



This addendum forms a part of the Request for Proposal and modifies the original Documents dated **September 25, 2024**, as noted below. Acknowledge receipt of this addendum in the space provided on Attachment B – Certifications / Residency Form. Failure to do so may subject the Proposer to disqualification.

**ENCLOSED ATTACHMENT E – DRAFT AIA A133-2019 STANDARD FORM OF AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER WITH EXHIBITS**

Enclosed AIA A133-2019 Standard Form of Agreement Between Owner and Construction Manager with Exhibits, *in its entirety*.

**ENCLOSED ATTACHMENT F – DRAFT AIA A133-2019 EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT**

Enclosed AIA A133-2019 Exhibit A Guaranteed Maximum Price Amendment, *in its entirety*.

**ENCLOSED ATTACHMENT G – DRAFT AIA A201-2017 GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**

Enclosed AIA A201-2017 General Conditions of the Contract for Construction, *in its entirety*.

**PRE-PROPOSAL MEETING SIGN IN SHEET**

Please review the attached sign in sheet; if corrections are required please send them to [kristi.nelson@hmkco.org](mailto:kristi.nelson@hmkco.org)

**END OF ADDENDUM 1**



ASHLAND SCHOOL DISTRICT  
SEISMIC REHABILITATION PROJECT  
CONSTRUCTION MANAGER|GENERAL CONTRACTOR  
REQUEST FOR PROPOSAL

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**ATTACHMENT E**  
**DRAFT AIA A133 – 2019**  
**Standard Form of Agreement between Owner and Construction Manager**

See Draft AIA A133-2019 Standard Form of Agreement between Owner and Construction Manager following this cover page.

# DRAFT AIA® Document A133™ - 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the « » day of « » in the year «2024»  
(In words, indicate day, month, and year.)

**BETWEEN** the Owner:  
(Name, legal status, address, and other information)

«Jackson County School District 5»  
«885 Siskiyou Boulevard»  
«Ashland, OR 97520»

and the Construction Manager:  
(Name, legal status, address, and other information)

«To Be Determined»  
« »  
« »  
« »

for the following Project:  
(Name, location, and detailed description)

«Jackson County School District 5»  
«Ashland High School»  
«Science Building Seismic Rehabilitation Project»  
«201 S Mountain Avenue»  
«Ashland, OR 97520»

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

«arkitek:design&architecture»  
«426 A Street, Suite 101»  
«Ashland, OR 97520»

The Owner and Construction Manager 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.

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

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 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

« »

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

«Ashland High School»

«Science Building Seismic Rehabilitation Project»

«201 S Mountain Avenue»

«Ashland, OR 97520»

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6 (referred to as the "Maximum Allowable Construction Cost" or "MACC"):

*(Provide total and, if known, a line item breakdown.)*

«Science Building Seismic Rehabilitation Project MACC: \$2,900,000.00»

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

«Schematic Design: September 5, 2024 – September 23, 2024 »  
«Design Development: September 24, 2024 – November 1, 2024 »  
«Construction Documents: November 2, 2024 – January 24, 2025 »

.2 Construction commencement date:

« June 9, 2025 »

.3 Substantial Completion date or dates:

« August 22, 2025 »

.4 Other milestone dates:

« »

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:  
(Identify any requirements for fast-track scheduling or phased construction.)

« »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:  
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

« »

§ 1.1.7 Other Project information:  
(Identify special characteristics or needs of the Project not provided elsewhere.)

« »

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:  
(List name, address, and other contact information.)

«HMK Company»  
«David McKay, Principal in Charge»  
«PO Box 3223»  
«Salem, OR 97302»

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:  
(List name, address and other contact information.)

«HMK Company»  
«Mike Freeman, Program Manager»  
«46 N Front Street, Suite 201»  
«Medford, OR 97501»

«HMK Company»  
«Josh Whitaker, Project Manager»

«46 N Front Street, Suite 201»  
«Medford, OR 97501»

§ 1.1.10 The Owner shall retain the following consultants and contractors:  
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

«To Be Determined by Owner»« »  
« »  
« »  
« »  
« »

.2 Civil Engineer:

«To Be Determined by Owner»« »  
« »  
« »  
« »  
« »

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

«To Be Determined by Owner»« »

§ 1.1.11 The Architect's representative:  
(List name, address, and other contact information.)

«arkitek:design&architecture»  
«Christopher Brown, Principal»  
«426 A Street, Suite 101»  
«Ashland, OR 97520»

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:  
(List name, address, and other contact information.)

«To Be Determined»  
« »  
« »  
« »

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:  
(List any Owner-specific requirements to be included in the staffing plan.)

« »

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:  
(List any Owner-specific requirements for subcontractor procurement.)

« »

§ 1.1.15 Other Initial Information on which this Agreement is based:

« »

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's MACC for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party. Change to the Construction Manager's representative shall require the Owner's prior written approval.

**§ 1.4 The Construction Manager acknowledges and agrees that the Contract Documents:**

- (a) Describe the methods the Construction Manager will use to qualify and select subcontractors. The methods shall be competitive and provide prospective subcontractors with a reasonable opportunity to participate in the Construction Manager's qualification and selection process.
- (b) Identify the portions of the construction work for which the Construction Manager may waive the qualification and selection process described in paragraph (a) of this subsection and describe:
  - (A) How the Construction Manager may determine the portions of the construction work that will not be subject to the qualification and selection process described in paragraph (a) of this subsection; and
  - (B) The process the Construction Manager will use to qualify and select prospective subcontractors for the portions of the construction work that are not subject to the qualification and selection process described in paragraph (a) of this subsection.
- (c) Identify the conditions under which the Construction Manager or an affiliate or subsidiary of the Construction Manager may perform or compete with other prospective subcontractors to perform construction work under the Contract and describe the methods the Construction Manager will use to qualify and select an affiliate or subsidiary to perform the construction work.
- (d) Describe how the Construction Manager will announce which prospective subcontractors the Construction Manager has selected to perform construction services in connection with the Contract.
- (e) Describe the conditions under which the Construction Manager will discuss the qualification and selection process described in this subsection with a prospective subcontractor that the Construction Manager did not select for a subcontract if the Construction Manager receives a request from the prospective subcontractor to discuss the process.

