logs and schedules at all times. Logs shall be kept on Excel spread sheets unless other format is approved by the Owner Representative.

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The Contractor shall make available, at the Project ~~site~~, site and updated at least weekly, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and otherwise marked to depict the as-built nature and configuration of the Work and the approved Shop Drawings, Product Data, Samples, and similar required submittals. Contractor also shall maintain at the Project site for the Owner and the Architect one current copy of all subcontracts with Subcontractors, RFIs, Requests For Change Proposals and Change Proposals. These shall be in electronic form or maintained under the Electronic Management System in addition to paper copy, available to the Architect and the Owner, and delivered to the Architect for submittal to the Owner upon completion no later than, and as a condition of, Final Completion of the Work as a record of the Work as constructed.

§ 3.11.1 The marked record Drawings and Specifications referenced shall be marked to show field decisions and selections affecting the Work, including but not limited to information regarding (1) approved or directed deviations from the Drawings and Specifications made during construction, (2) details of Work not previously shown or indicated, (3) changes to existing conditions or existing conditions found to differ from those shown on the Drawings or Specifications and (4) other information that the Architect or the Owner reasonably requests. The final set of the Contractor's marked Drawings and Specifications conforming to these standards ("As-Built") shall be presented to the Owner: (i) in reproducible hard copy (ii) in PDF format and (iii) in AutoCAD/.dwg format. Each hardcopy sheet shall be stamped "As-Built" and signed by the Contractor. The final marked Drawings and Specifications shall be delivered in the same formats as part of the As-Built.

§ 3.11.2 The location of all existing or new hidden piping, valves, and utilities, as located during the course of construction, shall be appropriately marked on plans. The approved permit set of plans shall also be available to the Architect and the Owner at the site.

§ 3.11.3 Contractor shall submit to the Architect an accurate and updated set of field drawings, in such format as the Architect may reasonably request, marked currently to record field changes and selections. Upon final completion of the Work the Contractor shall certify that the record documents reflect complete and accurate "as-built" conditions and shall deliver the documents and As-Built, as well as the approved permit set of plans in good condition to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Contractor shall indicate on the face of each As-Built drawing its concurrence that the as-built drawings are accurate. Satisfactory maintenance and submission of up-to-date record drawings will be a requirement and condition for submission to the Owner of the As-Built in the formats and meeting the standards of this Agreement will be a requirement and condition to final completion and release of retainage. Notwithstanding the completion of the As-Built and any review and correction of the same by the Contractor, neither the Architect nor the Contractor shall be relieved of any responsibility each has under its contract with District for the execution and completion of Work in compliance with the Contract Documents.

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§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, ~~approve~~, approve (including any approval of conforming with the submittal requirements as specified in the Contract Documents), and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall be responsible for all costs associated with Shop Drawings,

Product Data and Samples submitted out of sequence through the fault of Contractor. Submittals which are not marked as reviewed and approved by the Contractor for conformance with the submittal requirements of the Contract Documents may be returned by the Architect without action.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and the Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved or release for use by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's or the Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and the Owner in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. Any corrections or modifications to Shop Drawings requested by the Architect shall be deemed accepted by the Contractor, without change in Contract Sum or Contract Time, unless the Contractor provides the Architect with written notice specifically identifying the deviation and impact before commencing any Work from such Shop Drawings. The Contractor shall make all corrections and modifications requested by the Architect and, when requested by the Architect, provide a corrected Submittal. Notwithstanding the foregoing, the Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's and the Owner's approval or review thereof. The Contractor shall be solely responsible for errors or omissions in all submittals and Shop Drawings, whether or not the submittals and Shop Drawings have been reviewed or approved by the Architect or the Owner.

§ 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.

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§ 3.12.10.1 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 be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. The Contractor shall cause such services or certifications to be provided by an appropriately a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, Drawings and other submittals prepared by such professional. Contractor shall cause such portions of the Work to be designed, engineered, and permitted, and to construct such Work in accordance with all such criteria, in accordance with all applicable laws and codes, and in a manner such that these systems are functioning and properly integrated into the remainder of the Work. Any of Contractor's (or any Subcontractor's) design or engineering professionals shall carry errors and omissions coverage of at least \$1,000,000 for the design and engineering of such Work. The premium for errors and omissions coverages is included in the Contract Sum. The Owner will be the Owner of all design and engineering documents so generated for the Work. They are not to be used by Contractor or its subcontractors on any other project and shall be given to the Owner or destroyed upon completion of the Work, at the Owner's discretion. Contractor shall cause shop drawings and designs for such Work to be submitted in a timely fashion to the Architect for review in accordance with the schedule requirements. 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 and accuracy and completeness of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and the Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this

Section 3.12.10, the Architect or the Owner will review and 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. Contractor shall submit a copy of all design documents prepared by such design professionals to the Owner and to the Architect. The Owner will have an irrevocable, perpetual license to use all design documents generated by Contractor or its Subcontractors at any tier. They are not to be used by Contractor or its Subcontractors on any other project and shall be given to the Owner upon completion of the Work.

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§ 3.13 Use of Site

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

§ 3.12.11 Any corrections or modifications to Shop Drawings and other submittals made by the Architect shall be deemed acceptable by the Contractor, without change in the Contract Sum or Contract Time, unless said changes constitute changes to the Contract Documents and the Contractor provides the Architect with contrary written notice before commencing any such changed Work. In the absence of such notice, the Contractor shall make all corrections requested by the Architect and provide a corrected submittal without change in the Contract Sum or Contract Time.

§ 3.13 Use of Site

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, permits, rules and regulations, and lawful orders of public authorities, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. Portions of the site may be occupied and in use during construction. Contractor shall maintain access and services to minimize disturbance to occupants and to allow the Owner to utilize the occupied portion of the site throughout the construction period. Without limitation, the Contractor shall at all times and at its expense fully comply with the requirements of all applicable laws pertaining to storm water discharges and mitigation requirements.

§ 3.13.1 The Owner shall have the exclusive rights to approve of any signs erected at the Project, including without limitation signs placed on cranes or other equipment, company names, advertising on trailers, or other signs. The Contractor and all Subcontractors shall notify the Owner before signs are erected and shall obtain approval of their placement. No signs or advertising media of any nature shall be permitted on the site of Work or enclosing structures without the written approval of the Owner. Any approved signs shall comply with the applicable laws, ordinances, and/or rules. Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representations of the Owner, except with prior specific written authorization from the Owner.

§ 3.13.2 Prior to the commencement of construction, the Contractor shall prepare and obtain the Owner's approval of a construction site management plan, which will take into account requirements contained in the Specifications, and the Owner's requirements and restrictions concerning access and parking for construction personnel, staging areas and material delivery times, traffic flow requirements of the Owner and local governmental authorities, and work hours, among other things.

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§ 3.14.3 Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the Owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Contractor shall abide by such regulations and it shall pay for such work.

§ 3.15.1 The Contractor shall keep the premises and surrounding area ~~free from accumulation of waste materials and rubbish caused by operations under the Contract~~ in a clean condition, free from accumulation of waste materials and rubbish, excavated materials and "tracking" caused by operations under the Contract, on a daily basis or such other period as is acceptable to the Owner. At completion of the Work, the Contractor shall remove from the site, the surrounding area and contiguous roads, streets and sidewalks waste materials, rubbish, the Contractor's and

Subcontractor's tools, construction equipment, machinery, and surplus materials from and about the Project. Project and clean all surfaces.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor. immediate reimbursement from, or an offset of charges from the Contractor for the costs (internal or external) incurred by the Owner.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.15.3 The Contractor's obligations under this Section 3.15 shall include the proper disposal of all such waste materials, rubbish and disposable surplus materials consistent with and in compliance with all applicable laws, statutes, ordinances, codes, rules, regulations and lawful orders of public authorities, including without limitation those relating to hazardous materials and the environment.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, indemnify, protect, defend and hold harmless, and reimburse the Owner, the Architect, the Architect's consultants, and the members, partners, officers, directors, agents, employees, volunteers, and successors of any of them from, for and against suits, actions, awards, penalties, liabilities, claims, damages, losses, costs, and expenses, direct and indirect, or consequential, whether directly incurred or from third parties, including but not limited to attorneys' fees, costs, design professional fees, consultant and expert witness fees and other costs incurred on such claims, and in proving the right to indemnification arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is including but not limited to any such suit, action, award, penalty, liability, claim, damage, loss or expense 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 in any event to the extent caused, in whole or in part, by (1) the negligent or other wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, them or anyone for whose acts they may be liable, liable or (2) the failure of such person or entities to perform in accordance with the Contract. The Contractor's obligation under this Article 3.18 shall include damage to the Owner's own property and the Project itself, 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 that would otherwise exist as to a party or person described in this Section 3.18. this Section 3.18. Contractor's duty of defense shall arise immediately upon

assertion of any claim actually or allegedly covered by this indemnification provision, and, to the fullest extent allowed by law, shall be independent of any limitations upon Contractor's duty of indemnification.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a ~~Subcontractor, Subcontractor or supplier of any tier, their agents and~~ anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 If any provision of this Contract is determined to require either party to indemnify, defend, reimburse, hold harmless or provide insurance to the other party (or that party's insurers or sureties) in a manner that would violate applicable law (including but not limited to ORS 30.140), then the offending provision shall be construed such that it is given the broadest meaning and effect allowed by law.

§ 3.18.4 The indemnities and other covenants of this Section 3.18 shall survive the termination of the Contract.

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§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. Nothing herein shall require the Owner to designate the Architect. If no such party is designated, the Owner shall reserve, for itself or a third party under contract with the Owner, the administrative duties, rights, and responsibilities of the Architect herein.

§ 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, Contractor, and Architect. Consent shall not be unreasonably withheld.~~ Owner. Notwithstanding any provision of the Contract to the contrary, the Contractor agrees that any matter which is subject to the review, interpretation, approval, consent or direction of the Architect shall also be subject to the review, interpretation, approval, consent or direction of the Owner, whose opinions(s) shall govern and bind the Contractor in the event of any disagreement between the Owner (on the one hand) and the Architect (on the other hand).

§ 4.1.3 In the event of a termination of the Architect or a restriction of the duties, responsibilities or authority of the Architect as described in the Contract Documents, the Owner or a third party under contract with the Owner may carry out those duties, responsibilities and authority of the Architect; provided that all such duties, responsibilities and authorities that by law must be carried out by a licensed design professional shall be carried out by a licensed design professional.

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§ 4.2.1 ~~The~~ At the direction of the Owner, the Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Owner or the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

- .1 With the Owner's concurrence, the Architect may also provide administration from time to time during the period for correction of Work described in Section 12.2.

...

§ 4.2.2.1 The Contractor acknowledges that the Architect is not the Owner's agent and does not have authority to make any decision or give any direction to the Contractor that would impact the Contract Sum or Contract Time without the prior written approval of the Owner.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly-report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. ~~The Architect will not~~ Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not ~~Neither the Architect nor the Owner will~~ have control over or charge of, and will

not be responsible for acts or omissions of, the Contractor, ~~Subcontractors~~, Subcontractors at any tier, or their agents or employees, or any other persons or entities performing portions of the Work.

...

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. ~~Communications Contractor shall endeavor to communicate through the Architect about matters arising out of or relating to the Contract; provided that the Owner and Contractor may communicate directly with each other at any time regarding the Project. Communications by and with the Architect's consultants shall be through the Architect. Architect with copies to be given to the Owner's Project Manager.~~ Communications by and with Subcontractors and suppliers shall be through the ~~Contractor~~ the Contractor, unless at that time the Owner believes it has cause to communicate with them directly or determines the Contractor is in breach of the Contract Documents. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.4.1 The Contractor shall provide the Owner with a direct copy of all written communications to or from the Architect, including all notes, requests, claims and potential changes in the Contract Sum or Time.

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

§ 4.2.6 ~~The Architect has authority to reject Work that Owner and the Architect, after consultation with the Owner, will have authority to reject Work that is defective or does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, and after obtaining the Owner's permission in each instance, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, Section 13, whether or not the such Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, or the Owner to the Contractor, Subcontractors,~~ their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Contractor shall provide submittals for review so as to cause no delay in the Work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for fabrication, installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under ~~Sections 3.3, 3.5, and 3.12~~ the Contract Documents. The Architect's review is undertaken solely to satisfy its obligations to the Owner and shall not give rise to any claim by the Contractor or Subcontractors against the Architect or the Owner. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor should expect a submittal review cycle time of up to 14 days, although the Owner may in its discretion, at the request of Contractor, request that the Architect accelerate certain submittal reviews where these are shown to Owner to be necessary for the Project schedule. Neither the Owner nor the Architect can guarantee response times from governmental authorities.

§ 4.2.8 ~~The~~ With the written approval of the Owner, the Architect will prepare Change Orders and Construction Change Directives, and may ~~order~~ authorize minor changes in the Work as provided in Section 7.4. ~~The~~ At the Owner's request, the Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4. Section 3.7.5.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of ~~final completion~~; Final Completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and the Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 ~~The~~ At the Owner's written request, the Architect will interpret and decide matters concerning performance under, and requirements of, the Contract ~~Documents on written request of either the Owner or Contractor. Documents.~~ The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until at least 15 days after written request is made for them accompanied by sufficient information for the determination.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. ~~When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.~~

§ 4.2.13 The Architect's decisions on ~~matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents~~; all matters will be final only if approved by the Owner. The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.14 ~~The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~ In reviewing the quality and progress of the Work and submittals received from the Contractor, the Architect is acting solely for the convenience of the Owner. Neither the Owner nor the Architect has any responsibility to assist the Contractor in the supervision or performance of the Work. No action, approval or omission to act or failure to advise the Contractor as to any matter by the Owner or the Architect shall in any way relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived.

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§ 5.1.1 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~~; site or to supply materials or equipment. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. Unless the context indicates otherwise, the term "Subcontractor" also includes subcontractors, suppliers and consultants of the Contractor at all tiers, including subcontractors, suppliers and consultants of other Subcontractors.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. "Subcontractors of any tier" mean Subcontractors and Sub-subcontractors.

§ 5.2.1 Unless otherwise stated in the Contract Documents, Documents or already-submitted first-tier disclosure, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Notice of Intent of award of the Contract (but not later than ten (10) days after the Notice of Intent), shall notify the Owner and the Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specifications Sections, and state the Work category followed by the name of the Subcontractor and/or fabricator (or "Contractor" where the portion of the Work is by the Contractor's own forces). The list shall be accompanied by evidence of any qualifications required within the technical Sections of the Project Manual and satisfactory to the Architect and the Owner. This list shall be updated monthly as part of the payment process if additional Subcontractors of any tier are engaged. No progress payment will become due until this information is so furnished. No action or inaction of the Owner or the Architect in response to receipt of the names of the proposed Subcontractors or suppliers of any tier shall constitute approval of any Subcontractor or supplier of any tier or of its performance. Within 14 days of receipt of the information, the Architect-Owner may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect-Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection. If the Owner concludes that a proposed Subcontractor has materially failed to perform satisfactorily (such as causing a material delay or an unsafe working environment) on one or more projects for the Owner within three years of the bidding date or that a proposed Subcontractor is otherwise not "responsible," at the Owner's request, objection will be deemed reasonable and the Contractor shall replace the Subcontractor. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the work or compliance with all of the requirements of the Contract within the Contract Sum or the Contract Time, except that the Owner will be responsible for the difference between the original Subcontractor's sub-bid and the replacement Subcontractor's sub-bid including any schedule impact. Notwithstanding the above, if the Owner finds the Subcontractor irresponsible based on past performance which was known to the Contractor or reasonably should have been known to the Contractor, then replacement with another Subcontractor shall not result in any change to Contract Sum and/or Contract Time.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or the Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or the Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or the Architect has no objection. Similarly, any objection that a proposed Subcontractor or supplier of any tier is different from an entity listed with the Bid shall be deemed a reasonable objection. If the proposed but rejected Subcontractor was unreasonably objected to, and reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order or Change Directive shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. required or the proposed Subcontractor or supplier of any tier is different from an entity listed with the Bid.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or the Architect makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being prosecuted in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. To the fullest extent permitted by Law, the Contractor shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by the Owner, nor shall such removal relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the

~~Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~

§ 5.2.5 Notwithstanding the foregoing procedures, the Contractor may only engage and substitute first tier subcontractors as permitted by ORS 279C370, 279C.585, and 279C.590.

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each first-tier Subcontractor, to the extent of the Work to be performed by the first-tier Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the first-tier Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the first-tier Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the first-tier Subcontractor, unless specifically provided otherwise in the subcontract, purchase order, and similar agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each first-tier Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed first-tier Subcontractor, prior to the execution of the subcontract, purchase order, or similar agreement, copies of the Contract Documents to which the first-tier Subcontractor will be bound, and, upon written request of the first-tier Subcontractor, identify to the first-tier Subcontractor terms and conditions of the proposed subcontract, purchase order, or similar agreement that may be at variance with the Contract Documents. First-tier Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any subcontractor on request.

§ 5.3.1 The Contractor shall pay each Subcontractor, upon receipt of payment from the Owner, an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractor's work, less the percentage retained. Contractor shall require each Subcontractor to make similar payments to its Sub-subcontractor. The Contractor shall defend, indemnify and hold harmless the Owner from any liens and Subcontractor claims, including all expenses and attorneys' fees.

§ 5.3.2 Each subcontract, purchase order, and similar agreement shall state that the Subcontractor agrees to the contingent assignment of the subcontract, purchase order, or similar agreement to the Owner, consistent with Section 5.4. Each subcontract, purchase order and similar agreement at every tier shall provide that the Owner is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the Owner shall have the right, but not the obligation, to assert claims directly against the Subcontractor for breach of contract, breach of express warranties, breach of implied warranties including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The Owner and Contractor acknowledge and agree that the purpose of this Section 5.3.2 is to enable the Owner at its discretion, in addition to the Contractor, to assert claims for damages and indemnification directly against Subcontractors that are or may be responsible for breach of the contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project.

§ 5.3.3 Contractor shall include with every Subcontract agreement the following language: "Subcontractor binds itself to Contractor and Owner, and is obligated to Contractor and Owner, in the same manner and to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. In the event of any dispute between the Owner and Contractor, Subcontractor shall be bound by all decisions, directives, interpretations and rulings of the Owner or the Architect, at Owner's option, including Owner's termination or suspension of Contractor."

§ 5.3.4 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier. No subcontracting of any of the Work shall relieve the Contractor its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents.

§ 5.4.1 Each ~~subcontract~~ subcontract, purchase order and similar agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner ~~for cause pursuant to Section 14.2~~ and only for those ~~subcontracts, purchase orders and similar~~ subcontract agreements that the Owner accepts by notifying the Subcontractor and ~~Contractor~~ Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

~~When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.~~

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§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. ~~If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.~~ Contractor shall also assign to Owner, from time to time as Owner may request, all assignable guaranties, warranties and indemnities by any Subcontractor or Sub-subcontractor or any person providing material, equipment or services in connection with the Work. Upon such assignment to the Owner under this Section 5.4, the Owner may further assign these to a successor contractor or other entity.

§ 5.5 Subcontractors as Assignees and Third-Party Beneficiaries

§ 5.5.1 Nothing in this Article 5 or elsewhere in the Contract Documents shall be interpreted to (1) constitute an assignment of the Contractor's rights against the Owner to any Subcontractor or (2) make any Subcontractor a third-party beneficiary of the Contract.

§ 5.6 SUBCONTRACTOR CLAIMS

§ 5.6.1 The Contractor shall promptly pay (and secure the discharge of any liens or claims asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited, to any Subcontractors of any tier). The Contractor shall furnish to the Owner such releases of claims, payment, bond and surety claims, and other documents as required by Section 9.3 and as the Owner may request to evidence such payment and discharge. The Owner, at its option, may withhold payment, in whole or in part, to the Contractor until such documents are furnished.

§ 5.7 The requirements of this Article 5 are in addition to, and not in lieu of, any subcontracting requirements elsewhere in the Contract Documents.

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

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§ 6.1.3 ~~The Owner~~ Unless the Owner elects to do so, the Contractor shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the ~~Contractor, who shall cooperate with them.~~ Contractor. The Owner shall require its own forces and Separate Contractors to cooperate with the Contractor with respect to such coordination. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed

necessary after a joint review and mutual reasonable agreement. The construction schedules so established shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner (as to the Owner's own forces) or its Separate Contractors shall have the same ~~obligations and rights~~ that the Contractor has under the Conditions of the Contract, ~~including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.~~Contract.

§ 6.1.5 The cost of any materials or equipment to be provided by the Owner shall not be included in the Contract Sum, and no Contractor Fee (if applicable) shall apply to such cost. The cost of installing such materials or equipment shall be included in the Contract Sum to the extent the Contract Documents require the Contractor to install such materials or equipment as part of the Work. Handling and storage of any such materials or equipment supplied by the Owner and delivered to the site for installation by the Contractor shall be the responsibility of the Contractor.

...

§ 6.2.1 The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. If the Contractor receives items from a separate contractor or from the Owner for storage, erection or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and the Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to so notify the Architect and the Owner of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not ~~apparent~~ actually or readily apparent unless reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. ~~The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.~~

...

§ 6.3 Owner's Right to Clean Up

~~If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.~~

ARTICLE 7 — CHANGES IN THE WORK

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may (but shall not be obligated to) clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and between the Owner and Contractor and at the Owner's discretion the Architect; a Construction Change Directive requires direction by the Owner and at the Owner's discretion the Architect and may or may not be agreed to by the Contractor. An Contractor; an order for a minor change in the Work may be issued by the Architect alone. Change Orders shall be deemed to cover all costs and time impacts associated with the Work change including, but not limited to, all direct and indirect costs, and Contractor shall be entitled to no further compensation or time adjustments related to such Work.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Before effectuating a change the Contractor shall propose the amount of change in the Contract Sum, if any, and the amount of change in the Contract Time, if any, arising from a proposed change in the work in the form of a Change Order Proposal. The Contractor shall submit its responsible proposal within no longer than twenty one (21) days after a Change in Work, or request from the Owner or Architect, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. If the Contractor fails to respond within this time or an agreed to extension thereof, the Contractor shall be liable for any delays or costs to other Work associated with accepting or denying the change. The Owner may accept the proposal in writing, in which case, it will be deemed a Change Order, and the Contractor shall commence the change in the Work immediately in accordance with the proposal. The Owner shall include the accepted proposal in the next available formal Change Order. The Owner may reject the proposal, in which case the Owner may either not effectuate the change or may order the change through a Construction Change Directive or an order for a minor change in the Work.

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§ 7.2.1 A Change Order is a written instrument prepared by the Architect-Architect, the Owner or Contractor and signed by the Owner, Contractor, and (at the Owner's election) the Architect stating their agreement upon all of the following:

...

- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The form of Change Orders shall be AIA Document G701, Change Order, or as approved by the Owner

§ 7.2.3 If the Change Order 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. At a minimum, the Contractor shall submit an itemized breakdown of the cost and/or time required by the Change in the Work, including but not limited to, the following:
 - .a Material quantities and costs.
 - .b Direct labor hours and hourly rates for specific work or operation to be performed.
 - .c Equipment costs or rental charges.
 - .d Specified overhead and profit.
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 As provided in Section 7.5; or
- .4 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .5 As provided in Section 7.3.5.

§ 7.2.4 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, the construction schedule, and the Contract Time.

§ 7.2.5 In general, unless otherwise limited in the A101 or this A201, pricing for Change Orders shall include the same mark-up percentages that were in effect when the Contract was awarded, as outlined in Section 7.5.6 and Section 7.5.6.1. The cost or credit to the Owner resulting from a change in the Work shall be determined, based on the type of pricing for the Contract involved.

§ 7.2.6 Accurate Change Order Pricing Information: Contractor agrees that it is responsible for submitting accurate cost and pricing data to Owner to support its Fixed Price, Unit Price, and/or Cost-Plus Change Order Proposals or other Contract price adjustments under the Contract. Contractor further agrees to submit Change Order proposals with cost and pricing data, which is accurate, complete, current, and in accordance with the terms of the Contract with respect to pricing of change orders.

§ 7.2.7 Right to Verify Change Order Pricing Information: Contractor agrees that Owner, through its designated representative, will have the right to examine, copy, and scan the records of the Contractor, Subcontractor or Sub-Subcontractor's records (during the Contract period and up to three years after final payment is made on the Contract) to verify the accuracy and appropriateness of the pricing data used to price all Change Order proposals and/or claims. Contractor agrees that if Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the Contract regarding pricing of Change Orders, an appropriate Contract Price adjustment will be made. Such post-approval Contact Price

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§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect~~ Owner or at the Owner's election, the Architect, and signed by the Owner and at the Owner's election, the Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract 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.

...

.4 As provided in ~~Section 7.3.4.~~Section 7.3.4 and 7.5.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 — Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 — Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 — Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 — Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 — Costs of supervision and field office personnel directly attributable to the change. Unit prices are inclusive of all costs for the unit price Work, including but not limited to costs of labor, services, materials, equipment, supervision, insurance, bonds and general conditions, as well as applicable taxes and overhead and profit for that Work. If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15. does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner shall determine the method and the adjustment on the basis of reasonable cost expenditures and cost savings of those performing the Work attributable to the change, including but not limited to, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Item .3 of Section 7.3.3,

the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data.

§ 7.3.5.1 Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.5, shall be limited to the following, subject to the limitations of Section 7.5:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change (excluding Contractor's Corporate Activity Tax); and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5.2 As to CM/GC contracts only, the terms used in Section 7.3.5.1, including but not limited to Items .1 through .5, shall be subject to the provisions of Articles 4 and 5 of the Agreement.

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, but no longer than seven (7) days of receipt, the Contractor shall advise the Owner and the Architect of the Contractor's agreement or disagreement with the cost or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. If the Contractor does not timely disagree with the adjustments, the Construction Change Directive will be deemed an agreed "Change Order." The Contractor's notice shall reasonably specify the reasons for its disagreement and the amount or other terms that it proposes. Without such timely written notice, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, in strict accordance with this Paragraph and other applicable provisions of the Contract Documents.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. If the Contractor timely disagrees with the proposed method for adjustment in the Contract Sum and the parties do not otherwise come to terms on adjustment, or if cost is to be determined under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and the Architect may prescribe, an itemized accounting together with appropriate supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that

their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, materials and subcontract costs. Labor and materials shall be itemized in the manner described in Section 7.5. When cost items in excess of \$2,500 arise from Subcontractors of any tier, these items shall also be itemized and presented to the Owner. Approval may not be given without such itemization. Failure to provide data within seven (7) days of the Owner's request or approved extension thereof shall constitute waiver of any Claim for changes in the Contract Time or Contract Sum. The Owner shall have the right to audit and copy the books and records of the Contractor and of any Subcontractor or supplier of any tier seeking a change in the Contract Sum.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be the larger of the reasonable value of the deletion or change, or the actual net decrease in cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.11 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.12 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect or Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.13 Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the progress schedule directly caused thereby.

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The Architect and the Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's or Owner's order for minor changes shall ~~must~~ be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall ~~notify the Architect and shall not proceed to implement the change in the Work.~~ immediately notify the Architect and Owner, with its identification of the adjustment. If the Contractor performs the Work set forth in the Architect's or Owner's order for a minor change without prior written notice to the Architect and Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 PRICING COMPONENTS

§ 7.5.1 The total cost of any changed Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components:

- .1 Basic wages: The hourly wage (without markup, fringe benefits or labor burden) not to exceed that specified in the applicable "Prevailing Wage Publication" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. The premium portion of overtime wages is not included unless pre-approved by the Owner.
- .2 Fringe benefits: Fringe benefits paid by the Contractor as established by the Oregon Bureau of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable. Costs paid or incurred by the Contractor for vacations, per diem, bonuses, stock options, or discretionary payments to employees are not reimbursable.

- .3 Workers' insurances: Direct contributions to the State of Oregon as industrial insurance; medical aid; and supplemental pension by class and rates established by the Oregon Bureau of Labor and Industries.
- .4 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Architect. Discounts and rebates based on prompt payment shall be included.

§ 7.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, or the actual rate paid to an unrelated third party as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment, which rate and use must be approved by the Architect prior to performing the work. If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the changed Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment necessarily standing by for future use on the changed Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright.

§ 7.5.4 Cost of change in insurance or bond premium. This is defined as:

- .1 Contractors' liability insurance: The cost (expressed as a percentage) of any changes in the Contractor's liability insurance arising directly from the changed Work; and
- .2 Payment and performance bond: The cost (expressed as a percentage) of the change in the Contractor's premium for the Contractor's bond arising directly from the changed Work.

Upon request, the Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

§ 7.5.5 Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined as the lesser of the manner stated in their Subcontract, or in the manner as prescribed in this Section 7.5 (and, as may be further limited pursuant to the A101 Agreement). Payments to subcontractors or suppliers that are affiliates of Contractor for change work shall not exceed market rates for the services provided.

§ 7.5.6 Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineers, project foreman, estimator, superintendent and their vehicles), taxes (including income and Corporate Activity Tax), warranty, safety costs, quality control/assurance, purchasing, small or hand tool or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim preparation, and delay and impact costs of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. Change fees shall be capped as provided in Section § 7.5.6.1 of this A201 (modified). If a change in the Work involves both additive and deductive items, the appropriate net Fee allowed will be added to the net positive difference of the items. If the net difference is negative, net negative Fee will be included in the negative figure as a further deduction.

§ 7.5.6.1. The total aggregate amount of Fee allowed on Work performed by Contractor's own forces shall be limited to Contractor's original Fee percentage of the allowed costs of the change in the Work, but not more than 10% of the allowed costs of the change in the Work. The Contractor also shall receive the Fee identified in clause (2) below (or if

less, Contractor's original fee percentage not exceeding 5%) on the amount owed directly to a Subcontractor or Supplier for materials supplied or work properly performed by that Subcontractor or Supplier.

.1 The Contractor shall receive as Overhead and Profit its Fee percentage of the cost of any materials or work performed by the Contractor's or its Affiliates' own forces or that labor performed or materials supplied by subcontractors; provided total Contractor Overhead and Profit charges cumulatively at all tiers shall not exceed 20%.

.2 Each Subcontractor at any tier (including lower tier subcontractor involved, but excluding an Affiliates of Contractor) shall receive a maximum of 10% of the cost of any materials or work directly performed by its own forces, and a maximum of 5% of the cost of any materials and labor performed by its sub-tier subcontractors.

If a change in the Work involves both additive and deductive items, the appropriate net Fee allowed will be added to the net positive difference of the items. If the net difference is negative, net negative Fee will be included in the negative figure as a further deduction.

§ 7.5.7 The total cost of any change, including a Claim under Article 15, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article 15), of the items in this Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost of the work in the locality of the Project or the cost of the work in the current editions of R.S. Means Company, Inc. Building Construction cost Data as adjusted to local costs and conditions. The Owner or Architect may confer directly with Subcontractors or suppliers of any tier concerning any item chargeable to the Owner under this Article to confirm balances due and to obtain statements or lien waivers.

§ 7.6 CHANGE PROPOSALS

Within the time limits set out in this Section 7.6, after receipt of a Request For Change Order Proposal, Construction Change Directive, or when a Change in Work occurs, the Contractor shall submit to the Owner and the Architect a written Change Order Proposal setting out any proposed adjustment in the Contract Sum or Contract Time, or both, to which the Contractor believes it (1) would be entitled as a result of the change in the Work proposed in the Request For Change Order Proposal or (2) is entitled as a result of the change in the Work directed by the Construction Change Directive. Such Change Order Proposal may be in the form of a lump sum proposal (with adequate cost substantiation as required by the Owner and calculations showing the amount of markups on costs), or a unit price proposal, or a combination thereof, for a proposed increase in the Contract Sum, and in similar form for a proposed extension of the Contract Time, and otherwise shall be in such form and in such detail as the Owner or the Architect may require. Such Change Order Proposal shall be submitted as soon as practicable after the Contractor's receipt of the Request For Change Order Proposal, Construction Change Directive, or when a Change in Work occurs.

§ 7.7 Contractor shall not be entitled to a Change Order for any change in the Work unless a Change Order has been signed by the Owner, a Construction Change Directive has been issued, a Change Proposal has been approved by the Owner in writing, or a similar written Authorization has been issued by the Owner, prior to initiation of such Work.

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

...

§ 8.1.3 The date of Substantial Completion is the date certified by satisfying the requirements of the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. date of Final Completion is the date satisfying the requirements of the Contract Documents, including in Section 9.10.

§ 8.1.5 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. The term "working day" shall mean any calendar day except Saturdays, Sundays, and Legal Holidays at the place of building.

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

§ 8.2.2 The Contractor shall ~~not knowingly, not,~~ except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and the Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the applicable Contract Time.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or the Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, ~~fire, unusual delay in deliveries, not caused or contributed to by Contractor,~~ Subcontractors, or any person or entity for whose acts or omissions any of them are responsible, fire, unusual delay in deliveries beyond the Contractor's reasonable control, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; not reasonably foreseeable on the date the Work commenced and which are beyond the Contractor's control and not caused by the acts or omissions of Contractor or any Subcontractor or Sub-subcontractor; or (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Owner may determine. The Contractor shall be required to use best efforts to mitigate both the necessity of the delay and the period of the delay. Extension shall not exceed the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby, but in no circumstance more than a day for day increase due to the number of days of legitimate occurrence as defined above, as the Owner may determine consistent with the provisions of the Contract Documents.

§ 8.3.1.1 No extensions of the Contract Time shall be allowed for delays or suspensions to the extent caused by the negligent or other wrongful acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract.

§ 8.3.1.2 Any such extension of the Contract Time shall be net of any contingency, weather delay, or "float" time allowance included in the Contractor's construction schedule. If more than one event causes concurrent delays, and the cause of at least one of those events is a cause of delay that would not entitle the Contractor to an extension of time, then to the extent of such concurrency, the Contractor shall not be entitled to an extension of time.

§ 8.3.2 All claims for extension of time shall be made in writing to the Owner no more than seven (7) days after the commencement of the delay; otherwise they shall be deemed waived and barred. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and shall notify the Owner within ten (10) days after the event causing the delay has ceased. Claims relating to time otherwise shall be made in accordance with applicable provisions of Article 15. The Owner's or Architect's awareness of the occurrence of the delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim.

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ARTICLE 9 — PAYMENTS AND COMPLETION

§ 8.3.4 To the fullest extent allowed by law, when the Contract Time has been extended (i) such extension of time shall be the Contractor's sole remedy for such delay, and the Contractor shall not be entitled to any delay, equitable adjustment or impact damages or other increase in compensation due to such extension, and (ii) the Contractor agrees to make no monetary claim under any legal theory for delay, interference or hindrance of any kind in the performance of this Contract for any reason, and (iii) agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work. This Section 8.3.4 shall not apply to the extent of unreasonable delay occasioned by any act or omission of the Owner or anyone acting by or through the Owner.

§ 8.3.5 To the fullest extent allowed by law, the Contractor may recover an increase in the Contract Sum or Contract Time from the Owner for the Owner-directed changes only if the actions or inactions of the Owner or persons acting therefor were the actual cause of the delay. The Contractor shall not be entitled to an equitable adjustment or an

increase in the Contract Sum or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence.

§ 8.3.6 In addition to the other limits stated in Section 8.3, to the fullest extent allowed by law, the Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, altitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar theories of damages.

ARTICLE 9 PAYMENTS AND COMPLETION

...

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the ~~Architect~~ Architect or the Owner. If a schedule of values is attached as an exhibit to this Contract, it shall be considered the schedule of values for the purposes of this Contract. This schedule, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and the Owner and supported by such data to substantiate its accuracy as the Architect or the Owner may require, and unless objected to by the ~~Architect~~, Architect or the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

§ 9.3.1 ~~At least ten Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application. At least the number of days before the date established for each progress payment, the payment established in this Agreement.~~ The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, ~~if as~~ required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or the Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, from Contractor, Subcontractors and suppliers in the form of Exhibit B, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Draft Application: On or about the 25th of each month, the Contractor shall submit to the Architect and the Owner, a report on the current progress of the Work as compared to the Contractor's Construction Schedule, and a draft, itemized Application for Payment for work performed during the prior calendar month. This draft shall not constitute a payment request or formal Application for Payment. The Contractor, the Owner, and the Architect shall confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Owner or the Architect may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished. The Application shall also state that prevailing wages have been paid in accordance with the mailed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractor of any tier from the Owner's payment the prior month have been made. THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, unless otherwise noted on the

application. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders; provided that the Owner may withhold payment of disputed Construction Change Directive amounts.

§ 9.3.1.3 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay. An Application for Payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.1.4 The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification For Payment, supported by AIA Document G703, Continuation Sheet.

§ 9.3.1.5 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Architect and the Owner:

- .1 Duly executed lien and claim waivers in the forms attached as Exhibit B to the Agreement, executed acknowledged, and sworn by the Contractor, showing: all first-tier Subcontractors with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for payment to each such first-tier Subcontractor, and the amounts to be paid to and retained by the Contractor from such progress payment. The waiver and release forms submitted by the Contractor shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.
- .2 Duly executed lien and claim waivers in the forms attached as Exhibit B to the Agreement executed acknowledged, and sworn by all first-tier Subcontractors (and any Sub-subcontractors as required by the Owner) showing: all lower-tier Subcontractors with whom the first-tier Subcontractor has entered into subcontracts, the amount of each such subcontract, the amount requested for payment to each such lower-tier Subcontractor, and the amounts to be paid to and retained by the first-tier Subcontractor from such progress payment. The lien and claim waiver forms submitted by first-tier Subcontractors shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of project specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing in advance by the Owner, on such terms as the Owner may require, 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 subject to the Owner's approval and 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.

§ 9.3.3 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~~ upon physical incorporation into the construction at the site or the time of payment, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for payment or 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, shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

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§ 9.4.1 The Architect will, within ~~seven days~~ a reasonable period after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and the Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and the Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. ~~However, the~~ The issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Furthermore, the issuance of a Certificate for Payment will not excuse Contractor from (1) defects in the quality or quantity of the Work, (2) Contractor's responsibility for construction means, methods, techniques, sequences or procedures, (3) deficiencies in requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, (4) Contractor's duty to properly use money previously paid on account of the Contract Sum or (5) any other obligation of Contractor under the Contract Documents.

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§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and the Owner as provided in Section 9.4.1. If the Contractor and the Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective or nonconforming Work not remedied; 150% of the estimated value of such defective Work may be withheld;
 - .2 third party claims, including but not limited to construction lien claims and bond claims, filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
 - .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, services, materials or equipment;
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- .5 damage to the Owner or a Separate Contractor; Contractor or third party;
 - .6 reasonable evidence that the Work will not be completed within the Contract Time, and/or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
 - .7 repeated unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents. with the Contract Documents;
 - .8 delay by the Contractor and/or its Subcontractor(s) of any tier, or failure to comply with the Contractor's Construction Schedule requirements;
 - .9 failure of the Contractor to submit updates of the Contractor's construction schedule as required by Section 3.10.1.1;

- .10 failure to submit affidavits pertaining to wages paid as required by statute;
- .11 failure of the Contractor to provide satisfactions of claims of mechanics', material suppliers', design professionals', construction or similar liens or claims;
- .12 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .13 failure of the Contractor to provide waivers and releases from the Contractor and Subcontractors of any tier;
- .14 liquidated damages; or
- .15 any other grounds for withholding under this Contract or at law.

...

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect the payment in its records. Such payment will not relieve the Contractor or its surety. Contractor shall reflect such payment on its next Application for Payment.

§ 9.5.5 The Owner will have the same rights of withholding as the Architect, under Section 9.5.1, regardless of whether the Architect withholds.

§ 9.5.6 To the fullest extent allowed by law, Contractor shall have no right to stop the Work if Contractor timely is paid for all undisputed invoices, and if so paid, Contractor shall proceed with the performance of its obligations hereunder with reservation of all rights and remedies it may have at law or in equity with respect to disputed invoices.

...

§ 9.6.1 After the Architect has issued and the Owner has approved a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect, absent any material breaches by Contractor and/or the Owner's good-faith belief that a withholding of payment is necessary to protect the Owner from Contractor's failure to perform its obligations hereunder.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not receive payment for any cause which is not the fault of a particular subcontractor, but does receive payment for work done by the particular subcontractor, the Contractor shall pay that subcontractor on demand, made at any time after which such payment to the Contractor would have been made, for its satisfactorily completed work of such subcontractor, less the retained percentage.

§ 9.6.2.1 No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.