**ARTICLE 2 GENERAL PROVISIONS**

**§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General Conditions-AIA Document A201-2017 (as modified), Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications and Exhibits 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. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In addition, the State of Oregon Model Rules related to Public Contracts for Construction Services (OAR 137-049) apply to this Contract, and if anything in the Contract Documents is inconsistent with the Model Rules, the Model Rules shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

## § 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager'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 agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

## § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, shall apply. The term "Contractor" as used in A201-2017 shall mean the Construction Manager. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### General Description of Preconstruction and Construction Phase Services

In accordance with ORS 279C.332 and 279C.337, following is a general and nonexclusive general description of Construction Manager's services, as set forth in more detail in the Contract Documents:

1. Preconstruction Phase services generally:

(A) Include Construction Manager's:

(i) Functioning as a member of the project team that includes Owner, the Architect and other Owner contractors, and other consultants; and

(ii) Reviewing and analyzing the design for the Project in order to:

(I) Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;

(II) Recommend means by which the Owner may achieve the functions of the Project and all components of the Project safely, reliably, efficiently and at the lowest overall cost;

(III) Improve the value and quality of the Project; and

(IV) Reduce the time necessary to complete the Project; and

(B) Include, depending on whether Owner decides to proceed with construction, Construction Manager's:

(i) Devising a schedule for constructing the Work;

(ii) Estimating construction, materials, labor and other costs for the Work;



(iii) Establishing a Guaranteed Maximum Price and the components thereof;

(C) Other Preconstruction Phase Services described in the Request for Proposals and Construction Manager's Proposal.

2. Construction Phase services generally include Construction Manager's:

(A) Constructing portions of the Work with its own forces to the extent permitted by the Contract Documents, and subcontracting other portions to Subcontractors and permitted consultants;

(B) Coordinating and overseeing the construction process;

(C) Performing other services related to constructing the Work in accordance with the terms of the Contract Documents.

(D) Other Construction Phase Services described in the Request for Proposals and Construction Manager's Response.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 3.1.2** The Construction Manager shall provide to Owner a written preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, with written recommendations.

#### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Owner's Representative shall schedule and conduct meetings with the Architect and Construction Manager to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Construction Manager shall attend and participate in such meetings, and promptly provide any comments on Owner's Representative's minutes of such meetings.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using Architect-established standards for the development, use, transmission, and exchange of digital data.

**§ 3.1.3.4** The Construction Manager shall assist Owner and Architect to identify all items required for the Project, including technical infrastructure and equipment. Construction Manager shall perform constructability reviews of drawings, specifications, and other materials prepared or submitted by Architect and/or any Consultants relating to the Project, including the schematic design documents, design development documents, and construction documents. Construction Manager shall advise and facilitate on all matters relating to or required for the Project, including the efficiency, cost and availability of labor, trade union issues, Utilities, materials, equipment, construction means and

methods, sequencing, governmental review process, and/or other relevant matters relating to or required for the Project, including those which are reflected on, or required for, the drawings, specifications, and other materials for the Project prepared or submitted by Architect and/or any Consultants. To this end, Construction Manager shall review progressively the schematic design documents, design development documents, and construction drawings and specifications prepared by Architect, shall identify constructability issues, and shall advise upon selection of materials, building systems and equipment, and methods of delivery. Construction Manager shall also provide a detailed, complete and accurate logistics plan, updated monthly, identifying the sequencing of all elements of the Work during construction of the Project.

#### **§ 3.1.4 Project Schedule**

**§ 3.1.4.1** Promptly after its delivery to Construction Manager, Construction Manager shall review the initial Project Schedule(s) sent by the Owner. When Project requirements in Section 4.1.1 have been sufficiently identified to the Owner's and Architect's satisfaction, the Construction Manager, in cooperation with the Owner and Architect, shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. Thereafter, Construction Manager shall revise and update the Project Schedule every other week to show the progress of design and construction of the Project. Construction Manager shall also make formal submissions of the Project Schedule with each Application for Payment delivered to Owner. In addition to achieving Substantial Completion and Final Completion by the dates required herein, if the Project Schedule provides for Owner's access to the Project prior to Substantial Completion for the purpose of Owner's installation of furniture, fixtures, cabling, equipment or other items, the Construction Manager shall achieve sufficient completion of the Work prior to Substantial Completion so that Owner has such access as scheduled. The Project Schedule shall not exceed the required dates for Substantial Completion and Final Completion.

**§ 3.1.4.2** The Project Schedule shall be prepared by Construction Manager in a detailed precedence-style critical path method (CPM) in Primavera P6 and in format otherwise acceptable to Owner and Architect which shall (in accordance with industry CPM standards):

- (a) provide a graphic representation of all activities and events (including obtaining all necessary permits and/or approvals) that will occur during performance of the Work;
- (b) identify each phase of construction and occupancy (including commencement and completion dates of each stage of the Work of each Trade), and include detailed work tasks in accordance with the work breakdown structure, to produce a Level 3 CPM schedule;
- (c) identify deadlines for electing alternates under Trade Agreements;
- (d) set forth Construction Manager's estimated monthly cash flow projection for Requisitions during the period reflected in such Project Schedule;
- (e) prior to the time a subcontractor starts Work, depict in detail the time for such subcontractor's Work and showing week by week progress for each trade in a manner consistent with the most recent cash flow projection;
- (f) identify major equipment orders and delivery deadlines.
- (g) resource-load all activities.

**§ 3.1.4.3** Prior to the commencement of the Construction Phase and during final preparation, each update of the Project Schedule shall also include the status of cost estimates, document preparation and regulatory agency approvals. During the bidding stage, the monthly update shall include the status of bidding activity. During the Construction Phase, each updated Project Schedule shall contain detailed progress schedules of the Work by trade. If Construction Manager becomes aware of any delay or problem arising in connection with the progress of the Work, Construction Manager shall promptly notify Owner thereof.

**§ 3.1.4.4** The Construction Manager shall not be entitled to any adjustment in the Contract Time or in the Contract Sum, or to any additional payment of any sort, by reason of the loss or the use of any float time, including time between the Construction Manager's anticipated completion date and the end of the Contract Time, whether or not the float time is described as such on the Construction Manager's Construction Schedule.

### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### § 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the review by Architect and Owner's cost consultants, and for the Owner's approval. If the Owner or Architect procure the services of an independent cost consultant, the Construction Manager shall align its estimate format with that cost consultant's estimate format. The Construction Manager shall cooperate to reconcile Construction Manager's cost estimates to those of Owner's cost consultant. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work and Fee exceeds the latest Owner's MACC, and make recommendations for corrective action. At each stage of design, Construction Manager shall provide value engineering services towards keeping the cost of Architect's design within the parameters of the MACC. Toward this end, Construction Manager shall periodically identify alternatives to the Project design and make timely recommendations for cost saving options, and respond promptly to Architect's and Owner's recommendations regarding cost saving options.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager shall work together with the Architect to reconcile the cost estimates.

§ 3.1.6.4 After its preparation, Owner shall deliver to Construction Manager Owner's initial Project Budget(s) including the latest MACC. The initial Project Budget(s) may be in the alternative, until Owner has selected either option. Promptly after the date of this Agreement, Construction Manager shall provide detailed comments on that Project Budget(s), covering all categories of construction cost, cost evaluations of alternate construction methods and systems (including the phasing and sequencing of the Work), consideration of alternative components, communications and data requirements and (if applicable) salvage or re-use of Owner's existing equipment. Each version of the Project Budget shall be in form (and shall include documentation) satisfactory to Owner.

§ 3.1.6.5 Construction Manager shall deliver to Owner Cost Estimates at intervals acceptable to Owner, or as identified in the RFP. Cost Estimates submitted by Construction Manager shall be prepared independently of any prepared by Architect and its consultants and shall be in Construction Specifications Institute ("CSI") Format or in another format otherwise approved by Owner. Construction Manager's Cost Estimates shall include all elements of the scope of the Project reflected on Architect's most recent drawings and specifications. Construction Manager shall participate in meetings with Architect and the Owner's cost consultant (if any) to reconcile differences in their Cost Estimates. Construction Manager shall promptly prepare and submit to Owner a final reconciled version of each estimate for record purposes.

§ 3.1.6.6 Construction Manager shall identify discrepancies between actual and estimated costs and advise Owner whenever costs exceed budgets, estimates or the MACC.

§ 3.1.6.7 Construction Manager on request shall prepare, deliver, and update to Owner and Owner's representative a cash flow projection and an anticipated cost report for the Project, in a format approved by the Owner and keyed to the Project Budget and MACC, showing estimated monthly cash payments to each Trade, and breaking out major

expenditure categories, costs of permits, and other likely causes of material cash outlay. Also, Construction Manager shall submit updates of the cash flow projection with each update of the Project Budget, showing changes in requirements and amounts previously paid.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in the Contract Documents.

### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in Section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop subcontractor and supplier bidding interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, and well in advance of construction, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering, procurement and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to the Construction Manager's procurement any items prior to the establishment of the Guaranteed Maximum Price, the Construction Manager shall procure the items on terms and conditions acceptable to the Owner. The Owner shall not be obligated to pay for such items until bonded, insured, and confirmed as owned by Owner on terms satisfactory to Owner. If Owner decides not to engage the Construction Manager for construction, or otherwise at Owner's written request, the Construction Manager shall assign all contracts for these items to the Owner, conditioned on the Owner's payment for the items, and the Owner shall thereafter accept responsibility for them.

§ 3.1.12.1 **Procurement Requirements.** The provisions of this Section 3.1.12.1 collectively are referred to as the "Procurement Requirements." The requirements of ORS 279C.337(3) and OAR 137-049-0690 also are incorporated herein by reference. In the event of any conflict between the Basic Requirements and the Additional Requirements below, the Basic Requirements shall prevail.

#### Basic Requirements:

Within the scope of 279C.337(3), the Construction Manager's subcontractor selection process must meet the following parameters:

- (A) Absent a written justification prepared by the Construction Manager and approved by the Owner as more particularly provided for in this section, the Construction Manager's Subcontractor selection process must be "competitive", meaning that the process must include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

- (B) When the Subcontractor selection process for a particular Work package will not be “competitive” as provided for in this section, the process must meet the following requirements:
- (i) The Construction Manager must prepare and submit a written justification to the Owner, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the Construction Manager’s need to utilize a key Subcontractor member of the Construction Manager’s project team consistent with the Construction Manager’s project Proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a “competitive process” along with facts supporting the continuation or expansion of the Subcontractor agreement, or a “sole source” justification;
  - (ii) For a “sole source” selection of a subcontractor to proceed, the Owner must evaluate the written justification provided by the Construction Manager and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
  - (iii) The Construction Manager must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Owner;
  - (iv) The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
  - (v) The Owner must approve the Construction Manager’s use of the non-competitive Subcontractor selection process prior to the Construction Manager’s pursuit of the non-competitive process.
- (C) If approved in advance by Owner, a competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process.
- (D) As used herein, “Affiliate” means a subsidiary of or a person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Construction Manager or an Affiliate of Construction Manager. If the Construction Manager or an Affiliate will be included in the subcontractor selection process to perform particular construction Work on the project, the Construction Manager must disclose that fact in the selection process documents and announcements. The Construction Manager must establish to Owner and follow an objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party acceptable to Owner.
- (E) Subcontractor Approvals and Protests. The procedures and reporting mechanisms related to the resolution of subcontractor and supplier protests are established in the Additional Requirements below, including the Construction Manager’s roles and responsibilities in this process and whether the Construction Manager’s subcontracting records are considered to be public records. The Owner retains the right to monitor the subcontracting process in order to protect the Owner’s interests and to confirm the Construction Manager’s compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.
- (F) Construction Manager Self-Performance or Performance by Construction Manager Affiliates Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), these Basic Requirements and the Additional Requirements establish the conditions under which the Construction Manager or an Affiliate of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager’s



RFP Proposal to perform Construction Manager Services for the project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate of the Construction Manager. If required by the Owner, the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

- (G) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule:
- (i) Subcontractor will be allowed 60 days from the Construction Manager's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the Construction Manager under this section; and
  - (ii) The Construction Manager shall set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request. The Construction Manager shall maintain written minutes of such meeting and shall deliver a copy of such minutes to Owner within 10 days after each such meeting.