§ 9.6.2.2 Should the Contractor withhold payment from a first-tier Subcontractor due to a bona fide dispute, the Contractor shall notify the Owner. The Owner may then withhold such funds from the Contractor until the dispute is resolved; provided that this Section 9.6.2 shall not be construed or applied to prevent the Contractor from receiving payment from the Owner for Work performed by the Contractor or by another Subcontractor when such Work is the subject of a back-charge by the Contractor against the Subcontractor involved in the bona fide dispute. In accordance

with ORS Chapter 279C, unless payment is subject to a good-faith dispute as defined in ORS Chapter 279C, if Contractor or any first-tier Subcontractor fails, neglects, or refuses to make payment to person or entity furnishing labor or materials for this Project within thirty (30) days after receipt of payment from the Owner, the Contractor or first-tier Subcontractor shall owe the person or entity the amount due plus interest charges commencing at end of ten (10) day period that payment is due, unless payment is subject to good faith dispute as defined in ORS Chapter 279C. The rate of interest charged shall be equal to three (3) times the discount rate on ninety (90) day commercial paper in effect at Federal Reserve Bank on the date thirty (30) days after date payment was received from the Owner, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived. Additionally, if Contractor or any Subcontractor fails, neglects, or refuses to pay person or entity furnishing labor or material for the Project, the person or entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS Chapter 279C. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and the Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor the Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished ~~materials, or both,~~ materials or equipment, or any combination of the foregoing under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. Upon reasonable evidence of the unjustified nonpayment of one or more Subcontractors by the Contractor, the Owner may, after giving ten (10) days' notice and opportunity to cure to the Contractor, make payment of amounts due to Subcontractors by direct payments or by means of multiple-payee checks. Upon request of the Owner, the Contractor shall timely furnish to the Owner such information as the Owner reasonably will need to make such direct or multiple-payee check payments, including but not limited to the names and addresses of the first-tier Subcontractor payees and the amounts due to each.~~

§ 9.6.9 The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner may notify the Contractor. Should any Subcontractor, supplier or other person make, record or file, or maintain any action on or respecting a claim of construction lien, mechanic's lien, stop notice or lis pendens, relating to the Work, then the Contractor shall immediately and at its sole expense cause the same to be removed, extinguished and expunged.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, ~~within seven~~ Subcontractors, or anyone else for whose acts or omissions any of them are responsible, ~~within ten (10) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents,~~ the required undisputed amount within the earlier of 30 days after receipt of the properly submitted Application for Payment and supporting documents from the Contractor or 15 days after the payment is approved by the Owner the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon ~~seven-fourteen (14)~~ additional days' written notice to the Owner and the Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. Contractor shall have no right to stop or suspend the Work, withhold services or Work, or terminate this Agreement if Contractor timely is paid all undisputed amounts after applicable withholdings, and if so paid, Contractor shall proceed with the performance of its obligations hereunder with reservation of rights, but subject to the other terms of this Agreement regarding assertion of Claims.

...

§ 9.8.1 Substantial Completion is the latest of (a) the stage in the progress of the Work when the Work or designated portion thereof that the Owner agrees to accept separately is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including without limitation issuance of a certificate of occupancy or passage of any necessary governmental inspection; or (b) the date of the Owner's receipt of the Certificate of Substantial Completion from the Architect. The Work will be considered not Substantially Complete if the Owner determines that appropriate cleaning has not occurred. The only remaining Work after Substantial Completion shall be minor in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the Contractor would not interfere with or hamper the Owner's or its occupants' normal operations. Without limitation, no building or facility will be considered to have reached Substantial Completion unless all utilities and systems (mechanical, electrical, etc.) are connected, commissioned, and operating as required for normal use including balancing of the HVAC system, any receiving area and areas for loading and unloading are completed, the Contractor has completed all of the building systems training procedures with the Owner and the building or facility is accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or designated portion thereof alone does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change liquidated damages owed to the Owner and the Owner can perform "move-in" activities without interruption or risk of damages to people or property.

§ 9.8.1.1 In addition to the other requirements for Substantial Completion, to achieve Substantial Completion, all Work other than incidental corrective or Punchlist Work and final cleaning shall have been completed, including but not limited to the following:

- .1 Obtain temporary or final certificate of occupancy (if necessary for occupancy) and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose, including without limitation, permits, pressure vessel permits, elevator permits, all specialty permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- .2 Submit the Contractor's Punchlist of items to be completed or corrected and written request for inspection.
- .3 Complete final start-up, testing, and instruction and training sessions on all major building systems, including but not limited to HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks, lighting controls and elevators.

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

§ 9.8.3 Upon receipt of the Contractor's punch list, the Owner, Contractor and the Architect will jointly make an inspection to determine whether the Work or designated portion thereof the Owner agrees to accept separately, is substantially complete. If the Owner's and the Architect's inspection discloses any item, whether or not included on

the Contractor's punch list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner, Contractor and the Architect to determine Substantial Completion. In the event the Architect is required to make more than two (2) observations to determine Substantial Completion because of the Contractor's fault, the Contractor shall reimburse the Owner for compensation for the Architect's services and expenses incurred in conducting the third (3rd) and subsequent such observations. If upon observation of the Work or designated portion thereof pursuant to this Section 9.8.3 there is not agreement between or among the Owner, Contractor and the Architect as to whether Substantial Completion has been achieved, the stage of the progress of the Work shall be determined by decision of the Architect.

§ 9.8.4 When the Work or designated portion ~~thereof~~ thereof, which the Owner agrees to accept separately, is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. With respect to components or portions of the Work for which Substantial Completion is achieved after the date of Substantial Completion of the Work as a whole, such warranties shall commence on the dates of Substantial Completion of such components or portions.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for.~~ The Owner may, but is not obligated to, require consent of surety as an additional condition to payment. In addition to retention of retainage, such payment shall be adjusted for a value of 150% of Work that is incomplete or not in accordance with the requirements of the Contract Documents. No further payment will be due or owing until the payment at Final Completion.

§ 9.8.6 Commissioning of Critical Systems: The following systems of the Work, and any other systems designated in the Contract Documents, are considered "Critical Systems":

- .1 HVAC system;
- .2 Electrical system;
- .3 Data communication system(s);
- .4 Intercom system
- .5 Life safety system(s);
- .6 Security system
- .7 Access control system.

When the Contractor considers that the Critical Systems are up and running and ready for normal operation as specified for each phase, the Contractor shall so notify the Architect and Owner in writing a minimum of 14 days prior to the Date of Substantial Completion for that portion or phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection of these systems to determine whether the Critical Systems are complete and ready for normal operation. If the Architect's or Owner's inspection discloses that the Critical Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Critical Systems and pay the costs associated with the re-inspections, including fees of the Architect and its consultants. When the Critical Systems are ready for operation, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Warranties on the Critical Systems required by the Contract Documents shall commence on the later of the Date of Commissioning or Date of Substantial Completion, unless otherwise provided in the Contract Documents. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

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§ 9.9.1 The Owner may upon written notice to the Contractor, take possession of, occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the

~~Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect and time, when it is legal to do so. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of any of its obligations under the Contract. If the Contractor fails to complete the Work within the Contract Time, the Owner may take possession of, use or operate all or any part of the Work without an increase in the Contract Sum.~~

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work. A reasonable sum may be withheld by Owner until Contractor delivers to Owner record Drawings, Specifications, Addenda, Change Orders and other Modifications, and the warranties, instructions, and maintenance manuals required by the Specifications, and a final statement of the cost of the Work allocated in accordance with the budget and in a form approved by Owner.

§ 9.9.3 ~~Unless otherwise agreed upon,~~ upon in writing by the Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements ~~of the Contract Documents~~ of the Contract Documents, nor start the period for correction of Work mentioned in Section 12.2.2, nor establish Substantial Completion of the portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of any of its obligations under the Contract.

...

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Contractor and the Architect will jointly and promptly make such inspection. When the ~~Architect finds Owner and the Architect find~~ the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. In the event the Architect or any consultant is required to make more than two (2) observations to determine Final Completion, the contractor shall reimburse the Owner for compensation for the Architect's and consultant's services and expenses incurred in conducting the third (3rd) and subsequent such observations. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all fees and expenses incurred by the Owner for services performed after the required Final Completion date of all the Work due to the delay of the Contractor, whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.1.1 The term "Final Completion" as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved and the Architect's and engineers' punch list work completed, (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work for its intended purpose and (3) the Contractor has performed all of its obligations under the Contract except for those obligations that, by their nature, extend beyond Final Completion, including without limitation:

- .1 Submit for review final O&M manuals, as-builts, and warranties. Warranties to state start of warranty is established by the posted date of Substantial Completion.

- .2 Turn over all extra stock to the Owner.
- .3 Make final changeover of locks and transmit new keys to the Owner and advise the Owner of the changeover in security provisions.
- .4 Discontinue or change over and remove temporary facilities and services from the Project site.
- .5 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- .6 Complete building commissioning as required by the Specifications.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect ~~and the Owner~~ (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by ~~the~~ Owner) have been paid or otherwise ~~satisfied, satisfied;~~ (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in ~~effect, effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the~~ Owner; (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract ~~Documents, Documents;~~ (4) consent of surety, if any, to final ~~payment, payment;~~ (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor ~~warranties, and warranties;~~ (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated ~~by the Owner, by the Owner;~~ (7) all warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, as-built drawings and other documents or items required by the Contract Documents; (8) originals of all permits, licenses and certificates, together with a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health departments and utility owners, provided to Owner with a copy of all closed or signed off permits; (9) proof satisfactory to Owner that the Contractor has fully complied with the requirements of ORS 279C.845(7); (10) Certification that the materials in the Work are "lead-free" and asbestos-free;" and, (11) if the Contractor is not domiciled in or registered to do business in the State of Oregon, confirmation the Contractor has complied with the requirements of ORS 279A.120; (10) as-built Drawings in CAD format acceptable to the Owner to the extent required by the Specifications or this Agreement; and (11) all other documents and items required by the Contract Documents to be provided as a condition of achieving Final Completion. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner. Owner may (1) retain funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount; or (2) accept from the Contractor, a bond or other security satisfactory to the Owner, in its sole discretion, to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including ~~all costs and reasonable attorneys' fees but not limited to all costs, disbursements, expenses and reasonable attorneys' fees.~~

§ 9.10.2.1 In addition to other documentation required by the Architect and the Owner as a condition of final payment, the application for final payment shall be accompanied by final waivers and releases of claims, executed by the Contractor and Subcontractors. The forms of the waivers and releases shall be as set out in Exhibit B.

§ 9.10.3 If, after Substantial Completion of the Work, ~~final completion~~ Final Completion thereof is materially delayed through no fault of the ~~Contractor~~ Contractor, a Subcontractor or anyone for whom they are responsible, or by issuance of Change Orders affecting final completion, and the Owner and the Architect so ~~confirms, confirm,~~ the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.3.1 If the Owner elects to make such payment in advance of Final Completion, the Owner may retain an amount no less than one hundred fifty percent (150%) of the value of such Work for the Contractor to finally complete the Work, as determined by the Architect.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

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

Acceptance of final payment by the Contractor, a Subcontractor, or a 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. The execution of a Change Order shall constitute a waiver of Claims by the Contractor and all subcontractors arising out of the work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. General reservations of rights will be deemed waived and void.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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 10 — PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 9.11 Records

The Contractor shall maintain books, records, documents, and other evidence pertaining to the costs incurred by the Contractor in connection with or related to the Contract ("records") to such extent and in such detail as will properly reflect and fully support all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor shall preserve such records for a period of three (3) years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. In the event of a claim or dispute, the Contractor agrees to make available at the office of the Contractor at all reasonable times all records for inspection, audit and reproduction by the Owner and its representatives. These requirements shall be applicable to and included in each Subcontract and purchase order issued with respect to the Work, except fixed price Subcontracts where the price is \$25,000 or less.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the entirety of the Work.

§ 10.1.1 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof will:

- .1 — Relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation;
- .2 — Impose any obligation upon the Owner or the Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; and
- .3 — Impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other person or entity.

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- .1 — employees and others performing labor or services or furnishing materials or equipment on the Work and other persons who may be affected thereby;
 - .2 — the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- and

- .3 other property and structures 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; and
- .4 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors.

§ 10.2.2 The Contractor shall comply with, and give notices required ~~by-by, and otherwise shall comply with~~ applicable laws, statutes, ordinances, codes, ~~rules and regulations, rules, regulations, permits,~~ and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including but not limited to posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified ~~personnel-personnel~~ and give the Owner and the Architect reasonable prior notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in ~~Sections 10.2.1.2 and 10.2.1.3~~ Section 10.2 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under ~~Sections 10.2.1.2 and 10.2.1.3~~ Section 10.2. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the negligent or other wrongful acts or omissions of the Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's ~~superintendent~~ Superintendent unless otherwise designated by the Contractor in writing to the Owner and the Architect.

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§ 10.2.8 Injury or Damage to Person or Property

~~If either party 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~

§ 10.2.8 The Contractor shall immediately report to the Owner and the Architect all accidents arising out of or in connection with the Work which cause death, serious personal injury or substantial or significant property damage. The Contractor shall promptly thereafter submit a written report of such accident, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported by the Contractor immediately by telephone or messenger to the Owner.

§ 10.2.9 The Contractor shall, and shall require its Subcontractors to: be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying; furnish approved hard hats, other personal protective equipment as required, approved first aid supplies, the name of an individual on each shift who has completed the OSHA Supervisory Training Course and a posted list of emergency facilities; take prompt action to correct any hazardous conditions reported; comply with the requirements of the Occupational Safety and Health Act ("OSHA") and all other applicable federal, state and local worker safety laws, rules and regulations, including all standards and regulations which have been promulgated by the governmental authorities which administer such Acts and said requirements, standards and regulations are incorporated herein by reference. The Contractor shall be directly responsible for compliance therewith on the part itself and of its agents, employees, Subcontractors, Sub-subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of itself or its agents,

employees, materialmen, Subcontractors or Sub-subcontractors to so comply. Contractor shall provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumber's torches and other flame and spark producing apparatus and comply with NFPA Standard No. 51B, as amended, or its replacement. The Contractor shall submit its Safety Plan for the Project in hardcopy form as a submittal to the Owner to demonstrate the general level of safety program he will conduct and his general adherence to good safety practices. The Owner's review, comment upon, approval or disapproval of such Safety Plan or any portion thereof shall not relieve Contractor for full responsibility for Project safety.

§ 10.2.10 The Contractor, in all cases, shall comply with OSHA, EPA and all other Governmental Workplace Requirements. The term "Governmental Workplace Requirements" as used in the Contract Documents shall mean building, traffic, environmental, occupancy health, accessibility for disabled and other applicable laws, statutes, ordinances, regulations or decrees, of any federal, state, county, municipal or other governmental or quasi-governmental authority or agency pertaining (a) to the Project, (b) to the use and operation of the Project for their intended purposes, or (c) if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (a) or (b), then to the subject matter described in the Section in which the term is used.

§ 10.2.11 Injury or Damage to Person or Property

If the Contractor 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 the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding seventy-two (72) hours after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

§ 10.2.12 Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents. Contractor shall erect and maintain perimeter fencing around the entire Project site for the duration of the Work, and shall otherwise secure the Project site for the entire duration of the project until Substantial Completion and demobilization.

§ 10.2.13 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion. Contractor shall maintain Work materials and equipment free from damage from rain, wind, storms, frost or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, Contractor shall cease Work and immediately notify the Owner and the Architect of such cessation. Contractor shall not permit open fires or smoking on the Project site.

§ 10.3 Hazardous Materials and Substances [Not applicable to asbestos/hazardous materials abatement contractors]

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Architect of the condition orally and in writing.

§ 10.3.1.1 As used in this Article 10, the term "hazardous material" shall mean and include any "hazardous substance" as defined in the federal Comprehensive Environmental Response Compensation Liability Act (CERCLA), any "hazardous waste" as defined in the federal Resource Conservation Recovery Act (RCRA), and similar terms as used in applicable federal, state and local statutes, rules and regulations.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify. In the event the Contractor ceases the Work under any of the circumstances described in Section 10.3.1, the Owner in consultation with the Architect and Contractor shall arrange at the Owner's cost for such governmental reviews, professional services and laboratory and other analyses as are reasonably necessary to determine the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to

be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. 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 by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. suspected hazardous material, wetland condition or archeological site. In so doing, the Owner shall inform the Architect and Contractor of the nature of the governmental reviews, professional services and laboratory and other analyses that the Owner intends to arrange, and the identity of the agencies, firms and individuals the Owner intends to involve. If the Contractor has a reasonable objection to the nature of the reviews, services or analyses that the Owner intends to arrange, or to the identity of the agencies, firms or individuals that the Owner intends to involve, the Owner and Contractor shall negotiate in good faith and with expediency to determine alternative means or parties to perform the reviews, services or analyses. The Contractor shall cooperate in good faith with the Owner, the Architect, the Architect's consultants, the Owner's separate consultants and contractors and other agencies, firms and individuals that perform services or work at the Project site to analyze, control, remediate, render harmless or protect the suspected hazardous material, wetland condition or archeological site. Upon a determination based on such completed reviews, services or analyses as are reasonably necessary that the suspected hazardous material in fact does not exist, or has been controlled, remediated, rendered harmless or protected, the Owner shall transmit a written order to the Contractor to resume the construction of the Work in the affected area. Upon receipt of such order, the Contractor shall resume the Work as ordered. The Contractor shall be entitled to an extension of the Contract Time to the extent the Contractor is delayed in the progress of the Work by cessation of the Work under Section 10.3.1. If the Contractor claims additional costs as a result of such cessation of the Work, it shall make a Claim pursuant to Article 15.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and 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 in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, 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), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. The Contractor shall not permit or allow any Hazardous Substance to be deposited, disposed, placed, generated, buried, discharged, manufactured, refined, transported, treated, handled or located on or about the Project. Except as reasonably required for and are in quantities appropriate to the performance of the Work then being done, the Contractor shall exercise oversight over the use and storage of such Hazardous Substances and compliance with Governmental Requirements applicable to such use and storage. The Contractor shall store all hazardous materials safely, whether or not required by the Contract Documents. To the extent required by applicable Governmental Requirements, the Contractor shall have Material Safety Data Sheets (MSDS) for all Hazardous Substances used in the workplace and make them available to employees who are potentially exposed to those Hazardous Substances. The MSDS and other information shall be available at the jobsite with two (2) full copies of all information to be turned over to the Owner as it is received. The Contractor will be solely responsible for compliance with any "Right to Know" law relating to notice to its employees and others concerning Hazardous Substances to which they could be exposed in the course or the conduct of the Work, including the labeling of such materials, the filing of any necessary reports relating thereto, and related requirements. The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances, or by the failure of Contractor to perform as required by this Section 10.3.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for Contractor shall indemnify and reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of

the Contractor's fault or negligence in the use and handling of such materials or substances and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. If, without negligence on the part of the Contractor, Subcontractor, or anyone for whose acts or omissions any of them are responsible, the Contractor is held liable by a government agency 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 reimburse the Contractor for all cost and expense thereby incurred.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency 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 reimburse the Contractor for all cost and expense thereby incurred.

In an emergency affecting safety of persons or property, the Contractor shall ~~act, at the Contractor's discretion,~~ act to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 — INSURANCE AND BONDS

§ 10.5 SPILL RESPONSIBILITY

§ 10.5.1 The Contractor is responsible for any and all releases of water and environmental pollution during performance of the Contract which occur as a result of, or are contributed to by, itself or the actions of its agents, employees, or Subcontractors. The Contractor agrees to promptly remediate such releases to satisfaction of the Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner.

§ 10.5.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

- .1 properly handle, use and dispose of all environmental pollutants and hazardous materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- .2 be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous materials that the Contractor has brought onto the Work site; and
- .3 promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

§ 10.5.3 The Contractor shall be liable for any and all costs, expenses, damages, claims, fines, penalties, reimbursements, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) water or any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Contractor's (i) fault or (ii) failure to perform in accordance with the Contract Documents, permits, or applicable law. Nothing in this Section 10.5 shall limit the Contractor's liability or responsibility under any other provision of the Contract Documents.

§ 10.5.4 The Contractor shall report all violations or reportable quantity releases or violations described in this Section 10.5 to applicable federal, state, and local regulatory and emergency response agencies. Upon discovery, regardless of quantity, the Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to the Owner within forty-eight (48) hours of the telephonic report. Such written report shall contain, at a minimum:

- .1 Description of items released (identity, quantity, manifest number, and all other documentation required by law);
- .2 Whether amount of items released is EPA/DOE reportable and, if so, when it was reported;
- .3 Exact time and location of release, including a description of the area involved;

- .4 Containment procedures initiated;
- .5 Summary of communications about the release the Contractor has had with members of the press or state officials other than the Owner;
- .6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue; and
- .7 Personnel injuries, if any, resulting from, or aggravated by, the release.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. maintain, and cause Subcontractors to purchase and maintain, insurance as set forth in Exhibit E.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2 THE OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Refer to Exhibit E for the required Coverages, Deductibles, Builders Risk, Subrogation Waiver and information and requirements of the Contractor and subcontractors.

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation PERFORMANCE, RETENTION, AND PAYMENT BOND

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. Contractor shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The Contract shall include a Retention bond equal to five (5) percent of the contract sum. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The bonding company must be listed on the most current US Government Treasury list, Department Circular 570 or approved PRIOR TO BID SUBMISSION by Owner. The cost of the bonds shall be included in the Contract Sum. The bonds shall be submitted on form acceptable to Owner, be in compliance with the requirements of ORS 279C, and shall name Owner, and others required by statute, as beneficiary. Failure to adhere to these requirements may be grounds for rejection of the bid or cancellation by Owner of this Agreement.