#### **Additional Requirements:**

1. The Construction Manager shall review the Contract Documents and verify, prior to bidding, that they are ready for subcontract and supplier bidding. The Construction Manager shall perform constructability review of each Bid Package prior to bidding.
2. If the documents are not ready for bidding, prior to bidding the Construction Manager shall notify the Owner and Architect, specifying the perceived deficiency, and thereafter shall work with the Architect to complete the documents.
3. The Construction Manager shall divide the portions of the Work (other than general supervisory and "general conditions" type work of the Construction Manager) into components suitable for bidding ("Work Components"). The Construction Manager shall deliver a list of proposed Work Components to the Owner's Representative for comment prior to preparation of the Requests for Proposal.
4. The Construction Manager shall prepare a template form of Request for Proposal for Work Component procurement. The Construction Manager shall deliver a copy of such template to the Owner's Representative for review and comment before use. The Request for Proposals shall identify the scope of Component Services with reasonable specificity, the minimum qualifications of prospective bidders, and the deadline for bid submissions. The Construction Manager shall deliver a copy of each Request for Proposal to the Owner's Representative concurrent with publication.
5. The procurement by the Construction Manager of all labor and materials costing more than \$100,000 per contract, but excluding those items covered in the general conditions, will normally be publicly advertised. However, should circumstances arise where public advertisement is not practical or appropriate, and with the Owner's prior written approval, the Construction Manager may forego public advertisement, provided however, that it must attempt to obtain at least three written bids/quotes (with public opening) for the particular work to be done. At least three competitive quotes must be attempted to be solicited for all contracts between \$10,000 and \$100,000. With the Owner's concurrence, the Construction Manager/General Contractor must accept the quote that is most advantageous to the Owner. This normally would be the lowest quote from a responsible firm. Competitive quotes are encouraged but are

not required for contracts less than \$10,000. Except as otherwise allowed under this Contract, The Construction Manager shall obtain at least three competitive bids for each particular Work component to be complete, including work components which the Construction Manager may be interested in self-performing, unless the Owner approves in writing the obtaining of fewer bids for the Work Component. The solicitation of Subcontractors will be made pursuant to the following procedures:

- a. All bids are required to be sealed, written, and submitted to a specific location at a specific time, each as approved in writing by the Owner's Representative.
  - b. If less than three (3) bids are submitted for any work component, authorization by the Owner's Representative is required to accept the bid. When there are single fabricators of materials or special packaging requirements for subcontractor work, or work is otherwise proposed to be sole-sourced, Construction Manager shall be responsible for explaining in writing to Owner the grounds for such procurement, and advance approval by the Owner's representative is required.
  - c. Solicitations will be advertised at least ten (10) days in advance in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach minority, women, and emerging small business audiences.
  - d. The prevailing wage rates and all other standard terms and conditions of State of Oregon Public Works contracts shall apply to subcontracts at all tiers.
6. Except for "general conditions" type work, the compensation for which is included in the Construction Manager's Fee and General Conditions Maximum Charge, the Construction Manager shall identify to the Owner as required in the Basic Requirements and in advance of bidding, in writing, any work that the Construction Manager proposes be performed by the Construction Manager or any Affiliate, including, without limitation, Work Components, or procurement or rental of services, equipment or materials. Such writing shall include a detailed statement of the proposed work, and a statement of qualifications. The Owner may allow a Construction Manager or a related party to perform such work if such party competes competitively with subcontractors or other suppliers for that work and enters into a subcontract for the work in accordance with the procedures of this Section. Neither Construction Manager nor any related party shall perform work or provide services except in accordance with such procedures, unless waived in writing by Owner's Representative. In all cases where Construction Manager or a related party is proposed for provision of work or services, the unopened bids for that work (including that of the Construction Manager Party) will be submitted directly to the Owner's Representative at least 2 hours in advance of bid opening, for opening by Owner's staff or an independent third party approved by the Owner.
7. The Construction Manager shall establish the bidding schedule, conduct a pre-bid conference to familiarize bidders with bid documents and management techniques, maintain a log of firms attending the pre-bid conference and a log of the bidders, successful or not.
8. The Construction Manager shall respond to question from potential bidders and clarifications or interpretations of the Bidding Documents. The Owner's Representative and Architect shall assist as they determine appropriate.
9. All addendums, if any, shall be provided to the Construction Manager by the Owner. The Construction Manager shall, in turn, verify that all known potential bidders have received all addendums to incorporate in their bids.
10. The Construction Manager shall open all Subcontractor bids and proposals for self-performed work in the presence of the Owner's Representative, which opening may occur at Construction Manager's office in compliance with the rest of this Section. The Owner's Representative shall be given advance notice of and the opportunity to observe all bid openings. The Owner's Representative is not obligated, however, to attend a bid opening nor to ensure the Construction Manager's compliance with the required bidding procedures. All bid openings shall be by the Owner's Representative, Owner's staff or an independent third party approved by the Owner.
11. With respect to any subcontractor to whom Construction Manager proposes to subcontract a portion of the Work, Construction Manager shall submit the following information to Owner in sufficient time to prevent delays in the Project Schedule:
- (a) the name and address of the Subcontractor;
  - (b) a description of the portion of the Work and type of activity to be performed by such Subcontractor;

- (c) a brief summary of the Subcontractor's past experience in performing services or producing products similar to those to be performed or produced by the Subcontractor in connection with the Work (including number of years in business and recent major projects);
- (d) evidence that the Subcontractor has sufficient capacity (staff and/or plant) and financial resources to perform or produce the Work;
- (e) any documents or materials required under applicable laws regarding the qualifications of the Subcontractor to be accepted for work under this Contract; and
- (f) any ownership or other financial affiliations between Construction Manager and the proposed subcontractor
- (g) such other evidence of the Subcontractor's fitness and responsibility as Owner may reasonably request.