§ 11.3.2 Any Change Order, Construction Change Directive, order for a minor change in the Work or other modification of the Contractor's obligations under the Contract shall not be subject to inspection or approval by any surety on any required bond. The surety on such bond, by issuing the bond, expressly waives its right to approve any such Change Order, Construction Change Directive or order and consents to any modification of the Contractor's obligations hereunder.

§ 11.3.3 The Contractor shall deliver the required bonds to the Owner prior to or with the signed (by the contractor) Agreement to the Owner Representative at the address of the first page of this Agreement; or if these are General Conditions to a CM/GC Agreement, at the time required by statute. The Contract shall not be executed by the Owner until the bonds have been received and validated.

§ 11.3.4 POWER OF ATTORNEY

The Contractor shall require the Attorney-in-fact that executes the required bonds on behalf of the surety to affix thereto a certified and current copy of their power of attorney. The surety on any required bond shall be bound by the arbitration or litigation of any disputes between and among the Owner, Contractor, Subcontractors, Subcontractors' sureties, the Architect, the Architect's consultants, the Owner's separate contractors and consultants, and other third parties in the same way and to the same extent that the Contractor shall be bound. The surety shall be bound by the decisions and award of the arbitrator(s) or court in the same way and to the same extent that the Contractor shall be bound.

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

~~§ 11.3.2~~ 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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~11.3.6~~ If a payment bond and/or performance bond is required by the Owner under the Contract, the Owner may require that the Contractor subcontract only with Subcontractors who agree to file suit against such bond(s) in the event the Contractor fails to meet its payment or performance obligations to the Subcontractor, as the Subcontractor's exclusive remedy against the Owner, the Project or the Land. This requirement shall not apply if Contractor has not made payments to Subcontractors for the sole reason that the Owner has not paid the Contractor per the terms of the Agreement.

~~§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance~~

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

~~§11.5 Adjustment and Settlement of Insured Loss~~

~~§ 11.5.1~~ A loss insured under the property insurance required by the Agreement 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 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

~~§ 11.5.2~~ Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

~~ARTICLE 12 UNCOVERING AND CORRECTION OF WORK~~

~~ARTICLE 12 UNCOVERING AND CORRECTION OF WORK~~

~~§ 12.1.1~~ If a portion of the Work is covered contrary to the Architect's or the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or the Architect, be uncovered for the Owner's or the Architect's examination and be replaced at the Contractor's expense without change in the Contract ~~Time~~. ~~Time or Contract Sum~~.

~~§ 12.1.2~~ If a portion of the Work has been covered that the Owner or the Architect has not specifically requested to examine prior to its being covered, the Architect or the Owner may request to see such Work and it shall be uncovered by the Contractor. ~~Contractor~~ subject to approval of the Owner. If such Work is in accordance with the Contract Documents, ~~the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate.~~ costs of uncovering and replacement shall, by appropriate Amendment, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense. ~~expense~~ without reimbursement from the Owner.

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The Contractor shall promptly correct Work rejected by the Architect or the Owner as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and

whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and the Owner's attorneys' fees and related costs, disbursements and expenses made necessary thereby, shall be at the Contractor's expense without reimbursement from the Owner. Roadways, pavements and curbs that are broken, damaged, settled or otherwise defective as a result of receiving, handling, storage of materials or the performance of any Work under the Contract Documents shall be fully restored to the satisfaction of the Owner.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, (i) within one year after the date of Substantial Completion of the entire Work; (ii) within two years 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 any of the Work, as to those components of the Work that include, alter or affect any portion of the building envelope and penetration components; or (iii) within the period established by the terms of an applicable special warranty required by the Contract Documents, Documents or by law; or (iv) after the date for commencement of warranties established under Section 9.9.1, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall correct it at the Contractor's expense without reimbursement from the Owner 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. so. 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. Contractor on grounds of breach of warranty. The obligations of Contractor under this Section 12.2 shall survive acceptance of the Work under the Contract and termination of the Contact, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages. If the Contractor fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or the Architect, the Owner may correct it in accordance with Section 2.5. If payment of the Contract Sum has already been made by the Owner then upon demand the Contractor shall reimburse the Owner pursuant to Section 2.5. Without voiding specified warranties or relieving the Contractor of its responsibilities under this Section 12.2.2, the Owner reserves the right to make repairs as necessary to maintain the structure and its contents and operability. In addition to nonconforming Work otherwise needing to be corrected and completed:

- .1 If, in the Owner's opinion, the nonconforming Work either prevents the use of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), Contractor shall initiate corrective work on site the same day if the Contractor is notified prior to noon, or by noon the following day if notified after noon, and shall complete corrective action within 48 hours.
- .2 If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, affects internal security, or limits the use of the facility (e.g. loss of heat in a single classroom, failure of one or more plumbing fixtures, interior door locks not working, etc.), Contractor shall initiate corrective work on site within two working days and shall complete corrective action within 5 working days.
- .3 If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed, (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.), the Contractor shall initiate corrective work on site within 14 calendar days and shall complete corrective action within 28 calendar days.

§ 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 of the Work as a whole by the period of time between Substantial Completion of the Work as a whole and the actual completion of that portion of the Work. For example, if a portion of the Work is completed 15 days after Substantial Completion, the period of correction shall commence as to such Work 15 days after Substantial Completion.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Section 12.2, for such corrective Work for that period of time that equals the

amount of time after Substantial Completion of the Work as a whole that the corrected portions of the Work were defective or nonconforming. Such extensions shall be applicable only to corrected portions of the Work.

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§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is defective or not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract ~~Documents.~~ Documents or applicable law. Establishment of the ~~one-year~~ period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time nor shall otherwise be deemed to limit the time within which the obligation to comply with the Contract Documents or applicable law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.2.6 Prior to the first anniversary of Substantial Completion, the Contractor shall walk the project together with the Owner to identify items requiring to be corrected by the Contractor. The Contractor shall be responsible for scheduling this meeting, or shall attend such meeting together with relevant Subcontractors if scheduled by the Owner.

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If the Owner prefers to accept Work that is defective or not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The Owner shall never be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases the Owner shall be entitled to full removal and correction of defective or non-conforming Work.

§ 12.4 EFFECT OF OBSERVATIONS AND APPROVALS OF THE WORK

§ 12.4.1 The Contractor shall not be relieved from its obligations to perform the Work pursuant to the Contract Documents, or from responsibility for defects or nonconformities in the Work, either by the observations or reviews of the Work by the Owner, the Architect or other persons or entities or by other inspections, tests or approvals of the Work by any agency, entity or person.

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~~The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~ located.

...

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party ~~The Contractor shall not assign its rights or obligations under the Contract in whole or in part, for any purpose, except to Subcontractors approved pursuant to the Contract, without the prior written consent of the Owner. If the Contractor makes or attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.~~ Contract and such assignment shall be null, void and of no force or effect.

§ 13.2.2 ~~The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents, bonds or construction financing for the Project or to a successor school owner or another government agency. In such event, the Contractor shall execute all consents and other documents reasonably required to facilitate the assignment.~~

...

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law. The Contractor's sole remedy for claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to the Contract Documents or breach thereof, except claims which have been waived, is the dispute resolution procedure of Article 15.

§ 13.3.2 No action or failure to act by the ~~Owner, Architect, or Contractor~~ Owner or the Architect shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.3.3 Notwithstanding any provision in this Contract to the contrary, in the event requirements of the Owner's lender or bond financing source, if any, regarding the conditions, calculation or timing of progress payments differ from those set forth in this Contract, Contractor shall cooperate to comply with such requirements provided the same are not unduly burdensome to Contractor.

§ 13.3.4 If the majority of the Ownership or the control of the Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, determines the Owner cannot itself reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty days written notice of termination and the opportunity for the Contractor to cure prior to termination.

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§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall schedule and make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations ~~concluded~~ concluded, unless the test, inspection or approval arises from the fault of the Contractor or a Subcontractor or supplier, except as provided in Section 13.4.3. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, the Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and the Architect of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. If the Contractor arranges for an inspection and the inspector is required to wait, to leave without inspection, to perform a partial inspection, to return to complete or re-inspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within 30 days of billing, the Owner may pay the charges directly and back charge the Contractor on the next progress payment the amount plus a 10% handling fee.

§ 13.4.4 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 Owner and the Architect.

§ 13.4.7 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failure to inspect or test by the Owner, the Owner's representative, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery.

Payments due and unpaid under the Contract Documents shall bear interest as specified by ORS 279C.570 from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is ~~located~~located for public improvement contracts.

ARTICLE 14 — TERMINATION OR SUSPENSION OF THE CONTRACT

§ 13.6 TIME ACCRUAL OF CLAIMS

For claims by the Owner against Contractor based on the so-called "discovery rule," the applicable period of limitations or claims shall not commence to run and any alleged cause of action shall not be deemed to have accrued, whether such claims or actions involve strict liability, indemnity, intentional tort or other tort, breach of contract, breach of implied or express warranty, or any other legal or equitable theory, unless and until the party making the claim is fully aware of all three (3) of the following: (a) the identity of the party(ies) responsible; (b) the magnitude of the damage or the injury; and (c) the cause(s) of the damage or injury, provided this Section 13.6 shall not act to accelerate the accrual of any claim. The discovery rule provided herein applies in lieu of any other applicable statute or related case law. This provision does not accelerate the accrual of any claim earlier than what accrual would have been in the absence of this provision.

§ 13.7 EXCULPATORY PROVISION No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against any affiliate, partner, member, officer, director, trustee or beneficiary of the Owner on account of any agreement contained in the Agreement or any other Contract Documents, whether expressed or implied. Liability with respect to the entry and performance of this Agreement and all other Contract Documents, however it may arise, with respect to the Owner shall be asserted and enforced only against the Owner, and Contractor shall have no recourse to any assets of any affiliate, partner, member, director, officer, employee, trustee, beneficiary or other representative of the Owner. Any and all personal liability, if any, beyond that which may be asserted against the Owner is expressly waived and released by Contractor and by all persons or entities claiming by, through and under Contractor.

§ 13.8 INTERPRETATION

The Contract Documents have been carefully reviewed by Contractor and its counsel and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Paragraph headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 13.9 SURVIVAL

§ 13.9.1 If the full performance of an obligation is not required prior to the termination of this Contract, such obligation shall survive the termination and be fully enforceable thereafter. In addition, except as otherwise waived or barred, all rights and obligations set out in the Contract shall survive completion of the Project or termination of the Contract (1) as to the parties rights and obligations that arose before such completion of the Project or termination and (2) as is necessary to give effect to rights and obligations that arise after such completion of the Project or termination but derive from a breach or performance failure that occurred prior to such completion or termination.

§ 13.10 WAIVER, AMENDMENT AND EXTENSION; RIGHTS

No waiver, amendment, extension or variation in the terms of the Contract Documents shall be valid against the Owner unless in writing and signed by the Owner and then only to the extent specifically set forth in the writing. No failure or delay on the part of Owner in exercising any right, power or privilege under the Contract Documents, nor any course of dealing between the parties, will waive, amend or vary the terms of the Contract Documents. The Owner's rights and remedies provided by the Contract are cumulative and the use of any one right or remedy by the

Owner shall not preclude or waive the right to use any or all other remedies. The Owner's rights and remedies are given in addition to any other rights the Owner may have by law, statute, ordinance or otherwise.

§ 13.11 EXTENT OF CONTRACT

The terms of the Contract Documents are intended by the parties to be a final expression of their understanding with respect to the Project and may not be contradicted by evidence of any prior or contemporaneous statements or understandings. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in a writing signed by the parties hereto.

§ 13.12 SEVERABILITY

§ 13.12.1 This Contract is deemed to incorporate all provisions as required by law. Such incorporated provisions will have priority over any conflicting provision herein. Should any provision of the Contract, at any time, be in conflict with any law, statute, code, ordinance, rule, regulation or lawful order of a public authority, or be unenforceable or inoperative for any reason, then the remaining provisions of the Contract nonetheless shall continue in full force and effect and the court shall give the offending provision the fullest meaning and effect allowed by law.

§ 13.13 COUNTERPARTS

This Contract may be executed in counterparts, a complete set of which shall be considered an original.

§ 13.14 AUTHORITY

The Contractor represents and warrants that he or she or it has the full right, power, legal capacity and authority to enter into and perform the Contractor's respective obligations hereunder, and that such obligations shall be binding upon the Contractor without the requirement of the approval or consent of any other person or entity in connection herewith. Each person signing the Contract on behalf of the Contractor represents and warrants that he or she has the full right, power, legal capacity and authority to sign the Contract on behalf of the Contractor.

§ 13.15 REPRESENTATIONS

Contractor represents that (1) it has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) it has reviewed, analyzed, and has current knowledge of the site; and (3) it has reviewed, analyzed, and has found sufficient for completion of the Work the Contract Documents. Contractor acknowledges and warrants that any exceptions to this representation have been specifically identified in the Contract Documents.

§ 13.16 OPERATION AND MAINTENANCE MANUALS

As part of the Work, Contractor shall submit one hard copy and two electronic media copies (on memory stick, CD or DVD and in standard Microsoft or Adobe format) of completed operation and maintenance manuals for review by the Owner's Representative prior to submission of any pay request for more than ninety percent (90%) of the work. No payments beyond ninety percent (90%) will be made by the Owner until the O & M Manual has been received. The O & M Manual shall contain a complete set of all submittals; all product data as required by the specifications; training information; a telephone list of consultants, manufacturers, installer and suppliers; manufacturer's printed data; balance reports; record and shop drawings; schematic diagrams of systems; appropriate equipment indices; warranties; bonds; etc. The Owner's Representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, complete and approved sets of O & M Manuals shall be delivered to the Owner's Representative by the Contractor.

§ 13.17 Training

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Representative training sessions for all equipment and systems, as required in the individual specifications sections. The Contractor shall schedule training sessions at least two (2) weeks in advance of the date of training to allow the Owner's personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment and/or system is completely installed and operational in its normal operating environment. A condition to final payment shall be the Contractor's delivery to the Owner's Representative of a written log showing all training as having been provided and accepted by the Owner for all systems and equipment involved, signed by the Owner.

§ 13.18 Compliance with All Governmental Laws and Regulations. The Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and this Agreement. ORS Chapters 279A and

279C and the Attorney General's Model Public Contracting Rules (as such rules may have been modified by the Owner) ("Rules") contain certain requirements for public contracts, including but not limited to certain required contract provisions. Required contract provisions are attached as Exhibit F and are incorporated herein by this reference. Furthermore, Contractor and the Owner agree to comply with all requirements of ORS Chapter 279A and 279C, the Rules and all other applicable laws and regulations (collectively "Laws"), whether or not such applicable provisions are included in Exhibit F and whether or not such provisions are excised in Exhibit F. In the event of a conflict between any applicable Law and the provisions of this Contract, including Exhibit F, the Law shall prevail and control.

§ 13.19 Contractor hereby agrees that the Project will be completed substantially in accordance with building permits and any other permits related to development of the Project, the Contract Documents and unless otherwise provided in the Contract Documents all manufacturers' or suppliers' recommended installation procedures so as to preserve any warranties with respect thereto, free and clear of all liens or encumbrances and within the time set forth in the Contract Documents. Contractor does further agree that on the date of Substantial Completion, the Project shall comply with all applicable building laws, ordinances, rules and regulations known, or which should in the exercise of reasonable care be known, to Contractor, and that all utility services necessary for the operation of the Project shall have been provided to the Project within the time for completion of construction.

§ 13.20 If the Contractor fails, neglects or refuses to make prompt payment for labor, materials, equipment or other services furnished to the Contractor or a Subcontractor by any person in connection with the Project as such claim becomes due, the Owner may pay the claim and charge the amount of the payment against funds due or to become due the Contractor under this Contract. Payment of claims in this manner shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 13.21 This Contract is subject to the State of Oregon Bureau of Labor and Industries Prevailing Wage Rates, and Contractor shall pay or cause to be paid all workers accordingly.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~one-hundred eighty (180) consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, ~~the Work under direct or indirect contract with the Contractor,~~ for any of the following reasons:

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- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in ~~Section 9.4.1, Section 9.4.1 and the Owner has not cured such matters within seven (7) days after the date of Contractor's notice to the Owner,~~ or because the Owner has not made payment on ~~a-an approved Certificate for Payment (other than disputed sums) within the time stated in the Contract Documents;~~ or
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.Documents.~~

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of entire days scheduled for the Work completion, or ~~120~~ 180 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' notice to the Owner and Architect,~~ (7) days' written notice to the Owner, and if the Owner fails to cure such reason during the seven (7) day period, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work ~~not~~ executed, and costs incurred by reason of such termination. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.

§ 14.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly 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' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3. Notwithstanding any provision of the Contract seemingly to the contrary, to the fullest extent allowed by law, Contractor shall not stop or suspend the Work or terminate this Contract in the event the Owner withholds any disputed payment, so long as the Owner continues to make undisputed payments for which the Architect has issued a Certificate of Payment.

...

- ~~.1 repeatedly~~ refuses or fails to supply enough properly skilled workers or proper ~~materials;~~ materials or equipment;
- ...
- ~~.3 repeatedly~~ fails to abide by or disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public ~~authority;~~ authority having jurisdiction;
- ~~.4~~ fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- ~~.5~~ fails to comply with the current Contractor's construction schedule;
- ~~.6~~ is adjudged bankrupt, makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
- ~~.7~~ submits one or more Applications for Payment that the Contractor overstates the amount to be paid, by the Owner; or
- ~~.4~~ .8 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, ~~seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety;~~ at least one (1) business day's written notice, terminate the Contract in whole or in part and may end employment of the Contractor and may:

- ~~.1~~ Exclude the Contractor from the site and take possession of all or a portion of materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- ~~.2~~ Accept assignment of some or all subcontracts pursuant to Section 5.4; and
- ~~.3~~ Finish the Work ~~by whatever reasonable~~ or a portion thereof by whatever reasonable means and method the Owner may deem expedient. Upon written 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.

§ 14.2.3 When the Owner terminates the Contract in whole or in part for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the ~~unpaid balance of the Contract Sum exceeds~~ Owner completes the Work and costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly ~~waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner.~~ waived exceeded the unpaid Contract Sum, such excess shall be paid by the Contractor to the Owner. Contractor shall be responsible and shall pay all the Owners' claims for costs and damages upon demand, pending reconciliation pursuant to this Section 14.2.4. The amount to be paid to the Contractor or the Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this determined and, at the Owner's option, certified by the Architect upon application by the Owner. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event the Owner terminates the Contract for cause under this Section 14.2 and such termination subsequently is determined in a final arbitrated award or a final judgment to have been wrongful, the termination shall automatically be converted to a termination for the Owner's convenience pursuant to Section 14.4.

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§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under ~~Section 14.3.1.~~ Section 14.3.1 on all Work executed only. Adjustment of the Contract Sum shall ~~include profit.~~ be consistent with the terms of the Contract Documents, provided to the fullest extent allowed by law Contractor waives all claims for additional profit as a result of such suspension. No adjustment shall be made to the extent

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§ 14.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the Contract in whole or in part for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

...

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, and also except for Work not covered by the termination, terminate all existing subcontracts and purchase orders and similar agreements and enter into no further subcontracts and purchase orders, orders, and similar agreements.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to section 14.5.

ARTICLE 15 — CLAIMS AND DISPUTES

§ 14.4.4 If the Owner terminates for cause, the Owner at any time may, by notice to Contractor, convert the termination to a termination for convenience. In the event the Owner terminates for cause and it is determined that the Owner did not have sufficient cause for termination, such termination shall be deemed at the Owner's convenience under this Section. Termination for convenience shall not impair the Owner's other rights, including its rights and remedies for any breach of this Contract. In no event shall Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Contract by the Owner, with or without cause.

§ 14.5 TERMINATION AND SUSPENSION BY THE OWNER

§ 14.5.1 In the event the Owner terminates the Contract in part under Section 14.2 or 14.4 or suspends the Contract in part under Section 14.3, the Contractor shall cooperate with the Owner and all other persons and entities performing work or services on the Project as necessary and required to facilitate the efficient and proper performance and completion of (1) the overall Project, if the Owner completes the entire Project, or (2) the portion of the Project the Owner completes, if the Owner completes less than the entire Project. In the event of a termination, the Owner expressly reserves the right to recover damages arising out of or related to Contractor's performance of the Contract, regardless of whether (a) such performance occurred before or after the effective date of termination or (b) the Owner provided Contractor with the opportunity to cure. Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 Stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
- .3 Procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 Assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, in which case the Owner shall have the right, in its discretion, to accept such assignments or any of them, and settle or pay any or all claims arising out of the termination of such orders and subcontracts;

- .5 With the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 Transfer title and deliver to the entity or entities designated by the Owner the fabricated or un-fabricated parts. Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 Use its best efforts to sell any property of the types referred to in Section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 Take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 Continue performance only to the extent not terminated.

§ 14.5.2 The Contractor shall, from the effective Date of Termination until the expiration of three (3) years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work.

§ 14.5.3 In arriving at any amount due the Contractor after termination, in addition to any other permitted deductions, the following deductions shall be made:

- .1 All un-liquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;
- .2 Any claim pursued under the Contract which the Owner may have against the Contractor, including without limitation liquidated damages;
- .3 An amount necessary to protect the Owner against outstanding or potential liens or claims;
- .4 The agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of section 14.5.1.7, and not otherwise recovered by or credited to the Owner.

§ 14.5.4 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a claim for equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim by the Contractor for an equitable adjustment under this section must be asserted within thirty days from the effective date of the partial termination or it shall be deemed barred.

§ 14.5.5 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under the Contract Documents.

§ 14.5.6 The Owner may have costs reimbursable under this Article 14 audited and certified by accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.7 To the fullest extent allowed by law, the damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

§ 14.5.8 A default by the Contractor under this Contract shall, at the election of the Owner, constitute a default under any other contract between Contractor (or a Contractor affiliate) and the Owner ("Other Construction Contract"). A default by Contractor or such Contractor affiliate under any Other Construction Contract shall, at the election of the Owner, also constitute a default under this Contract. In such event, Owner, at its sole election, may (i) as to default under the Other Construction Contract, terminate or excise its other rights and remedies under this Contract, as if such default under the Other Construction Contract is also a default of this Contract, and/or (ii) as to default under this Contract, terminate or excise its other rights and remedies under the Other Construction Contract, as if such default under this Contract is also a default of the Other Construction Contract.

ARTICLE 15 CLAIMS AND DISPUTES

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§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and 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 15.1.2.

§ 15.1.2 Claims

Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement. Contractor waives all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Contractor shall be initiated by written notice to the other party. Unless a different period for assertion of particular Claims is specifically identified in this Agreement, Contractor must give written notice of any Claim to the Owner not later than seven (7) days after occurrence of the event giving rise to the Claim or Contractor first becomes aware of the Claim, whichever is sooner, or the Claim shall be deemed forever time barred and waived. Contractor's notice shall provide sufficient detail to enable the Owner to investigate the matter, and shall include a clear description of the Claim, the proposed change in the Contract Sum and/or Contract Time of the Claim, and data supporting the Claim. Failure to properly submit the notice of Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and Subcontractors of any tier) is entitled. Prior to the initiation of a dispute resolution procedure, the Owner or its representatives shall have the right to audit and copy any Subcontractor or supplier of any tier whose claim is part of or included in the Claim. All Claims shall be addressed to:

Purchasing Manager
Beaverton School District #48J
16550 SW Merlo Road
Beaverton, OR 97003
Telephone: (503) 356-4555

In addition, a copy of the Claim notice shall be sent concurrently to the Owner's Project Manager and the Owner's Administrator for Facilities Development at the above address. All unresolved Contractor Claims shall be deemed waived and released by Contractor unless Contractor has strictly complied with the time limits of the Contract Documents.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents. The Architect will prepare Amendments, Change Orders and issue Certificates for Payment in accordance with the decisions of the Owner.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Notice under Section 15.1.3 shall contain sufficient detail and substantiating data to permit evaluation of the Claim by the Owner. No such Claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4, provided written notice is given as soon as possible after addressing the emergency.

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time, and a schedule analysis based upon the approved Contractor's construction schedule, showing the impact of the cause or event on the critical path of the approved Contractor's construction schedule. No Claim under this Section 15.1.6 shall be valid unless so made. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the ~~scheduled construction~~ critical path for the scheduled construction in a manner that could not be avoided by rescheduling and that either the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred or the adverse effect on the scheduled construction would have occurred whether or not the Work was on schedule, or by implementing measures to protect against the weather so that the Work could proceed. No claim for additional time will be granted where the scheduled construction adversely affected was not on the critical path or was within the schedule float or contingency (or would have been in float or contingency had Contractor appropriately rescheduled Work on account of weather conditions), or could be avoided by Contractor through temporary weather protection measures. Claims for additional time will not be granted where the delays for which the Contractor is responsible result in moving Work into an adverse weather season. The Contractor shall provide copies of weather reports to the Owner and the Architect, produced from 'NOAA' - National Oceanic & Atmospheric Administration' for dates affected, as well as, a ten (10) year historical average report for same period of time. In addition, the Contractor must submit a revised construction schedule to the Owner and the Architect showing critical path activities affected by the delay. A rain, snow, ice, windstorm, high water, or other natural phenomenon for the specific locality of the Work (a "Weather Event"), which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that only a Weather Event exceeding one-hundred twenty-five percent (125%) of the weekly, 10-year historical average for the general locality of the Work shall be considered abnormal for purposes of this Section 15.1.6.2. The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Project site shall be considered the official agency of record for weather information. Approved time extensions for abnormal weather conditions shall be deemed excusable and non-compensable.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner. In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim. If a claim, dispute or other matter in question relates to or is the subject of a bond, the party asserting such matter may proceed in accordance with applicable Oregon law to comply with the bond notice or filing deadlines prior to resolution of the matter by the Owner. Contractor shall make its employees and principals, as well as its work and project records, available to the Owner upon the Owner's request, in the event that there is any dispute concerning the compliance of the Work with the Agreement or the Contract Documents. The availability of such personnel and documentation shall be provided without the necessity of a subpoena, request for production or similar legal process. In the event that the Owner is required to utilize some form of legal process to obtain such ability, the Owner shall be entitled to recover its reasonable attorney fees and the costs expended in obtaining access to such personnel and documentation, regardless of whether the Owner is the prevailing party in connection with any later dispute resolution, mediation, arbitration, or litigation regarding such matters.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

~~§ 15.2.7~~ In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

~~§ 15.2.8~~ If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, ~~shall~~ shall, at the election of the Owner, be subject to mediation as a condition precedent to binding dispute resolution. If the Owner has given written notice to Contractor requiring mediation of the claim, Contractor may not commence dispute resolution proceedings against the Owner until the mediation is concluded, except as is necessary to avoid a time bar from commencement of dispute resolution proceedings under this Contract or applicable law the Owner may commence binding dispute resolution at any time.

~~§ 15.3.2~~ ~~The~~ At the Owner's election, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. ~~Agreement, or the Arbitration Service of Portland in accordance with its applicable Mediation Procedures in effect on the date of the Agreement as selected by the Owner ("Arbitration Service").~~ A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending attempted 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 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 15.3.3~~ Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

~~§ 15.3.4~~ ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the ~~Agreement,~~ Agreement (otherwise, litigation shall be the means of binding dispute resolution), any Claim subject to, but not resolved by, mediation (if the Owner elected to mediate) shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the ~~American Arbitration Association in accordance with its Construction Industry Arbitration Rules~~ Arbitration Service in accordance with the applicable Arbitration Rules of the Arbitration Service in effect on the date of the Agreement. ~~The Arbitration~~ There shall only be one arbitrator regardless of the amount in dispute. The arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A 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 party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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~~§ 15.4.1.2~~ In addition to the other time limits and requirements for notification of and assertion of Claims by the Contractor under the Agreement or at law, any arbitration or other legal proceeding on a Contractor Claim must be

initiated by Contractor within the earlier of (a) one hundred twenty (120) days after Substantial Completion as designated in writing by the Owner or (b) sixty (60) days after Final Acceptance, or the Claim will be considered waived and time-barred. This requirement cannot be waived except by an explicit written waiver signed by the Owner. The pendency of mediation shall toll these deadlines unless and until the Owner terminates mediation.

§ 15.4.2 ~~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.~~

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§ 15.4.4.1 ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party Arbitration Service or other applicable arbitration rules, Owner (and with the Owner's prior written consent, the Contractor) may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a 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). In addition, at the Owner's election, the Contractor agrees to joinder in any arbitration or litigation proceeding in which the Owner is a party with third parties in which the Owner or such third party alleges indemnification or contribution from the Contractor, any of its Subcontractors of any tier, any one directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors of any tier will, in the subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such subcontractor(s).~~

§ 15.4.4.2 ~~Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party Arbitration Service or other applicable arbitration rules, the Owner (and with Owner's prior written consent, the Contractor) 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 any claim, dispute or other matter in question not described in the written consent.~~

§ 15.4.4.3 ~~The Owner and Contractor grant Contractor grants to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement; the Contractor under this Agreement; provided such joinder or consolidation much also be consented to in writing by the Owner.~~

§ 15.4.4.4 ~~Contractor's agreements with its Subcontractors of any tier and material suppliers shall require such Subcontractors and material suppliers, upon demand by Owner, to participate in the mediation and (if applicable) arbitration herein, in accordance with the procedures set forth in this Agreement, and to be bound thereby.~~

§ 15.4.4.5 ~~Notwithstanding the foregoing, the Owner does not agree to joinder in any separate proceeding in which Contractor is a party, without the Owner's written consent. Upon demand by the Owner, claims between the Owner and Contractor, the Owner and the Architect, Contractor and the Architect or Contractor and its subcontractors and suppliers shall be submitted in a single arbitration, and Contractor agrees to joinder in such arbitration.~~

§ 15.4.4.6 ~~If another involved party will not consent to arbitration or cannot be joined, the Owner, in its sole discretion, has the option to elect consolidated litigation in court to resolve the dispute. The venue for such litigation shall be in the place where the Project is located, and the outcome shall be decided by the judge only (bench trial). Both parties expressly waive their right to a jury trial. If another involved party will not consent to a bench trial, the Owner, in its sole discretion, has the option to elect a consolidated jury trial. The agreements contained in this Section 15.4 shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Any award rendered by an arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The arbitrator is specifically empowered to award attorneys' fees and costs to the extent allowed by contract or law. It is understood that the purpose of this Section 15.4.4.5 is to allow the Owner to determine the best means of achieving a single consolidated proceeding that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (1) a consolidated arbitration of all significant parties, if possible; or (2) alternatively, a consolidated bench trial of all significant parties, if possible; or (3) alternatively, and as a last resort, a consolidated jury trial of all significant parties.~~

§ 15.4.4.7 With respect to any claim for allegedly defective work or warranty item asserted against the Owner by any occupant or user of any portion of the Project, or their assignee, successor or subrogee, through court action or arbitration ("Defect Claims"), the Owner shall have the right to join the Contractor in the proceeding. In the event a proceeding under this Agreement is pending relating to a matter of common fact in the Defect Claim proceeding, the Owner may stay such proceeding under this Agreement shall be stayed pending resolution of the Defect Claim proceeding to the extent allowed by law.

§ 15.5 DISPUTE EXPENSES

§ 15.5.1 In the event of any dispute relating to this Agreement the Work or the Project, whether such dispute is resolved through arbitration or through judicial process, the prevailing party shall recover from the other party, the prevailing party's "Dispute Expenses" incurred in arbitration, at trial or on appeal or review from a decision or determination in arbitration or following trial, including without limitation any proceeding under the US Bankruptcy Code. For purposes of this Agreement, the term "Dispute Expenses" shall include a recovery for the following items of expense: reasonable attorney and paralegal fees, reasonable fees for expert witnesses and consultants, costs for providing discovery materials, costs for creation of mediation or trial materials (including, without limitation, photographs, exhibits, analyses, diagrams, or plans) and a reasonable reimbursement for employed staff time incurred with respect to handling any such claim to completion. All the foregoing items shall be in addition to any statutory award of costs and fees provided under Oregon law. The foregoing provisions recognize the significant expenditure of public funds by the Owner under this Agreement and the necessity of the Owner to recoup expenses associated with recovering public money for breaches of this Agreement, for non-complying Work or for warranty or contractual claims.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:04:34 on 07/06/2026 under Order No. 20250151053 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT B

FORMS OF WAIVERS AND RELEASES

CONDITIONAL RELEASE ON PROGRESS PAYMENT	UNCONDITIONAL RELEASE ON PROGRESS PAYMENT
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The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from _____ in the sum of \$_____ for labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims through _____ (Date) only and does not cover unpaid retention or items furnished after that date.

Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)

(Title) _____

Company Name: _____

Dated this ___ day of _____, 20__

Project Name: _____

Project Address: _____

The undersigned does hereby acknowledge that the undersigned has been paid and has received a progress payment in the sum of \$_____ for labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and does hereby release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims through _____ (Date) only and does not cover unpaid retention or items furnished after that date.

NOTICE: THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)

(Title) _____

Company Name: _____

Dated this ___ day of _____, 20__

Project Name: _____

Project Address: _____

CONDITIONAL RELEASE ON FINAL PAYMENT	UNCONDITIONAL RELEASE ON FINAL PAYMENT
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The undersigned does hereby acknowledge that upon receipt by the undersigned of a final payment check from _____ in the sum of \$ _____ (representing the agreed full and final payment) for all labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full and final payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims, including but not limited to all retention, through Final Completion of the Work and for the entire project.

Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)
(Title) _____
Company Name: _____
Dated this ___ day of _____, 20__
Project Name: _____
Project Address: _____

The undersigned does hereby acknowledge that the undersigned has been paid and has received final payment in the sum of \$ _____ (representing the agreed full and final payment) for all labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and does hereby release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full and final payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims, including but not limited to all retention, through Final Completion of the Work and for the entire project.

NOTICE: THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

SIGNATURE:

(Authorized Corporate Officer/Partner/Owner)
(Title) _____
Company Name: _____
Dated this ___ day of _____, 20__
Project Name: _____
Project Address: _____

EXHIBIT C

PROVISIONS FROM THE OREGON PUBLIC CONTRACTING CODE AND PUBLIC CONTRACTING RULES

1. GENERAL

1.1 INCORPORATION OF ALL CONTRACT PROVISIONS. The Contract hereby incorporates all contract provisions that are required to be incorporated into contracts with public entities pursuant to (a) the Public Contracting Code (ORS Chapters 279A, 279B and 279C), (b) the Attorney General Model Public Contracting Rules (which are referred to in this Exhibit as the "Rules") or (c) other applicable law. The provisions incorporated into the Contract under the preceding sentence include, without limitation, any provisions or amendments to provisions that become required after the Contract is executed.

1.2 DISCLAIMER REGARDING ANY UNLISTED CONTRACT PROVISIONS. The provisions listed in this Exhibit are not necessarily an exhaustive list of provisions that are required under the Public Contracting Code, the Rules or other applicable law, and the fact that this Exhibit does not list a provision that is required by the Public Contracting Code, the Rules or other applicable law will not (i) prevent or otherwise diminish the incorporation of that unlisted provision into the Contract or (ii) negate or otherwise diminish Contractor's obligation to comply with applicable laws.

2. PAYMENT.

2.1 PROMPT PAYMENT. Contractor shall promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, payments (1) to all persons, as due, supplying to Contractor labor, equipment, services or material for the performance of the Work, (2) of all contributions or amounts due the Industrial Accident Fund from Contractor or the Subcontractors incurred in the performance of the Work, and (3) to the Department of Revenue of all sums withheld from employees under ORS 316.167.

2.2 CONTRACTOR'S OBLIGATIONS TO FIRST-TIER SUBCONTRACTOR. Contractor shall pay each first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract. Contractor shall provide a first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor. Contractor shall use this same form and regular administrative procedures for processing payments during the entire term of the Subcontract. Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

2.3 PROMPT PAYMENT POLICY. It is the policy of the State of Oregon that all payments due on a public improvement contract and owed by a contracting agency shall be paid promptly. No public contracting agency is exempt from the provisions of ORS 279C.570.

2.4 CONTRACTOR'S FAILURE TO MAKE PROMPT PAYMENT. If the Contractor has failed, neglected or refused to pay promptly a person's claim for labor, equipment, services or materials that the person provides to the Contractor or a Subcontractor in connection with the Project as such claim becomes due, the Owner may pay such claim to the person that provides the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the Contractor under the Contract. Owner reserves the right to make payments directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Owner's request, Contractor

shall furnish to Owner the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons.

2.5 CONTRACTOR'S AND FIRST-TIER SUBCONTRACTOR'S FAILURE TO MAKE PAYMENT AFTER PAYMENT FROM OWNER; INTEREST PENALTY. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor, equipment, services or materials in connection the Contract within thirty (30) days after receiving payment from the Owner or the Contractor, the Contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period that payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

2.6 CONSTRUCTION CONTRACTORS BOARD COMPLAINT. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person that provides labor, equipment, services or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

2.7 CONTINUING LIABILITY OF CONTRACTOR AND SURETY. Payment by the Owner of a claim in the manner authorized in this Section 2 does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

2.8 RETAINAGE. Retainage shall be subject to the applicable requirements of ORS 279C.550 through 279C.570C.570. The Owner may elect to make early release of some or any portion of the retainage as allowed therein. The Contractor may withhold payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of the retainage and interest due a Subcontractor.

3. PUBLIC WORKS PROJECT.

3.1 PREVAILING RATE OF WAGE. The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Contractor and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract. For CM/GC contracts, the "prevailing rate of wage" shall mean the prevailing wage rate in effect at the time the CM/GC contract "becomes a public works contract" as defined in OAR 839-025-0020(6), which prevailing rates shall be incorporated by attachment or reference in Guaranteed Maximum Price Amendment or, if applicable, the Early Work Amendment to the CM/GC contract. Pursuant to ORS 279C.840, the Contractor shall keep the prevailing wage rate for the Project posted in a conspicuous and accessible place in or about the Project. Copies of these wage rates are available from the Commissioner of the Bureau of Labor and Industries without charge. The Contractor shall also post a description of provided health and welfare and/or pension plans in the same place. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information. The Contractor shall, and shall cause all subcontractors at all tiers to, timely comply with the requirements of ORS 279C.845. Contractor shall indemnify, defend, protect and hold harmless the Owner from any violation of or noncompliance with the prevailing wage laws (ORS 279C.800 et seq) by Contractor or any subcontractor at any tier.

3.2 PUBLIC WORKS BOND. Before starting the Work, Contractor and every Subcontractor shall file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Contractor or Subcontractor has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Before permitting a Subcontractor to start the Work, Contractor shall verify that the Subcontractor has filed a public works bond as required by ORS 279C.836, has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS

279C.836(4) or (9). Contractor shall also ensure that each subcontract entered into by a Subcontractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 3.2, such that all subcontracts at all tiers include a requirement to comply with this Section 3.2.

4. **COMPLIANCE WITH LAWS/TAX LAWS.** Contractor shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, rules, orders and rulings as well as all applicable construction industry standards, including without limitation those governing labor, materials, equipment, construction procedures, safety, health, sanitation and the environment. Contractor agrees to indemnify, hold harmless, reimburse, and defend Owner from and against any penalties or liabilities arising out of violations of such obligations by Contractor or its Subcontractors at any tier. Contractor must also comply with all Oregon tax laws and shall submit a certification of such compliance in accordance with ORS 305.385(6).

5. **CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.**

5.1 **EMPLOYEE DRUG TESTING PROGRAM.** The Contractor shall demonstrate to the Owner, in a manner acceptable to the Owner, that the Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.2 **WORK DAY/WORK WEEK.** No person shall be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

5.3 **NOTICE OF REQUIRED WORK HOURS.** The Contractor and each Subcontractor must give notice to its employees in writing, either at the time of hire or before commencement of Work, or by posting a notice in a location frequented by its employees, of the number of hours per day and days per week that the employees may be required to work.

5.4 **CLAIMS FOR OVERTIME.** Any worker employed by the Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 days from the completion of the Contract, provided the Contractor has: (1) caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section 5.4 to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to any or all workers employed on the Work; and (2) maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

5.5 **WORKERS' COMPENSATION.** All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

5.6 **PROMPT PAYMENT FOR MEDICAL SERVICES.** The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.7 **PROMPT PAYMENT BY SUBCONTRACTORS; INTEREST PENALTY.** Contractor shall include in each subcontract entered into by the Contractor (including contracts with material suppliers) the following:

(a) A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract.

(b) A clause that requires the Contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the Contractor.

(c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the Owner, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this Section. The Contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier subcontractor did not make payment when payment was due is that the Contractor or first-tier subcontractor did not receive payment from the Owner or Contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints).

(e) a clause requiring the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

5.8 LICENSING WITH CONSTRUCTION CONTRACTORS BOARD AND LANDSCAPE CONTRACTORS BOARD. Before commencing the Work, Contractor shall ensure that the Subcontractors are duly registered with the Oregon State Construction Contractors Board (and the State Landscape Contractors Board, if applicable), and that no Subcontractor has been declared ineligible to work on a public contract.