12. The Owner's Representative shall be given the opportunity to review the Construction Manager's evaluation of bids and recommendations and authorize (or deny authorization of) the award, prior to bid award.

13. The Construction Manager shall review and respond to any recommendations of the Owner's Representative.

14. The Construction Manager shall make recommendations for awards. The Owner's Representative may require disqualification of particular bids for good cause, including without limitation the bidder's (or its affiliates) presence on the Owner's disqualified contractor list. No subcontract or supply award shall be made without the Owner's written approval. The Owner's approval shall not constitute approval of the individual subcontractor and supplier, and the Construction Manager remains responsible for their selection.

15. The Construction Manager will announce which prospective Subcontractors the Construction Manager intends to select by written notice given to the Owner and all bidders for the Work Component at issue. The Construction Manager shall make such announcement at least five business days prior to the date of prospective award. The Construction Manager shall respond to any questions, comments, or protests of the prospective bidders for the Work Component in writing, with a copy of the writing given concurrently to all prospective bidders for the Work Component and to the Owner's Representative. The Construction Manager shall make no award without Owner's prior written authorization.

16. The Construction Manager shall not discuss or communicate about the selection process with any prospective Subcontractor, or any entity not selected for award, without at least one business day's prior written notice to the Owner's Representative, so that Owner may participate in such discussion or communication at Owner's election. If the Construction Manager discusses with or communicates about the selection process for a Subcontract with a prospective Subcontractor or any entity that the Construction Manager did not select for the Work Component at issue, the Construction Manager shall maintain complete written minutes of such discussion and deliver a copy to the Owner's Representative.

17. After award, the Construction Manager shall prepare subcontracts and supply agreements. At Owner's option and written request, Owner shall have the right of prior written approval of the subcontract and supply agreements (or the form of the same) before execution. Whether or not Owner requests such prior written approval, Construction Manager shall deliver copies of the executed subcontracts and supply agreements to the Owner's Representative within five business days after execution.

18. The Construction Manager may not waive the competitive process described in this Section for any Work Component, including any proposed self-performed work, without (i) identifying to the Owner's Representative in advance the Work Component at issue and the Construction Manager's proposed alternative procurement method for such Work Component, through a proposed Addendum to this Agreement and (ii) procuring written approval of the waiver by Owner's Representative, including the Owner's Representative's approval of an agreed alternative procurement method. The Construction Manager shall comply with such agreed alternative procurement methodology in procurement of such Work Component.

19. Bidding is proceeding under special rules applicable to public Construction Manager/General Construction Manager contracts, and statutory formal bidding procedures for public contracts are not applicable to subcontractor and supplier bids. Owner's approval is required for all bid awards. The Construction Manager's subcontracting records (including without limitation any bid dispute documentation) are considered to be public records



generally; however, the Owner reserves sole discretion in response to any public records request regarding the same. The Owner retains the right to monitor the entire subcontracting and bid dispute process in order to protect Owner's interests. The Owner retains the right to require Construction Manager re-bidding of any Work Component, at Owner's discretion.

20. Construction Manager shall comply with the socio-economic programs described herein or in the RFP, in connection with subcontractor and supplier bidding ("Hiring Programs"). During the course of bidding, Construction Manager shall deliver written reports to the Owner documenting Construction Manager's compliance with the Hiring Programs. The Owner is not responsible for Construction Manager's compliance with the Hiring Programs, but may at any time, by written notice to the Construction Manager, require Construction Manager's compliance with the Hiring Programs (including rebidding as applicable) and bring action to enforce such compliance.

21. Firms responding to the Construction Managers bid documents may submit a request for change of particular solicitation provisions, specifications and conditions (including comments on any requirement that a firm believes limits competition) to the Construction Manager, with a copy to the Owner's Representative, no later than noon seven (7) days prior to the bid deadline date. Such requests for change shall include reason for the request and proposed changes to the solicitation provisions, specifications and conditions. Any such proposed changes, if accepted by Owner, will be provided in the form of an addendum, to all requesting the bid information.

22. Any firm responding to the bid who claims to have been adversely affected or aggrieved by the selection of a competing firm shall have five calendar days after notification of the selected firm to submit a written protest to the Construction Manager, identifying with specificity the grounds for dispute, with a copy to the Owner's Representative. Failure to timely submit such protest shall bar the claim. For timely submitted bid disputes, the Construction Manager shall be solely and exclusively responsible for resolving the dispute, at the Construction Manager's sole expense. The entire bid dispute and resolution file, including minutes of all conversations, will be delivered by Construction Manager to the Owner upon request. Resolution of the dispute shall not increase the Guaranteed Maximum Price. Statutory bid dispute procedures for public contracts are not applicable unless and then only to the extent Owner requires in writing that such procedures be used. Construction Manager is not acting as the Owner's representative in this process. Aggrieved or selected subcontractors and suppliers are not intended third-party beneficiaries of this bid dispute provision.

23. The Construction Manager shall use good faith efforts to reach out to Local Subcontractors and Suppliers (defined as having their head office within a 25 mile radius of the center of the District's jurisdiction for participation in the Project. Construction Manager shall include a narrative of its outreach program, after approval by Owner, in the Exhibit A GMP amendment, and shall, both midway and after full bid procurement, provide to Owner a written report of such outreach efforts and their effect, in form acceptable to Owner.

24. Pursuant to Oregon Revised Statute (ORS) Chapter 200, the Owner encourages the participation of small businesses, certified by the Oregon Certification Office for Business Inclusion and Diversity ("COBID") in all contracting opportunities. This includes certified small businesses in the following categories: disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business. The Owner also encourages joint ventures or subcontracting with certified small business enterprises.

### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

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## § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 Within 30 days after written request by the Owner, given at any time that Owner has determined that design has progressed past the Design Development stage, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance in the form of Exhibit A. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The purpose of the Guaranteed Maximum Price proposal is to identify the Work specifications and the pricing (including subcontractors and suppliers) and schedule thereof; the Construction Manager shall not and may not include in its Guaranteed Maximum Price proposal any proposed clarification, assumption, qualification, exclusion, or other term that is at variance or conflicts with, that amends, or that adds to the terms and conditions of the Contract Documents unless approved by the Owner in the Owner's sole discretion.

§ 3.2.2 To the extent that the Drawings and Specifications are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order. Construction Manager will identify and notify the Owner of the proposed Guaranteed Maximum Price increase or decrease resulting from a change in the Drawings or Specifications within 10 days after receipt of the same, or any such claim for a Guaranteed Maximum Price increase shall be barred. Notwithstanding any provision of the Contract Documents seemingly to the contrary, the Guaranteed Maximum Price shall not be increased without a concomitant increase to the scope defined at the time of establishment of the Guaranteed Maximum Price or the most recent Guaranteed Maximum Price amendment. Reductions in scope shall result in a concomitant reduction in the Guaranteed Maximum Price.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based, if not stated in this A133 Contract;
- .5 A schedule of values breaking down the Guaranteed Maximum Price Proposal by task and trade, and including a copy of any bids or subcontractor estimates, in accordance with the Procurement Requirements; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its proposed contingency ("Contingency"), which shall not exceed 5% of the estimated Cost of the Work. The Contingency shall be applied by Construction Manager solely to cover unanticipated costs reimbursable as Cost of the Work that exceed the estimated Cost of the Work, but are not included in a Change Order. Construction Manager's application of the Contingency shall not change the Guaranteed Maximum Price. Change Orders shall not increase the Contingency. The Contingency may be used only with the Owner's prior written authorization, which shall not be unreasonably withheld. The status of the Contingency will be evaluated by Owner and the Construction Manager on a regular basis to reallocate unused or unneeded Contingency to Owner, or to allow the Owner to potentially add scope, to enhance aspects of the Project, or otherwise pay for Change Orders without increase to the Guaranteed Maximum Price. Such reallocation shall be based on an evaluation of remaining risk to the Project, and such reallocation shall not be unreasonably opposed or delayed by the Construction Manager. The Construction Manager shall provide a monthly status of the Construction Contingency with each Application for Payment, including its specific line item application and the basis therefor. Any portion of the Contingency not used or applied as provided above shall, at Owner's election, either be applied to pay for Owner-directed Change Orders or shall reduce the Guaranteed Maximum Price at the time of Substantial Completion.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement (using the form of Exhibit A), a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based, which shall be consistent with the Procurement Requirements.

**§ 3.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

**§ 3.2.8** The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

**§ 3.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed, but only to the extent included in the definition of the Cost of the Work.

**§ 3.2.10** Unless Owner directs otherwise, the Construction Manager shall not charge more than an amount stated in the Guaranteed Maximum Price Amendment, for the Cost of the Work of all “general conditions” items of Construction Manager listed in Exhibit F, which general conditions items shall be set forth as a not-to-exceed sum in the Guaranteed Maximum Price Amendment (“General Conditions Maximum Charge”).

**§ 3.2.11** Prior to execution of the Guaranteed Maximum Price Amendment, Construction Manager shall not commence demolition or construction of any aspect of the Work unless Owner directs in writing to proceed on a time-and-materials basis, or unless Owner and Construction Manager have agreed upon a not-to-exceed price for such aspect of the Work.

**§ 3.2.12** The Guaranteed Maximum Price Amendment may include allowance amounts within the Guaranteed Maximum Price for the items of work identified in the Guaranteed Maximum Price Amendment (“Allowances”). If the costs of any item to which an Allowance applies shall be greater than the amount of the Allowance, Construction Manager shall so notify Owner and if Owner authorizes the Allowance Work, the Construction Cost and Guaranteed Maximum Price shall be increased by such difference without adding any additional Construction Fee. If the cost of any item to which an Allowance applies shall be less than the amount of the Allowance, the Construction Cost and Guaranteed Maximum Price shall be decreased by the amount of such difference. Work covered under an Allowance shall be accounted for on the same basis as extra work (i.e., the same percentages for overhead and profit and general conditions that apply for extra work would be applicable to Allowance Work).

**§ 3.2.13** Any Construction Manager or subcontractor proposals referenced as part of the Contract Documents (whether herein, in the Guaranteed Maximum Price Amendment, or any other amendment or change order) 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.

### **§ 3.2.14 Alternates.**

**§ 3.2.14.1** The Construction Manager, Owner, and Architect shall agree on appropriate bid alternates for every bid package such that if the Cost of the Work in connection with the Guaranteed Maximum Price is less than (or more than) the Guaranteed Maximum Price, the Owner shall have the opportunity to authorize additive (or deductive) alternates, as appropriate. It is understood that the Owner and Construction Manager may choose to defer the award of alternates in order to ensure the successful outcome of later bid packages.

**§ 3.2.14.2** Bid alternates for subcontractor packages, authorized by the Owner under the above provisions, shall be performed by the Construction Manager with no increase to the Guaranteed Maximum Price, with no time extension, and with no increase in Construction Manager's fee, unless both the Owner and the Construction Manager agree in writing at the time of the designation of alternates that awarding of the alternates will result in an increase in fee, and/or time extension.

**§ 3.2.14.3** If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price is not exceeded, then the Construction Manager shall not be eligible for an increase in fee. However, the Construction Manager may be eligible for a time extension, if such extension is determined to be warranted.

**§ 3.2.14.4** If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price will be exceeded, then the Construction Manager shall be entitled to an increase in fee, for the increase in the Cost of the Work above the Guaranteed Maximum Price, and as described in this document.