5.9 FIRST-TIER SUBCONTRACTORS. the Contractor may only engage and substitute first tier subcontractors as permitted by ORS 279C.370, 279C.585, and 279C.590.

5.10 NO DISCRIMINATION. Pursuant to ORS 279A.100 to ORS 279A.110, the Contractor shall not discriminate against minority, women, or emerging small business enterprises in the awarding of subcontracts. The Contractor covenants and agrees not to discriminate against any qualified employee or qualified applicant for employment because of race, creed, color, sex or national origin, and that similar provisions shall also be included by said party in any subcontract. The Contractor shall comply with the prohibition set forth in ORS 652.220 (Prohibition of discriminatory wage rates based on sex). Compliance is a material element of the Contract and a failure to comply is a breach that entitles the Owner to terminate the contract for cause.

5.11 NO PROHIBITION. The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

6. MATERIAL SALVAGE. To the extent the scope of the Work for the Contract requires demolition, Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective.

7. COMPOSTING. To the extent the scope of the Work for the Contract requires lawn and landscape maintenance, the Contractor must compost or mulch yard waste material at an approved site, if feasible and cost-effective.

8. RECYCLED MATERIALS. The Contractor, in performance of the Work, shall give preference to the procurement of goods manufactured from recycled materials.

9. ENVIRONMENTAL AND NATURAL RESOURCES LAWS. Pursuant to ORS 279C.525, the following is a list of Federal, State, and Local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract. The following list may not include all such agencies that have enacted ordinances, rules or regulations relating to the environmental pollution and preservation of natural resources.

Federal Agencies:

Agriculture, Dept. of
Forest Service
Natural Resource Conservation Service
Defense, Dept. of
Army Corps of Engineers
Coast Guard
Environmental Protection Agency
Interior, Dept. of
U.S. Fish and Wildlife Service
Bureau of Land Management
Bureau of Indian Affairs
Bureau of Reclamation
Labor, Dept. of
Occupational Safety and Health Administration
Transportation, Dept. of
Federal Highway Administration

State Agencies:

Agriculture, Dept. of
Consumer and Business Services Dept.
Oregon Occupational Safety and Health Division
Environmental Quality, Dept. of
Fish and Wildlife, Dept. of
Forestry, Dept. of
Geology and Mineral Industries, Dept. of
Human Services, Dept. of
Land Conservation and Development, Dept. of
Natural Resources, Dept. of
State Fire Marshall
State Lands, Dept. of
Water Resources Department

Local Agencies:

City Councils
Circuit Courts
County Commissioners, Boards of
Fire Districts
Planning Commissions

10. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1867 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported as required by law.

11. RETAINAGE. The withholding of retainage by the Contractor or Subcontractor shall be in accordance with ORS 279C.550 to ORS 279C.570.

12. LIENS. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

13. NONRESIDENT. If the Contractor is a "nonresident bidder" as defined in ORS 279A.120, the Contractor shall comply with the reporting requirements of that statute.

14. NOTICE OF CLAIM ON BOND. The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Contractor or Subcontractor at any place the Contractor or Subcontractor maintains an office or conducts business or at the residence of the Contractor or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

To (here insert the name of the Contractor or Subcontractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Contractor or Subcontractor).

_____ (here to be signed)

[15. ADD ANY NECESSARY CONTRACTOR COMPLIANCE/REPORTING PROVISIONS FOR AGENCY'S WMBE GOALS PROGRAM UNDER ORS 200.090]

EXHIBIT E

INSURANCE REQUIREMENTS

ARTICLE 1 – OWNER CONTROLLED INSURANCE PROGRAM (“OCIP”)

1.1 Overview. Owner has arranged with Marsh USA, Inc., (“OCIP Administrator”) for the Project identified below to be insured under its Owner Controlled Insurance Program (“OCIP”). The OCIP is more fully described in the OCIP Manual (the “Insurance Manual”). The Insurance Manual has been provided to Construction Manager and is available from the OCIP Administrator. The OCIP will provide to the Enrolled Parties, as defined below, commercial general liability insurance and excess liability insurance as summarily described below (“OCIP Coverages”). Owner reserves the right, in its sole discretion, to include or exclude any Construction Manager, Subcontractor, or Sub-subcontractor from the OCIP. Unless otherwise defined herein, terms found in this Exhibit E shall be as defined by the AIA 101 and/or AIA 201 Agreement.

1.2 Enrolled Parties and Their Insurance Obligations. OCIP Coverages shall cover the following “Enrolled Parties”: (a) Owner; (b) the eligible Construction Manager, Subcontractors, and Sub-subcontractors who enroll in the OCIP; and (c) such other persons or entities as the Owner, in its sole discretion, may designate and who enroll in the OCIP. Enrolled Parties shall obtain and maintain, and shall require each of their Subcontractors and Sub-subcontractors to obtain and maintain the insurance coverage specified in **Article 2** below and in the Insurance Manual. It is mandatory for the eligible Construction Manager, Subcontractors, and Sub-subcontractors to enroll in the OCIP and comply with all administrative, insurance and other requirements specified in this Exhibit, the Insurance Manual, or elsewhere in the Contract Documents.

1.3 Excluded Parties and Their Insurance Obligations. OCIP Coverages do not cover the following “Excluded Parties”, who shall obtain and maintain the insurance coverage specified in **Article 2** below and in the Insurance Manual for both onsite and offsite work:

(a) Those performing asbestos abatement, hazardous materials remediation, removal, abatement, and/or transportation and their consultants;

(b) Architects, surveyors, engineers, soil testing engineers, and those providing other consulting services;

(c) Vendors, suppliers, fabricators, material dealers, truckers, haulers, drivers, and others who merely transport, pickup, deliver or carry materials, personnel, parts, or equipment or any other items or persons to or from the Project site;

(d) Construction Managers and their Subcontractors and Sub-subcontractors who do not perform any Work on the Project site during the term of the Contract;

(e) Those performing emergency work on an immediate, short-term basis; and

(f) Any individuals or entities not specifically identified in this Article or excluded from the OCIP by Owner, in its sole discretion, even if otherwise eligible.

1.4 Definitions. Capitalized terms not otherwise defined herein shall have the meanings set forth in the General Conditions of the Contract for Construction.

1.5 OCIP Insurance Policies Establish OCIP Coverages. The OCIP Coverages and exclusions summarized in this Article and other Contract Documents and are set forth in full in their respective insurance policy forms. The summary descriptions of the OCIP Coverages in this Article or in the Insurance Manual are not intended to be complete or alter or amend any provision of the actual OCIP insurance policies. In the event any provision of this Exhibit, the Insurance Manual, or the Contract Documents conflicts with the any of the OCIP insurance policies, the OCIP insurance policies shall govern. Enrolled Parties shall be deemed to have reviewed and analyzed the OCIP binders, specimen policies and endorsements, including exclusions from coverage, which are available for inspection at the OCIP Administrator's office.

1.6 Summary of OCIP Coverages. OCIP Coverages apply only to those operations of each Enrolled Party performed at the Project site in connection with the Work and only to Enrolled Parties that are eligible for the OCIP, even if erroneously enrolled in the OCIP. The OCIP Coverages will **not** cover Work off the Project job-site. The OCIP shall provide only the following insurance to eligible and Enrolled Parties:

(1) General Liability

See the Insurance Manual for summary of coverages.

1.7 Owner's OCIP Obligations and Rights.

1.7.1 Premiums. Owner shall pay the costs of premiums for the OCIP Coverages. Owner will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, refunds, audits, or otherwise. Construction Manager, its Subcontractors and Sub-subcontractors shall and hereby do assign to Owner the right to receive all such adjustments.

1.7.2 Other Insurance and Construction Manager Obligations. Owner assumes no obligation to provide insurance other than as specified in this Exhibit and the OCIP insurance policies. Owner's furnishing of OCIP Coverages shall in no way relieve or limit, or be construed to relieve or limit, Construction Manager or any of its Subcontractors or Sub-subcontractors of any responsibility, liability, or obligation imposed by the Contract Documents, the OCIP insurance policies, or by law including, without limitation, any indemnification obligations due Owner.

1.7.3 Owner's Election to Substitute, Modify or Discontinue OCIP

Coverages. Owner may, for any reason, modify the OCIP Coverages, discontinue the OCIP Coverages, or any portion thereof, or request Construction Manager or any of its Subcontractors or Sub-subcontractors to withdraw from the OCIP. Upon such notice, Construction Manager and/or one or more of its Subcontractors and Sub-subcontractors, as specified by Owner in such notice, shall obtain and thereafter maintain during the performance of the Work, and any extended periods specified in such notice, all (or a portion thereof as specified by Owner) of the OCIP Coverages upon thirty (30) calendar days' written notice. Owner shall compensate Construction Manager for the cost of such insurance. All insurance secured by the Construction Manager, Subcontractors or Sub-subcontractors pursuant to this Exhibit shall be in policies subject to the prior written approval of the Owner as to form, content, limits of liability, cost and issuing company. Owner reserves the right at its option, without obligation to do so, to furnish other insurance coverage of various types and limits provided that such coverage is not less than that specified in the Contract Documents.

1.74 Adjustment of OCIP Claims. The Construction Manager, Subcontractors, Sub-subcontractors shall assist the Owner, its agents and the OCIP Administrator and provide the utmost cooperation in the adjustment of claims arising out of the operations conducted under, or in connection with, the Project and shall cooperate with each insurance company named on the OCIP insurance policies ("OCIP Insurer") in claims and demands that arise out of the Work and that the OCIP Insurers are called upon to adjust or resist.

1.75 Owner's Right to Audit. Construction Manager agrees that the Owner, its officers, agents, representatives, the OCIP Administrator and/or any OCIP Insurer may audit the records, including but not limited to payroll records, books and records, insurance coverages, policies, insurance cost information of the Construction Manager, Subcontractors and Sub-subcontractors to confirm their accuracy. In the event and audit reveals discrepancies in the information provided by Construction Manager, Subcontractors and Sub-subcontractors to Owner or the OCIP Administrator, which entitle Owner to make deductions as described herein, Owner shall be entitled to deduct audit costs.

1.76 Deductions from and Withholding of Payments.

- (a) Owner may deduct from any payment owing to Construction Manager, the Costs of OCIP Coverages, as defined below, if such costs are included in a request for payment. In the event an audit of the records of Construction Manager, its Subcontractors and Sub-Subcontractors reveals a discrepancy in the insurance, payroll, safety, or any other information required by the Contract Documents to be provided by Construction Manager to Owner, or to the OCIP Administrator, or reveals the inclusion of Costs of OCIP Coverage in any payment for the Work, Owner shall have the right to full deduction from the payment request and the Contract Sum/GMP of all such Costs of OCIP Coverages and all audit costs. Audit costs shall include, but not be limited to, the fees of the OCIP Administrator, and the fees of attorneys and accountants conducting the

audit and review. Owner may adjust the costs of OCIP Coverages based on inaccurate assumptions relating to, or calculations of, the initial calculation, payroll reports, manhours, material misstatements by Construction Manager or its Subcontractors, or from information available to Owner or the OCIP Administrator which justifies the taking of additional deductions.

- (b) Owner shall deduct from any payment request and the Contract Sum/GMP the Liability SIR Deduction Obligation defined in Subparagraph 1.8.3 below and the Builder's Risk SIR Deduction Obligation defined in Subparagraph 4.2 below.
- (c) In the event the Construction Manager fails to deliver proof of coverage required by this Exhibit to be provided by Construction Manager, its Subcontractors and Sub-subcontractors, or such coverage is cancelled or substantially modified, Owner may procure the coverage required by this Exhibit and deduct the costs from any payment request and the Contract Sum/GMP.
- (d) Construction Manager is solely responsible for the recovery from its Subcontractors of any deductions from any payment requests and the Contract Sum/GMP attributable to Subcontractors and Sub-subcontractors.
- (e) If the Construction Manager or its Subcontractors or Sub-subcontractors fail to timely and properly comply with the provisions of this Exhibit or the Insurance Manual, Owner may withhold any payments due Construction Manager and its Subcontractors or Sub-subcontractors until such time as they have performed such requirements.

1.7.7 Other Remedies. Owner may deem the failure or refusal of the Construction Manager or its Subcontractors or Sub-subcontractors to timely and properly comply with the provisions of this Exhibit or the Insurance Manual a default of a material obligation of the Contract, and thereupon the Owner may proceed to exercise any right or remedy provided for under the Contract Documents or at law.

1.8 Construction Manager's OCIP Obligations and Warranties.

1.8.1 Construction Manager Representations and Warranties. Construction Manager, on behalf of itself, its Subcontractors and Sub-subcontractors, represents and warrants to Owner that:

- (a) All information they submit to Owner, the OCIP Administrator, or an OCIP Insurer shall be accurate and complete;
- (b) They have had the opportunity to read and analyze copies of the OCIP

binders and specimen policies and endorsements that are on file in the OCIP Administrator's office. Any reference or summary in the Contract, this Exhibit, the Insurance Manual, or elsewhere in any Contract Documents as to amount, nature, type or extent of OCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Construction Manager and its Subcontractors and Sub-subcontractors have not relied upon said references but solely upon their own independent review and analysis of the OCIP insurance policies in formulating any understanding and/or belief as to amount, nature, type or extent of any OCIP Coverages and/or its potential applicability to any potential claim or loss;

The Costs of OCIP Coverages, as herein defined, were not included in Construction Manager's, Subcontractor's or Sub-subcontractor's bid or proposal for the Work or the Contract Sum, and will not be included in any Change Order pricing proposal, Change Order, or any request for payment for the Work or extra work. The "Costs of OCIP Coverages", is defined as the amount of the Construction Manager's and its Subcontractor's and Sub-subcontractors reduction in insurance costs (including tax and mark-ups thereon) due to eligibility for OCIP Coverages as determined by the Owner using the Enrollment Forms and information available to Owner and/or the OCIP Administrator regarding the costs of similar coverages taking into account limits of liability coverages and rating of the insurer(s);

- (c) They acknowledge that Owner shall not pay or compensate Construction Manager or any Subcontractor or Sub-subcontractor in any manner, for Costs of OCIP Coverages.

1.82 Enrollment in and Administration of OCIP. Construction Manager shall:

- (a) Incorporate the terms of this Exhibit in all subcontract agreements and shall require its Subcontractors to incorporate the terms of this Exhibit in all Sub-subcontract agreements.
- (b) Accurately and fully complete and shall require all Subcontractors and Sub-subcontractors to accurately and fully complete the OCIP Enrollment Forms specified in the Insurance Manual (collectively "Enrollment Forms") located in the Insurance Manual and submit them to the OCIP Administrator at least two (2) weeks **prior** to commencement of the Work of each Subcontractor and Sub-Subcontractor.
- (c) Comply with all of the administrative, safety, insurance, and other requirements outlined in this Exhibit, the Insurance Manual, the OCIP insurance policies, or elsewhere in the Contract Documents.

- (d) Provide each of its Subcontractors and Sub-subcontractors with a copy of the Insurance Manual and assist Subcontractors and Sub-subcontractors with compliance with the provisions of the OCIP insurance policies, the Insurance Manual, this Exhibit and the Contract Documents. The failure of: (a) Owner to include the Insurance Manual in the bid documents; or (b) Construction Manager to provide each of its eligible Subcontractors or Sub-subcontractors with a copy of same, shall not relieve Construction Manager or any of its Subcontractors or Sub-subcontractors from any of the obligations contained therein.
- (e) Acknowledge and agrees that Owner shall use the completed Enrollment Forms and information available to Owner and the OCIP Administrator to calculate Construction Manager's and its Subcontractor's and Sub-subcontractors Costs of OCIP Coverages. Construction Manager agrees that Owner is entitled to and may deduct from any payments requests and the Contract Sum/GMP, the Costs of OCIP Coverage and other amounts as provided in Subparagraph 1.7.6 above.
- (f) Acknowledge, and shall require all of its Subcontractors and Sub-subcontractors to acknowledge in writing, that Owner and the OCIP Administrator are not agents, partners or guarantors of the OCIP Insurers and that Owner is not responsible for any claims or disputes between or among Construction Manager, its Subcontractors, Sub-subcontractors and any OCIP Insurer(s). Any type of insurance coverage or limits of liability in addition to the OCIP Coverages that Construction Manager or any Subcontractor or Sub-subcontractor requires for its or their own protection, or that is required by applicable laws or regulations, shall be Construction Manager's, its Subcontractor's, or Sub-subcontractor's sole responsibility and expense and shall not be billed or passed through to Owner.
- (g) Cooperate fully with the OCIP Administrator and the OCIP insurers, as applicable, in its or their administration of the OCIP.
- (h) Maintain or cause to be maintained sufficient records as may be necessary to audit its compliance, and that of Subcontractors and Sub-subcontractors, with the requirements of the OCIP.
- (i) Provide, within five (5) business days of Owner's or the OCIP Administrator's request, all records or information as requested of Construction Manager or its Subcontractors or Sub-subcontractors. Such information may include but not be limited to, payroll records, , declaration pages of coverages, , certificates of insurance, , experience modification rating ("EMR"), , safety records or history, OSHA citations, or as required by the Insurance Manual ("Insurance Enrollment and Administration Information").

- ⓐ Construction Manager, Subcontractor and Sub-subcontractors will complete and submit certified payroll reporting forms on a monthly basis. Failure to submit these forms will allow Owner to withhold progress payments.

1.83 Liability SIR Obligation. The OCIP Coverages are subject to self-insured retentions (“SIR”). Construction Managers, Subcontractors and each of its Sub-subcontractors shall pay to Owner a sum, up to a maximum of \$10,000, of each occurrence, including court costs, attorneys’ fees and costs of defense, for property damage, to the extent losses payable under the OCIP Coverages are attributable to the Work, acts or omissions of Construction Manager, Subcontractor, its Sub-subcontractors or any other entity or individual for whom they may be responsible (as determined by the OCIP Insurers) (“Liability SIR Obligation”). The Liability SIR Obligation shall remain uninsured by Construction Manager, Subcontractors and Sub-subcontractors and will not be covered by the OCIP Coverages. In accordance with Subparagraph 1.7.6 above, Owner has the right to deduct from any payment owing to the Construction Manager the Liability SIR Obligation.

1.84 Assignment of OCIP Refunds and Dividends. The Construction Manager, in consideration of the agreement of Owner to arrange for OCIP Coverages and pay premiums as provided by this Article for the Construction Manager, Subcontractors and Sub-subcontractors, and for other good and valuable consideration, hereby assigns to Owner all return premiums, premium refunds, dividends, and any monies due or to become due under the OCIP insurance policies. Construction Manager shall require all Subcontractors and Sub-subcontractors to assign to Owner all return premiums, premium refunds, dividends, and any monies due or to become due under the OCIP insurance policies.

1.8.6 No Work at the Site Prior to Enrollment in the OCIP. Under no circumstances shall any Construction Manager, Subcontractor or Sub-subcontractor eligible for coverage under the OCIP commence Work at the Project site without having submitted to the Owner completed and executed Enrollment Forms and without having an OCIP certificate of insurance issued in the name of such Construction Manager, Subcontractor or Sub-subcontractor by the OCIP Administrator. It is the sole responsibility of the Construction Manager to ensure that all eligible Subcontractors and Sub-subcontractors performing Work on the Project site are properly and timely enrolled in the OCIP. Construction Manager’s failure or refusal concerning its obligations in this regard may be deemed by the Owner to be a default of a material obligation.

1.9 OCIP Coverages; No Owner Warranty. The Owner does not warrant or represent that the OCIP Coverages constitute an insurance portfolio that adequately addresses the risks of the Construction Manager, Subcontractors or Sub-subcontractors. The Construction Manager, Subcontractors and Sub-subcontractors shall satisfy themselves as to the existence, extent and adequacy of the OCIP Coverages prior to

the commencement of Work under the Contract.

ARTICLE 2 – ADDITIONAL NON-OCIP COVERAGE REQUIRED FROM ENROLLED PARTIES AND EXCLUDED PARTIES

21 Conditions of Non-OCIP Coverage Provided by Enrolled Construction Manager, Subcontractors and Sub-subcontractors. The Construction Manager shall provide and maintain insurance, and shall require each Subcontractor and Sub-Subcontractor to provide and maintain insurance for the duration of the Contract through Final Completion, and any extended periods required, of the type and in the limits as set forth below in a form and from insurance companies reasonably acceptable to Owner (“Non-OCIP Coverage”). As to eligible and Enrolled Parties, the commercial general liability shall be only for off- site activities or operations not insured under the OCIP Coverages. All Non-OCIP Coverage may be provided in single policy or multiple policies (primary and excess), including an umbrella form. The insurance required by this Article shall conform to the requirements outlined in the Insurance Manual. Such insurance shall contain a defense of suits provision and shall provide the coverages set forth in this Article 2 under the conditions set forth in Article 3 below:

22 Summary of Non-OCIP Coverages. The Construction Manager shall obtain and maintain, and shall require each of its Subcontractors and Sub-subcontractors, to obtain and maintain, for the duration of the Contract until Final Completion of the Work or such extended periods set forth below, the insurance coverages described below, from insurance companies reasonably acceptable to Owner. The insurance limits may be provided through a combination of primary and excess policies, including an umbrella form of policy.