**§ 3.2.14.5** Certain add and deduct alternates and the prices therefor (each, an "Alternate") may be set forth in the Guaranteed Maximum Price Amendment. Owner at its option may choose to have Construction Manager perform or delete the Work set forth in any such Alternate, in which case the Construction Cost and Guaranteed Maximum Price shall be increased or decreased, as the case may be, in the amount shown. Any Alternates listed in the Guaranteed Maximum Price Amendment shall represent the firm total amount by which the Construction Cost and Guaranteed Maximum Price will be increased or decreased upon the election of such Alternate and such Alternates shall be inclusive of all direct and indirect costs (including insurance and bonds), overhead, profit and fee.

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed for Early Work, whichever occurs earlier.

**§ 3.3.1.3** In the event the Owner determines, in its discretion, to authorize Work in advance of mutual agreement on the Guaranteed Maximum Price Amendment ("Early Work"), the Construction Manager shall not proceed with such Early Work without mutual execution of an amendment to this Contract stating the specifications, timing and price (including the applicable Construction Manager Fee) of such Early Work ("Early Work Amendment"). Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the Project for which performance prior to establishment of the GMP will materially and positively affect the development or completion of the Project. Except in the event of emergency as approved in advance by Owner, no Early Work or Owner-directed Change Order work will proceed except on a lump-sum or not-to-exceed basis.

The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.



### **§ 3.3.2 Administration**

**§ 3.3.2.1** The Owner Representative shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work, not less than weekly with the Construction Manager, Architect, and Owner. The Owner Representative shall prepare and promptly distribute minutes of the meetings to the Construction Manager and Architect. Construction Manager shall attend and participate in such meetings, and promptly provide in writing any comments on Owner's Representative's minutes of such meetings. Except for written comments of the Construction Manager regarding meeting minutes delivered to the Owner's Representative within the earlier of (i) seven days after submission of the minutes, or (ii) by the next OAC meeting, Construction Manager shall be deemed to have approved the meeting minutes as submitted.

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work (consistent with the required Substantial Completion and Final Completion Dates with appropriate time contingencies) and a submittal schedule in accordance with Section 3.10 of A201–2017.

### **§ 3.3.2.3 Monthly Report**

The Construction Manager shall prepare and maintain ordinary and customarily accepted records of the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

### **§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

### **§ 3.3.2.5 Cost Control**

The Construction Manager 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 Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

**§ 3.3.2.6** Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager, in accordance with the Procurement Requirements. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work in accordance with the Procurement Requirements.

**§ 3.3.2.7** If the Guaranteed Maximum Price has been established and when a specific bidder (1) satisfies the Procurement Requirements and is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner unreasonably requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 3.3.2.8** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below. Subcontracts shall provide that the Subcontractor shall correct defective or nonconforming Work at no additional charge.

§ 3.3.2.9 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 3.3.2.10 In addition to the meetings set forth above and any other obligations of Construction Manager, Construction Manager shall assist Owner in dealing and working with the neighborhood groups, government agencies and/or funding sources (public or private) for the Project, attend meetings with such entities, if applicable or requested by Owner, assist Owner in completing forms and applications, organizing information, and assembling documents and materials, and generally assist Owner as necessary in connection with its financing, permitting, and approval activities for the Project. Construction Manager shall assemble such documents and materials as may be appropriate for the anticipated discussion at such meetings, and shall make presentations regarding the Project to such entities as applicable and as requested by Owner. Construction Manager shall receive no extra compensation for attending such meetings or making such presentations.

§ 3.3.2.11 Construction Manager shall assign all extended manufacturer's warranties to Owner and shall cooperate with the Owner's pursuit of warranties and warranty claims. The Construction Manager acknowledges that Owner retains the right to assign Construction Manager's warranties and any manufacturer's warranties for each Phase to the purchaser of such Phase, and shall execute such documents as are requested by Owner to further evidence such assignment.

§ 3.3.3 Construction Manager shall comply with the Access Standards (see Exhibit I) in all aspects of performance of the Work.

#### **ARTICLE 4 OWNER'S RESPONSIBILITIES**

##### **§ 4.1 Information and Services Required of the Owner**

§ 4.1.1 To the extent not already identified in the Request for Proposals, the Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

##### **§ 4.1.2 DELETED**

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the MACC for the Cost of the Work as defined in Article 7 with Fee, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's MACC for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, may thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other site information in Owner's possession and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to reasonably rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, if such services are required under this Contract, shall furnish services of geotechnical engineers, which may include, but are not limited to, at Owner's discretion, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness.

#### § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project ("Owner's Representative"). The Owner's Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's Representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. Owner is not responsible for providing legal, insurance or accounting services to or for Construction Manager.

#### § 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101™–2017 or B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, as modified by the Owner, including the changes herein and any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement. Owner may elect to have any duty or right of the Architect under the Contract Documents (other than those required by law to be performed by a licensed design professional) instead to be performed by Owner's Representative.

§ 4.4 **Key Persons.** Construction Manager shall appoint the personnel named in Construction Manager's Proposal (see Exhibit E) to work on the Project in the respective positions designated therein, which shall include the Principal in Charge, Project Manager and Superintendent ("Key Persons"). Each Key Person shall be authorized to communicate to Owner on behalf of Construction Manager (which communications shall be binding on Construction Manager, and Owner communications to any Key Person shall be deemed communications to Construction Manager. Construction Manager shall not change any of the Key Persons without Owner's prior written approval. In the case any such person is no longer employed by Construction Manager, Owner's approval of such change shall not unreasonably withheld. If Owner requests a change to any of the Key Persons, Construction Manager shall work with Owner to replace such Key Person with a member of Construction Manager's staff reasonably acceptable to Owner.

### ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

#### § 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows (only services performed after the date of mutual signature of this Agreement are compensable):

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

«Documented Direct Personnel Expense of the Preconstruction Phase Services, plus Construction Manager's Fee percentage on such Direct Personnel Expense, but not exceeding \$ \_\_\_\_\_.»

§ 5.1.2 For the purposes of Section 5.1.1, the hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

*(If applicable, attach an exhibit of hourly billing rates or insert them below.)*

« »

**Individual or Position**

**Rate**

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

**§ 5.2 Payments**

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable after presentation of the Construction Manager's invoice in accordance with ORS 279C.570, and amounts unpaid when required under that statute shall bear interest at the rate stated in the statute.