- (1) Workers’ Compensation Insurance.**
(All parties for work performed onsite and offsite) Statutory
Limits
- (2) Employer’s Liability Insurance.**
(All parties for work performed onsite and offsite)

Bodily Injury by Accident, Each Accident	\$1,000,000
Bodily Injury by Disease, Each Employee	\$1,000,000
Bodily Injury by Disease, Policy Limit	\$1,000,000
- (3) Commercial General Liability Insurance**
*(Enrolled parties for work performed offsite;
Non-Enrolled parties for work performed both onsite and offsite)*
Commercial General Liability insurance on an occurrence form insuring Personal Injury and Property Damage against the hazards of Premises and Operations (including explosions, collapse and underground damage), Products and Completed Operations, Independent Contractor and Construction Manager’s Liability (specifically covering the indemnity provisions set forth in the Contract) in a form providing coverage not

less than ISO CG 00 01 12 07, for all operations of the party required to furnish same, including hazards of operations, independent contractors, employees as additional insureds, completed operations, with contractual liability coverage (for contracts related to the Work), for personal injury, bodily injury and property damage of insurance provided on a primary/non-contributing basis with limits in an amount not less than:

Each Occurrence Limit Aggregate	\$1,000,000
Personal/Advertising Injury Aggregate	\$1,000,000
General Aggregate	\$2,000,000
Products and Completed Operations Aggregate	\$2,000,000

(4) Excess Liability Insurance (over Employer's Liability & CGL).
(All parties)

Combined Single Limit	\$5,000,000
General Annual Aggregate for all Enrolled Parties	\$5,000,000

This insurance is following form to the underlying CGL and Employer's Liability insurance.

(5) Automobile Liability Insurance *(All Parties)*. Standard Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles, trucks, and trailers of the Construction Manager, Subcontractors and Sub-subcontractors. Such insurance shall provide coverage not less than that of the Standard Comprehensive Automobile Liability policy with a combined single limit of not less than that \$1,000,000 for bodily injury/property damage.

(6) Drone / Aircraft / Watercraft Liability Insurance. If drone, aircraft or watercraft are used by the Construction Manager, Subcontractors, Sub-subcontractors or anyone else on their behalf, such Construction Manager, Subcontractor, Sub-subcontractor or other entity shall maintain or cause the operator of the drone, aircraft or watercraft to maintain public liability insurance insuring passengers and the general public against personal injury, bodily injury or property damage arising from drone, aircraft owned, used, operated or hired in connection with the work of the Construction Manager, Subcontractor, Sub-subcontractor or anyone else, in a form and with limits of liability and from an insuring entity reasonably satisfactory to Owner.

(7) Professional Liability Insurance. All parties and their consultants whose scope of Work requires performing or providing professional engineering or architectural design services including, but not limited to, mechanical, electrical and plumbing ("MEP"), heating, ventilation and air conditioning ("HVAC"), fire, life safety and smoke-

control systems, fire sprinkler system, curtain wall systems and swimming pools, shall maintain professional liability insurance. This insurance must be maintained in force and effect, from the day of commencement of such services, throughout the duration of the Contract, and thereafter for an additional ten (10) years following Final Completion of the Project, or for the applicable statutory period that may apply to actions for recovery of latent deficiencies in the planning, design or construction of improvements to real property, whichever is later. This professional liability insurance must cover the errors and omissions of Excluded Parties, their officers, directors, employees and any individual, partnership, joint venture or corporation whose errors and omissions Excluded Parties is legally liable for), with limits of liability of two million dollars (\$2,000,000) per claim/occurrence and yearly aggregate, including defense costs. The deductible/self-insured retention shall not exceed \$2,000,000 unless Owner approves in writing.

(8) Pollution Legal Liability Insurance with a limit of \$2,000,000 per occurrence is required for all excavation contractors and any other contractor whose operations involve the use of materials or supplies that are classified as a pollutant or hazardous material and the quantity on site would require reporting to the Environmental Protection Agency if released on or into the air, land or water. Such material may include, but not be limited to, gasoline, kerosene, diesel fuel, solvents and degreasers but excluding fuel contained in the fuel tank of a motorized highway vehicle.

23 Evidence of Non-OCIP Coverages. Concurrently with delivery of the executed Contract, and thereafter, prior to each Subcontractor's and Sub-subcontractor's mobilization on the Project site, and as a condition to payment of each Application for Payment, Construction Manager shall make available to the Owner, certificates of insurance and required endorsements evidencing the Non-OCIP Coverages required by this Article. Upon Owner's request, the Construction Manager, its Subcontractor and Sub-subcontractors shall furnish satisfactory proof of coverage of each type coverage required by this Article, including certified copies of the insurance policies or renewals or replacements, certificates, endorsements, and renewals, all in form and content acceptable to the Owner. Failure or refusal of the Construction Manager to so deliver proof of coverage may be deemed by the Owner to be a default of a material obligation of the Construction Manager under the Contract Documents, and thereupon the Owner may procure such coverage and deduct the costs from any payment request and the Contract Sum/GMP and may otherwise proceed to exercise any right or remedy provided for under the Contract Documents or at law. Failure of the Owner or OCIP Administrator to demand such certificate or other evidence of full compliance with these insurance requirements or failure of the owner to identify a deficiency from evidence provided will not be construed as a waiver of the Construction Manager's obligation to maintain such insurance. The acceptance by the Owner or OCIP Administrator of any certificate of insurance evidencing the required coverages and limits does not constitute approval or agreement by the Owner that the insurance requirements have

been met or that the insurance policies shown in the certificates of insurance are in compliance with the requirements of this Exhibit.

24 No Work at the Site Without Non-OCIP Coverages. Under no circumstances shall any Construction Manager, Subcontractor or Sub-subcontractor commence Work at the Project site without having all Non-OCIP Coverages issued and in effect in accordance with the provisions of this Article. Construction Manager's failure or refusal concerning Construction Manager's obligations in this regard may be deemed by the Owner to be a default of a material obligation.

25 Construction Manager's Breach. Construction Manager's failure to procure or maintain required insurance and to assure all its subcontractors maintain required insurance during the entire term of the Contract shall constitute a material breach of this Contract under which the Owner may immediately suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect the Owner's interests and pay any and all premiums in connection therewith, and withhold or recover all monies so paid from the Construction Manager.

ARTICLE 3 – CONDITIONS OF INSURANCE PROVIDED BY ENROLLED PARTIES AND EXCLUDED PARTIES

3.1 Primary and Non-Contributing Coverage Endorsement. The insurance required by Article 2 above (except for automobile liability) shall be endorsed to provide that its coverage is primary and non-contributing with other insurance, if any, carried by the Owner, OCIP Administrator and their respective officers, agents, employees and representatives.

3.2 Notice of Claims. Construction Manager, its Subcontractors and Sub-subcontractors shall provide notice of occurrences or claims under the policies provided under Article 2 to the Owner and OCIP Administrator.

3.3 Status of Insurance Carriers. All insurance required by Article 2 shall be written with insurance companies licensed and admitted to do business in California and having a rating of A- VII or higher from A.M. Best's Company or an equivalent rating group and limits equaling or exceeding this minimum, for the duration of the Contract through Final Completion and any extended periods as provided for herein.

3.4 Replacement Coverage by Owner. Should any policy of insurance required under Article 2 be canceled and the Construction Manager fails to immediately procure replacement insurance, Owner reserves the right to procure such insurance and to deduct the premium cost thereof and other costs incurred by the Owner in connection therewith from any sum then or thereafter due the Construction Manager under the Contract Documents.

3.5 Additional Insureds Endorsement Schedule. All insurance policies required by Article 2 above, shall be written or endorsed to state that the coverage to be provided to the additional insureds is primary and non-contributing with respect to any other

insurance available to the additional insureds. All insurance policies required by Article 2 above, except workers' compensation coverage, shall be endorsed to include the following, including their respective officers, directors, members, employees, representatives, and agents, as Additional Insureds:

- a. See attached Named Insureds;
- b. Such lenders as may be designed by Owner from time to time as their interests may appear of record; and
- c. Construction Manager.

The Additional Insured Endorsements for CGL coverage shall be equivalent to ISO form CG 2010 0704 in addition to CG 2037 0704.

In addition to these endorsements, insurers will issue an independent set of certificates directly to Owner for each Subcontractor and Sub-subcontractor identifying the types and limits of coverage provided by each insurer.

3.6 Subrogation and Waiver Endorsement (Construction Manager and Subcontractor Provided Insurance Coverages). As required by Paragraph 5.4 below, the Construction Manager shall require all policies of insurance required by Article 2 to be endorsed include clauses providing that each insurance underwriter shall waive all its rights of recovery, under subrogation or otherwise, against the Owner, its agents and their respective officers, members, employees and insurers.

3.7 Notices. All policies of insurance required of the Construction Manager, its Subcontractors and Sub-subcontractors shall be endorsed to provide that the insurance company shall notify the Owner, Construction Manager, and the additional Insureds, at least sixty (60) calendar days prior to the effective date of any cancellation, non-renewal or reduction of the limits of liability of such policies.

ARTICLE 4 – Builder's Risk Insurance

BUILDER'S RISK INSURANCE

4.0 Contractor shall provide and maintain Builders All Risks ("BR") Insurance upon the entire Project for the full initial Contract Sum (and thereafter adjusted pursuant to any Change Orders issued with respect to the Work), covering "all risk" on a replacement cost basis, issued on a manuscript form, including, but not limited to, coverage against fire, lightning, wind damage, hail, explosion, riot or civil commotion, aircraft and other vehicles, and collapse, with a sublimit for losses caused by certain perils, including water damage. Off-site storage and transit coverages are required to be included, subject to sublimits and subject to certain other limitations, and limits adequate for the specific project. Coverage will include all materials, supplies and equipment that are intended for specific installation as part of the Project while such materials, supplies

and equipment are located at the Project site, in transit and while temporarily located away from the Project site for the purpose of repair, adjustment or storage. The BR coverage shall exclude machinery, tools, equipment, protective fencing, scaffolding and personal property owned, rented, leased or used by the Contractor or its Subcontractors in performance of the Work and not intended for specific installation as part of the Project. Payments by the applicable insurer for all losses covered under the BR policy shall be adjusted by and payable to General Contractor and Owner, for the interest of all insured parties and, if required by Owner's lender(s), shall be subject to the interests of such lender(s), including the right(s) of such lender(s) to apply such payments in accordance with the terms of the applicable loan documents. Contractor shall have the authority to adjust and settle any loss with the insurer(s). Contractor will act as a fiduciary regarding any insurance settlement and receive owners authorization of disbursements prior to distribution of settlement proceeds.

4.1 Builder's Risk Deductible Obligation. Payment of the deductible on the Builders Risk policy claims is the responsibility of the Contractor and is not subject to reimbursement by the Owner. The Contractor promptly shall pay the deductible (or if the claim is less than the deductible, the amount of the claim) promptly and without offset or deduction. If the Contractor does not do so, the Owner may, in addition to other remedies, deduct and offset the amount of the deductible from the Contract Sum. Any deductible shall not exceed \$50,000 for each loss except to the extent that a builder's risk policy required higher deductibles for water damage, flood damage, and/or earthquake damages.

4.2 Owner Provided Additional Insurance.

4.2.1 Contractor's Pollution Liability Insurance. Owner shall maintain Contractor's Pollution Liability coverage for the Project.

ARTICLE 5 – MISCELLANEOUS

5.1 Construction Manager Responsibility to Repair Damaged Work. For the duration of the Contract, and through Final Completion, the Construction Manager shall have full and complete charge and care of and shall bear all risk of loss of, and injury or damage to, the Work or any portion thereof (including Owner-furnished supplies, material, equipment or other items to be utilized with or incorporated in the Work) to the fullest extent of the law. The Construction Manager shall rebuild, repair, restore and make good losses of, and injuries or damages to, the Work or any portion thereof (including Owner-furnished supplies, material, equipment or other items to be utilized with or incorporated in the Work) before Final Completion of the Work. Such rebuilding, repair or restoration shall be at the Construction Manager's sole cost and expense.

5.2 Safety. Construction Manager shall be solely responsible for safety on the Project. Construction Manager shall establish a safety program that, at a minimum, complies with all local, state and federal safety standards, and any safety standards

established by Owner for the Project, including construction safety standards.

5.3 No Waiver of Construction Manager's Obligations and Duty of Care.

Nothing contained in this Exhibit or the Insurance Manual shall be construed to relieve the Construction Manager or any of its Subcontractors herein shall relieve the Construction Manager and its Subcontractors of their respective obligations to exercise due care in the performance of their duties in connection with the Work and complete the Work in strict compliance with the Contract Documents.

5.4 Waiver of Subrogation.

To the fullest extent permitted by law, Construction Manager hereby waives, all rights of recovery under subrogation against Owner, its officers, agents, or employees, insurers and any other contractor, Subcontractor or Sub-subcontractor performing Work or rendering services on behalf of Owner in connection with the planning, development and construction of the Project. Construction Manager shall also require that all Construction Manager-maintained insurance coverage related to the Work include clauses providing that each insurer shall waive all of its rights of recovery by subrogation against Owner together with the same parties referenced immediately above in this Article. To the fullest extent permitted by law, Construction Manager shall require similar written express waivers and insurance clauses from each of its Subcontractors and Sub-subcontractors. A waiver of subrogation shall be effective as to any individual or entity even if such individual or entity (a) would otherwise have a duty of indemnification, contractual or otherwise, (b) did not pay the insurance premium directly or indirectly, and (c) whether or not such individual or entity has an insurable interest in the property damaged.

5.5 Continuing Insurance Obligations.

Coverage which meets or exceeds the minimum requirements will be maintained, purchased annually by Construction Manager, its Subcontractors, Sub-Subcontractors and consultants, and maintained in full force without interruption during the entire term of the Contract plus an additional 10 years for products and completed operations coverage following Final Completion and acceptance of the Project by the Owner. Construction Manager, its Subcontractors, Sub-Subcontractors and consultants shall provide Owner with such certificates, endorsements and, if requested, copies of the policies of insurance required herein, on an annual basis for ten (10) years after Final Completion of the Work. If such coverage becomes unavailable in the market or on a commercially reasonable basis, in which case the contractor will notify the Owner. If the Owner agrees such coverage is not commercially reasonably available, the Construction Manager may elect not to provide such coverage.

5.6 Additional Insurance.

Nothing contained in the Contract Documents or otherwise shall prohibit the Construction Manager, its Subcontractors, any Sub-subcontractor, Excluded Parties or any other entity providing or performing Work of the Project from purchasing any additional insurance or coverage which he, she or it believes is necessary to protect such person or entity from any liability arising under the Contract Documents, the Project or the Work. Any such additional insurance procured by such person or entity shall be at the procuring party's sole expense.

END OF DOCUMENT

**Addendum to Exhibit B:
List of Additional
Insureds**

The Owner and its officers, directors, agents and employees, and the successors in interest of the foregoing.



Beaverton School District

OCIP Manual

May 2024





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Section One

Introduction & Program Overview

Welcome to the Beaverton School District's Owner Controlled Insurance Program, [OCIP].

Beaverton School District has elected to purchase and administer an Owner Controlled Insurance Program ("OCIP") for the Beaverton School District Project.

The OCIP is a single insurance program that insures Beaverton School District, ENROLLED PARTIES, along with their eligible employees and other designated parties for work performed at the PROJECT SITE. Certain parties and their employees are excluded from the OCIP as identified in this Manual. ENROLLED and EXCLUDED contractors working at the PROJECT SITE are subject to respective provisions outlined in this manual.

Participation in the OCIP is mandatory for all Contractors and Subcontractors of any tier unless excluded as outlined in this Manual. **Enrollment is not automatic.** Eligible OCIP parties will enroll in the OCIP on a paperless basis using the Contractor Portal.

Sponsor will pay insurance premiums for the OCIP policies described in this Manual. Each ENROLLED PARTY, of any tier, is responsible to notify their company's insurers of their participation in the OCIP program.

This manual:

- Describes the general structure of the OCIP;
- Identifies the responsibilities of the various parties involved in the project;
- Provides a basic description of OCIP coverage;
- Describes audit and administrative procedures;
- Provides an Explanation of Terms (see Section 3); and
- Is updated as deemed necessary by SPONSOR

This manual does not:

- Provide coverage interpretations;
- Provide complete information about coverage; or

- Provide answers to specific claim questions

The OCIP policies apply only to work performed at the PROJECT SITE by ENROLLED PARTIES. ENROLLED PARTIES must provide their own insurance for off-site activities including, but not limited to, work at their permanent shops, fabrication or manufacturing of building products, materials or supplies. The insurance required of Enrolled Parties and Excluded Parties is set forth in full in the Insurance section of your Contract. Sponsor purchased insurance in no way relieves any party of their contractor responsibilities.

Refer questions concerning the OCIP POLICIES to the OCIP Manager or the OCIP Administrator, as indicated in the directory (Section 2).



Section Two

OCIP Directory

	Contact / e-mail	Telephone
OCIP ADMINISTRATION/INSURANCE BROKER		
Marsh USA Inc. 111 SW Columbia, Ste. 500, Portland, Oregon 97201		
• OCIP Dedicated Email	Beavertonsd.ocip@marsh.com	n/a
• OCIP Administrator	Jonna Duncan Jonna.duncan@marsh.com	Ph.: 503-248-1206
• OCIP Manager	Theresa Carey-Brill Theresa.carey-brill@marsh.com	Ph.: 503-248-1234 Cell: 971-266-9945
• OCIP GL Claims Advisor	Greg Phipps Gregory.phipps@marsh.com	Cell: 415-601-7238
• OCIP Broker/Advisor	Faye Song Faye.Song@marsh.com	Cell: 415-205-7784
• OCIP Client Executive	Catherine Brown Catherine.brown@marsh.com	Ph.: 503-248-6423 Cell: 503-209-0018
SPONSOR		
• Risk Manager	Leah McCarthy leah_mccarthy@beaverton.k12.or.us	Ph.: 503-356-4562 Cell: 503-503-0332
• Administrator of Facilities Development	Aaron Boyle Aaron_boyle@beaverton.k12.or.us	Ph.: 503-356-4364
• Loss Control Specialist	Kordell Perkin kordell_perkin@beaverton.k12.or.us	Ph.: 503-356-4561
GENERAL CONTRACTOR / CONSTRUCTION MANAGER		
Please refer to your Contract for appropriate contact information		
OCIP INSURANCE COMPANY		
• Claim Reporting	crumandforsternol@cfinc.com	Ph.: 800-690-5520
• Claim Advocate	Greg Phipps Gregory.phipps@marsh.com	Ph.: 415-601-7238



Section Three

Project Definitions

Enrolled Party	Contractors that have (i) been awarded work, (ii) submitted all necessary enrollment forms, (iii) met all enrollment requirements, and (iv) been issued a Certificate of Insurance by the OCIP Administrator. Subcontractors performing installation for suppliers are subject to enrollment. Temporary Labor & Employee leasing firms are considered a subcontractor and are required to enroll.
Excluded Party	<p>Types of contractors based on work performed.</p> <p>Commuting exposures to and from PROJECT SITE.</p> <ul style="list-style-type: none">• Certain emergency work performed on an immediate, short-term basis.• Any architect, engineer or surveyor, or those who perform professional services as their sole scope of work and their consultants.• Truckers, material dealers, vendors and suppliers (unless subcontracting installation work) whose operation(s) and/or employee(s) is/are engaged solely in the loading, hauling and/or unloading of materials, supplies and/or equipment to or from the PROJECT SITE.• Any person and/or organization whose sole function is to abate, remediate or dispose of lead, asbestos or other hazardous material.• Security Guards Services• Any other entity specifically excluded by Beaverton School District.
Contract Insurance Cost	Cost of insurance identified and removed from the contract and subsequent change orders. Lines of coverage are defined in Section 4
OCIP Insurer	All or any one of the carriers providing insurance coverage for the OCIP.

On-Site Activities	Construction activities at a Project Site.
Owner Controlled Insurance Program	Referred to as an OCIP. The insurance purchased by the SPONSOR and provide coverage to the SPONSOR and ENROLLED PARTIES. The OCIP includes procedures outline in this manual
Project Site	"Project Site" as defined by the OCIP Insurer Miscellaneous Other Maintenance Works The definition of project site can be extended to include additional areas, if applicable, and evidenced in writing by the OCIP Insurer(s).
Sponsor	Beaverton School District
Work	Operations as fully described in the Contract, performed at or emanating directly from a Project Site and the entire completed construction or the various separately identifiable parts required under the Contract.



Section Four

Overview of OCIP Insurance Program

This section provides a brief description of OCIP coverages, however is not a detailed analysis of the insurance policies. OCIP Policies govern coverage and are available upon request

The OCIP is intended to be in effect for the duration of the project and the completed operations term post construction. Enrollment of Contractors and subcontractors in the program may be for a shorter period based on specific scope of work. Property & Liability policy are available upon request and when approved by the SPONSOR.

Summary Description of OCIP Coverage

Limits are shared by SPONSOR and all ENROLLED PARTIES unless otherwise specified

OCIP Coverage is primary for all on-site operations of ENROLLED PARTIES. The OCIP will provide only the following insurance to Enrolled Parties:

A. Commercial General Liability Insurance

General Information	
Insurer	Crum & Forster Specialty Ins. Co.
Master Policy Term	1/1/2024-1/1/2029
Coverage Limits	
• General Aggregate Limit	\$2,000,000
• Personal & Advertising Injury Limit	\$2,000,000
• Each Occurrence Limit	\$2,000,000

• Products-Completed Operations Agg. Limit	\$2,000,000
Product/Completed Operations Extension	10 Years

B. Excess Liability Insurance

Excess Liability Insurance covering all insureds jointly, is provided by the insurers identified below, to bring the total maximum collective limits of liability (inclusive of primary limits stated above) to:

1st Excess Layer	
Insurer	Crum & Forster Specialty Ins. Co.
Master Policy Term	1/1/2024-1/1/2029
Coverage Limits	
• Annual Aggregate	\$5,000,000 xs Primary
• Products/Completion Operations Aggregate	\$5,000,000 xs Primary
• Each Occurrence	\$5,000,000 xs Primary
2nd Excess Layer	
Insurer	StarStone Specialty Ins. Co.
Master Policy Term	1/1/2024-1/1/2029
Coverage Limits	
• Annual Aggregate	\$10,000,000 xs \$5,000,000
• Products/Completion Operations Aggregate	\$10,000,000 xs \$5,000,000
• Each Occurrence	\$10,000,000 xs \$5,000,000
3rd Excess Layer	
Insurer	Allied World Surplus Lines Ins. Co.
Master Policy Term	1/1/2024-1/1/2029

Coverage Limits	
• Annual Aggregate	\$10,000,000 xs \$15,000,000
• Products/Completion Operations Aggregate	\$10,000,000 xs \$15,000,000
• Each Occurrence	\$10,000,000 xs \$15,000,000

4th Excess Layer Quota Share	
Insurer	QBE Specialty Ins. Co.
Master Policy Term	1/1/2024-1/1/2029

Coverage Limits	
• Annual Aggregate	\$12,500,000 part of \$25,000,000 xs \$25,000,000
• Products/Completion Operations Aggregate	\$12,500,000 part of \$25,000,000 xs \$25,000,000
• Each Occurrence	\$12,500,000 part of \$25,000,000 xs \$25,000,000

4th Excess Layer Quota Share	
Insurer	Great American Security Ins. Co.
Master Policy Term	1/1/2024-1/1/2029

Coverage Limits	
• Annual Aggregate	\$12,500,000 part of \$25,000,000 xs \$25,000,000
• Products/Completion Operations Aggregate	\$12,500,000 part of \$25,000,000 xs \$25,000,000
• Each Occurrence	\$12,500,000 part of \$25,000,000 xs \$25,000,000

5 th Excess Layer	
Insurer	Lloyd's of London
Master Policy Term	1/1/2024-1/1/2029
Coverage Limits	
• Annual Aggregate	\$50,000,000 xs \$50,000,000
• Products/Completion Operations Aggregate	\$50,000,000 xs \$50,000,000
• Each Occurrence	\$50,000,000 xs \$50,000,000

Other Insurance Provided by Sponsor

1. Construction Manager's Pollution Liability

Beaverton School District maintains Contractor's Pollution Liability insurance for the Project based on the terms of the contract. \$10,000,000 Policy Aggregate and 120 months Extended Completed Operations.

Provisions

Policies specific will:

1. Contains a 30-day cancellation clause, except 10 days for non-payment or failure to meet the Sponsor's safety requirements.
2. Applies to claims arising out of operations at the Project Site
3. Will terminate when the Work is completed by the Contractor/Subcontractor except for Extended Completed Operations Liability.
4. Construction Manager assigns their rights to return premiums, refunds, dividends or other monies. The Construction Manager will execute any Sponsor required documentation to effect this assignment.
5. Except for Construction manager obligations, Enrolled Parties waives their rights to subrogation
6. Each Enrolled Party is named as an insured on the insurance described above. Upon receipt of a completed enrollment application, a certificates of insurance for coverage defined in Section 4 is issued.

Loss Obligation: OCIP based on the terms of contract.

Assignment: In consideration of Beaverton School District purchasing OCIP insurance as stated above, the enrolled parties will assign to Beaverton School District all return premiums, premium refunds, dividends and other monies due or to become due in connection with the insurance which Beaverton School District provides under the OCIP, all of which will insure to the

benefit of the OCIP. The enrolled parties will execute such further documentation required by Beaverton School District to effect this assignment.



Section Five

Contractor/Subcontractor Required Coverage

Contractors and all Subcontractors are required to maintain coverage to protect against losses that occur away from the Jobsite or that are otherwise not covered under the OCIP. A compliant certificate of insurance is required prior to the start of work and is a condition of enrollment.

Enrolled Parties and **Excluded Parties** are required to maintain insurance coverages, as summarized in Attachment B. In the event of a conflict between the terms of this Manual and the terms of the Contract or Subcontract, the terms of the Contract/Subcontract control.

Prior to the start of work and prior to each renewal date, provide the Construction Manager/General Contractor with a Certificate of Insurance evidencing insurance as defined in the Contract documents.



Enrolled Contractor Responsibilities

Cooperation

The Enrolled Parties will:

1. Cooperate with Sponsor with regard to administration and operation of the OCIP. The Enrolled Parties' responsibilities will include but are not limited to: operations and insurance information; inclusion of OCIP provisions in all Subcontracts; notification to Sponsor's representative of all Subcontracts awarded; maintenance and provision of records as necessary for premium computation; compliance with applicable loss control (safety) and claims reporting procedures;
2. Furnish to Sponsor, the OCIP Administrator or the OCIP insurer(s) all information and documentation which the OCIP may require in connection with the issuance of any policies, in such form and substance as Sponsor or its designee may require.
3. Promptly comply with the requirements, obligations and recommendations of Sponsor, its OCIP Administrator, or OCIP insurer(s) to facilitate OCIP administration and OCIP Insurer requirements for continuation of coverage.
4. If the Enrolled Parties should fail to comply with any requirement, obligation or recommendation, Sponsor may withhold any payments due the Enrolled Parties until such time as they will have performed the requirements, obligations and recommendations as required by this contract.
5. The Enrolled Parties will provide Sponsor, its OCIP Administrator or OCIP insurer(s) with all information necessary for the issuance of said policies and will maintain and make available to the insurance companies records relating to the Work as requested for the proper computation of the insurance premiums.
6. Participate in claim review meetings as requested.

ENROLLED PARTIES use Marsh’s online “MWrap” system to enroll in the [CIP], provide insurance credit information, and perform other important functions outlined in this Section.

Visit: <https://MWrap.Marsh.com/contractorportal> to get started.

Bids

Net Bid: Eligible Contractors/Subcontractors are required to exclude their insurance cost, inclusive of subcontracted.

Enrollment

Prior to the start of on-site work, complete the Enrollment via the MWrap Contractor Portal. Any fines assessed by a governmental entity as the result of late enrollment are assessed against the responsible Enrolled Parties, as applicable.

CONTRACTOR/ SUBCONTRACTOR CANNOT PERFORM WORK AT THE PROJECT SITE UNTIL ENROLLMENT IS COMPLETE AND A CERTIFICATE OF INSURANCE OR LETTER OF EXCLUSION IS ISSUED BY THE OCIP ADMINISTRATOR.

Change Orders

Price change orders to exclude Contract Insurance Cost for both your company and any subcontractors as defined in the Bid section of this manual.

Contractor Responsibilities for their Subcontractor(s)

Each Construction Manager shall:

- Notify the OCIP Administrator of each subcontract award via Notice of Subcontract Award through the Contractor Portal. Failure to notify Marsh of all Subcontractors of any tier may lead to OCIP insurance coverage gaps for your Subcontractor(s). Thorough notification is critical.
- Include this OCIP Manual in all Subcontracts as appropriate and require that the provisions flow down to all sub-tiers.
- Make certain that before each Subcontractor start their work the Certificates of Insurance meets the Project’s insurance requirements as described in their contract. Compliant Subcontractor certificates of insurance are provided to the Sponsor, the Lead Contractor, and/or Marsh upon request.
- Ensure that all Subcontractors:
 - Bid according to the instructions set forth above.
 - Cooperate with the OCIP Administrator’s requests for information.
 - Comply with the Project’s insurance, claim and safety procedures.

Notice of Work Completion – Close Out of Each Contract

The OCIP Administrator will Close Out each contract as the Enrolled Parties complete their Work subject to the following conditions:

- The Enrolled Parties must complete a “Notice of Work Completion” through the Contractor Portal for each contract that has been completed on the Project Site.
- The OCIP Administrator will verify total change order and final contract value with the Contractor and/or awarding contractor before completing the final reconciliation of the **Contractor’s Insurance Cost**.
- Reimburse the **Sponsor** for **Claim Obligations** that an **Enrolled Party** is responsible for, unless the claim has been concluded and the actual cost of the claim has been established and considered prior to Close Out.
- Cooperate with Insurer, or their representative, audit.
- Retention is released upon successful completion of the Close Out process.

Project Completion

Upon notification of project completion, the OCIP Administrator will send 30 days advance notification of OCIP termination and Completed Operations trigger to all participants of the OCIP.



Section Six

Claims Reporting Procedures

This section describes basic procedures for reporting various types of claims: **General Liability, and Property Damage to the project.**

Contractors are required to follow Sponsor's claims reporting procedures. All parties agree to assist and cooperate in the investigation and adjustment of all claims.

All Contractors and Subcontractors shall, at a minimum:

- Instruct employees and other personnel to report, in writing, all accidents and occurrences of any type within 24 hours to the OCIP Safety Personnel and Carrier.
- Take appropriate emergency measures to prevent additional injury or damage in a safe manner.
- Cooperate with the companies involved in investigating or adjusting any claim.
- Any fines assessed for claims which are reported late are the responsibility of the Contractor or Subcontractor who failed to timely report the claim.
- Adhere to Drug Testing as defined by the program Sponsor.

Liability & Property Claim Reporting

- The Construction Manager/General Contractor will notify the Sponsor immediately.
- The Construction Manager/General Contractor completes the Incident Investigation Report and notify the OCIP Insurer within 24 hours.
- All subsequent inquiries or correspondence about the incident to the Construction/General Contractor.

Automobile Incident and Claim Reporting

No coverage is provided for automobile accidents under the OCIP. It is the sole responsibility of each Party to report accidents/claims involving their automobiles to their own insurers.

HOWEVER, report all accidents occurring in or around the Project site to the Prime Contractor and the OCIP Safety Coordinator. Accident investigations will occur and focus on liability

arising out of the Project construction activities that could result in future claims (i.e., due to the conditions of the roads, etc.). Each Party shall cooperate in the investigation of all automobile accidents.

Other Details

- The OCIP Administrator will provide period loss runs upon request
- Claim Review meetings are held as needed. Contractor's participation is required when requested.
- In the event legal representation is required to defend parties insured under this OCIP, absent any actual conflict of interest between two or more insureds, the insurer has the right to retain one counsel to represent all such insureds in any action or proceeding in which more than one insured is joined.



Section Seven

Online Portal Instructions

Contractor is required to submit information via the MWrap Contractor Portal. User access is initiated when a Notice of Subcontract is completed and initial login instructions are provided below. Portal Instructions for required forms are found in the documents section of your enrollment on the Portal or by clicking the “?” at the top of the screen. The instructions include the following information:

- Notice of Subcontract
- Enrollment
- Notice of Work Completion
- Available reports

For questions, contact the [CIP] Administrator or the General Contractor Project Administrator identified in the Project Contact Directory (Section 2)

Notice of Subcontract

When a user is identified in a Notice of Subcontract Award, by their parent contract, the user received an email with a link to register and log into the MWrap Contractor Portal. The email contains the assigned User Name and contains a login link valid for one time use.

Create a password following the rules outlined immediately below the entry fields. Press [Continue].

Dear [New User Name],

Welcome to Marsh Contractor Portal!

Marsh has the ability to manage your enrollment in the CIP through our Contractor Portal. You will be able to easily enter any information, monthly payroll, or insurance cost information, depending on the requirements of your program. In addition, you Insurance, State specific forms as well as your policy's Declaration and Rate pages we might need.

Please see below your Username. Click on the link to change your password.

User Name:jmauldin1

<https://mwrap.marsh.com/CSSI.VUE.STS.Web/Pages/MARSHPORTAL/ChangePassword.aspx?TELEPWFTMWhkV3hrYVcDeCZYWFsBT1HSFwVGHNNKxSOXRKM0poYOM1dFY5nphQzVgY1jwdIEYOKVKEpoWTNSdMNsQnZjbl>

Thank you,
Marsh Wrap Up Administration Team

MARSH & McLENNAN COMPANIES

Welcome to the MWrap Contractor Portal!

MWrap organizes subcontractor communications, eliminates paperwork and reduces manual intervention and electronically organizes documents to eliminate the need for paper filing systems.

You can provide and manage the following information from our Contractor portal.

- Enrollment Information.
- Monthly Payroll.
- Insurance Cost Information.
- Submit Certificate of Insurance.
- Submit policy's Declaration and Rate pages.
- Award your subcontractors.
- CIP Manuals.
- Claims Reporting Instructions.

If you are not already registered, please Register yourself via the link below.

[REGISTER ME](#)

Please enter your new password below.

Enter New Password

Enter Confirm Password

- Password should be at least 7 characters in length.
- Password should contain 3 different characters (alpha, numeric, special character).
- You will be required to change password every 90 days.
- You cannot reuse previous 8 passwords.
- Password can only be changed once in a 24 hour period.
- Password should not contain username.

[CONTINUE](#)

[Trouble logging in?](#)

Use [click here](#) the hyperlink in the success message to move to the login screen. Provide your user name and newly created password to complete the log in process



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Exhibit G

Contractor Background Check

To ensure the safety of Beaverton School District (BSD) students, all personnel associated with contractors, subcontractors, vendors, inspectors, consultants, subconsultants, and service providers (“Contractor”), whether retained directly or indirectly by the District, must complete and pass a criminal background check prior to the commencement of any work or services.

1. **Background Check and Fingerprinting Requirements:** Contractor personnel who may have a presence at a District facility shall complete a criminal background check and fingerprinting. Background checks shall be conducted by BSD’s Public Safety Department (PSD) and fingerprinting shall be conducted by Fieldprint, Inc. For full details, visit BSD PSD’s website: (<https://www.beaverton.k12.or.us/departments/public-safety/bsd-contractor-background-check-process>).
- a. **Fees and Payment:** All costs associated with background checks and fingerprinting shall be paid by the Contractor to cover fees incurred by the District. Refer to the website above for current fee information.
- b. **Exclusionary Crimes:** A list of Oregon Department of Education’s Exclusionary Crimes that may disqualify individuals from working on District property may be found here: <https://www.oregon.gov/ode/schools-and-districts/ptf/Documents/forever%20crime%20volunteer.pdf>
- c. **Validity:** Background checks are valid for two (2) years from the date of clearance.
- d. **Recognition of Other Background Checks:** The District does not recognize background checks conducted by other private or public organizations.
2. **Identification Badge Requirements:** Upon successful completion of the background check and fingerprinting, BSD PSD will notify Contractor’s personnel of their approval. Approved personnel must:
 - a. Have their photo taken and collect a BSD-issued identification badge.
 - b. Always wear the badge visibly while on-site at any District facility.
3. **Badge Loss Procedures:** In the event a BSD-issued identification badge is lost, the following steps must be taken:
 - a. The loss must be reported immediately to the District Representative and BSD PSD (bsd_public_safety@beaverton.k12.or.us). Notification must include the full name of the individual and the Contractor company name.
 - b. The Contractor will be responsible for a non-refundable replacement fee of \$100 for the lost badge.
 - c. A replacement badge will be issued only after notification of the lost badge has been made and acknowledged by BSD PSD and the replacement badge fee has been paid.

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- d. Repeated loss of badges may result in revocation of site access or other actions at the discretion of the District.
- 4. **Termination, Transfer or Resignation Procedures:** In the event of termination or resignation of Contractor personnel:
 - a. The Contractor must notify the designated District Representative and BSD PSD (bsd_public_safety@beaverton.k12.or.us) immediately upon learning of the personnel change.
 - b. The affected individual's BSD-issued identification badge must be returned promptly to the District Representative or BSD PSD.
 - c. Failure to return the badge may result in additional fees or other actions at the discretion of the District.
- 5. **Badge Return Protocol:** Identification badges must be returned to the designated District Representative or BSD PSD upon termination, or completion of the assignment, project, or contract.
 - a. Badges may be returned via USPS or in-person during normal business hours at the Beaverton School District's District Administrative Office:
1260 NW Waterhouse Ave.
Beaverton, OR 97006

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Beaverton School District does not discriminate in any programs or activities on any basis protected by law, including but not limited to, an individual's actual or perceived race, color, religion, sex, sexual orientation, gender identity, gender expression, national or ethnic origin, marital status, age, mental or physical disability, pregnancy, familial status, economic status, veteran status, or because of a perceived or actual association with any other persons within these protected classes.

Contractor Access and Responsibility Requirements

To facilitate access to District facilities, contractors, subcontractors, vendors, inspectors, consultants, subconsultants, and service providers (“Contractors”) may be issued facility access credentials, which may include badge access, intrusion PINs (personal identification numbers), and/or building master keys. Contractors are responsible for safeguarding these credentials to protect Beaverton School District (BSD) students, staff, systems, and property.

Contractor Access

1. Credential Management:

- a. The Contractor is responsible for all badges and keys issued to them during the project.
 - i. Badges: Lost badges will incur a \$100 replacement fee. See Exhibit H for the Badge Loss Procedure.
 - ii. Keys: Lost keys will result in a fee based on the actual cost to rekey affected doors or facilities.
- b. Facility access credentials may not be loaned or shared under any circumstances.

2. On-site Supervision

- a. Contractor’s responsible party (e.g., superintendent, foreman, or supervisor) must be present (on-site) at all times during deliveries and while any work is being performed by the Contractor or subcontractors.

3. Intrusion System Protocols

- a. Contractors may be required to deactivate the intrusion system upon arrival and reactivate it prior to departure.
 - i. Contractors must be familiar with the intrusion panel location and avoid triggering alarms. False alarms will result in a \$150 fee per incident.
 - ii. When required to secure a facility, the Contractor shall follow District-provided procedures.

4. School Hours Protocol

- a. When on-site during school hours:
 - i. Contractors must check in with the main office upon arrival and check out upon completion of work and securing the area.
 - ii. All planned work must be scheduled with the District Representative at least 24 hours in advance. Work involving shutdowns requires 48 hours’ notice.

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Contractor Responsibility

1. Conduct and Oversight

- a. The Contractor shall enforce strict discipline and good order among the Contractor's employees, subcontractors and other persons carrying out the contract while on District property.
- b. The District reserves the right to require immediate removal of any individual whose behavior is deemed objectionable.

2. Badge Visibility

- a. The Contractor shall enforce the requirement that all personnel visibly wear District-issued identification badges at all times while on-site.

3. Site Security

- a. The designated Responsible Party is accountable for the security of all work areas, including access and egress points.
- b. The Contractor shall maintain a daily log documenting all areas accessed by Contractor and Subcontractor personnel.

4. Security Checks

- a. All personnel may be subject to security checks, at any time, by the District Public Safety Department, Beaverton Police Department, Washington County Sheriff's Office, or other authorized agencies.

5. Fire Alarm Systems

- b. Contractors must not disable, tamper with, or test fire alarm systems without prior written approval from the District's project team.
- c. False alarms due to negligence will result in a \$150 fee per incident, plus any emergency response charges.

6. Access Control Systems

- a. Any access to or modification of access control systems must be coordinated with the District. Unauthorized access or changes may result in removal from the site and potential legal action.

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Beaverton School District does not discriminate in any programs or activities on any basis protected by law, including but not limited to, an individual's actual or perceived race, color, religion, sex, sexual orientation, gender identity, gender expression, national or ethnic origin, marital status, age, mental or physical disability, pregnancy, familial status, economic status, veteran status, or because of a perceived or actual association with any other persons within these protected classes.