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

**§ 6.1 Contract Sum**

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee, not exceeding the Guaranteed Maximum Price.

§ 6.1.2 The Construction Manager's Fee:

*(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)*

«The Construction Manager's Fee shall be established as \_\_\_ % of the estimated Cost of the Work as established at the time of the Guaranteed Maximum Price Amendment, except no fee shall be calculated on Fee Exclusion Items. The Construction Manager's Fee shall be stated as a lump sum in the Guaranteed Maximum Price Amendment. The Construction Manager's Fee is inclusive of all profit, overhead and all other indirect and non-reimbursable costs, and is inclusive of costs of preparation of, and response to inquiries relating to, Construction Manager's required monthly reports to Owner.

No Fee shall be applied to the following items: [Insurance, Bond Charges, LIST OTHERS]»

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

« \_\_\_ % of the net increase or decrease to the Cost of the Work resulting from the change, subject to Section 7.5 of the A201 General Conditions. "Contractor's Change Fee" for the purposes of the A201 shall mean the Construction Manager's Fee of \_\_\_ %.»

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

«See Section 7.5 of the A201 General Conditions»

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ~~one hundred~~ percent (~~100~~%) of the standard rental rate paid at the place of the Project.

§ 6.1.5.1 Unit prices, if any, shall be identified in the Guaranteed Maximum Price Amendment.

§ 6.1.6 Liquidated damages, if any:

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



### § 6.1.6.1 Liquidated Damages

The Construction Manager 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 (“Loss of Use”); which are in addition to damages, other than Loss of Use, such as 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 6.1.6, the Construction Manager acknowledges and agrees that time is particularly of the essence in the Construction Manager’s performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of 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 completion of the Work does not occur within the required Contract Time. It would be difficult if not impossible to determine the amount of Loss of Use 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 additional Owner costs related to the Project, and the right to collect consequential damages in any case where liquidated damages are unenforceable or otherwise unavailable. The provisions shall not relieve or release the Construction Manager 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, or other damages that are not expressly covered by liquidated damages.

### § 6.1.6.2 Loss of Use Liquidated Damages

§ 6.1.6.2.1 The Owner and Construction Manager acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion, the amount of the Owner’s actual Loss of Use damages (as described in Section 6.1.6.1 above) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Substantial Completion is not achieved by the agreed date of Substantial Completion as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay to the Owner as liquidated damages for the Loss of Use of the Project the following amounts: the sum of **One Thousand Dollars and 00/100 (\$1,000.00)** for each partial day or full day of delay beyond the deadline for Substantial Completion.

§ 6.1.6.2.2 The parties further acknowledge and agree that the Construction Manager’s obligation to pay liquidated damages under this Section 6.1.6 shall be in lieu of the obligation to pay actual delay damages for the Loss of Use damages. 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 such Loss of Use delay damages and that the Owner reserves the right to claim other types of damages against Construction Manager resulting from delays, including but not limited to other delay damages. The Construction Manager’s obligation to pay liquidated damages for the applicable period shall not require Owner’s establishment of any actual damages for such delay. The Owner may withhold liquidated damages from any progress or final payment.

§ 6.1.6.2.3 The required date of Substantial Completion of the Work is August 22, 2025.

### § 6.1.7 Other:

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*  
«100% of all Savings accrue to the Owner. As used in this Section, “Savings” means any positive difference between a fixed price, the Guaranteed Maximum Price or other maximum price set forth in the Contract Documents and the actual Cost of the Work and Fee, including all costs for which Owner reimburses Construction Manager and Construction Manager’s fees or profits the Construction Manager earns.»

### § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided as it

is amended from time to time. To the extent the Cost of the Work and Fee exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price and Fee without reimbursement or additional compensation from the Owner. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

### **§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** Subject to Article 15 of AIA Document A201-2017, if no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean only costs necessarily incurred by the Construction Manager in the proper performance of the Work in accordance with this Article 7 and Article 8. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. As to change work, in the event of conflict between the provisions of this Article 7 and Section 7.5 of the A201 General Conditions, the provision more favorable to Owner (including any identification of chargeable costs) shall take precedence.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops, calculated as follows and with only the following components:

- .1** Basic wages: The hourly wage (without markup, fringe benefits or labor burden) not less than that specified in the applicable “Intent to Pay Prevailing Wage” for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Work on the site. The premium portion of overtime wages is not included unless pre-approved by the Owner and seek the Owner’s prior written approval.
- .2** Fringe benefits: Fringe benefits paid by the Construction Manager 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 Construction Manager 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).

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site, or with the Owner's prior written approval, offsite while working exclusive on the Project.

§ 7.2.3 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below. Home office administrative tasks are included in the Fee and are not to be charged to the Project. The activity must be directly attributable to the construction management process. *(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

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§ 7.2.4 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.5 If agreed rates for wages and salaries under Sections 7.2.2 through 7.2.4 in lieu of actual costs, are provided in this Agreement (or in a separate Construction Manager proposal that the Owner has accepted), those rates shall apply and the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.2.6 If applicable prevailing wage rates for personnel are actually higher than as provided above, Construction Manager shall pay or cause to be paid the difference, and the difference shall not be a Cost of the Work.

### § 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts for Work properly performed.

### § 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item. All rental rates shall be subject to the Owner's prior written approval.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval. In addition to other requirements of the Contract Documents applicable to payment for stored materials, Owner may withhold payment for any stored materials until all of the following conditions are fulfilled to Owner's satisfaction: (i) evidence that Owner has acquired title to the same and such materials are covered by insurance required and the Owner is named as additional insured on insurance certificate; (ii) a Stored Materials Log for review by Owner and Architect, together with all invoices and bills of sale for such materials itemized therein; (iv) a schedule for the prompt incorporation thereof into the Property; (v) written confirmation from the Architect verifying and approving the cost and acquisition of said materials, that such materials are stored in a secure building or bonded warehouse located on the Property, or in the jurisdiction in which the Property is situated, and that such materials are tagged and separate and not subject to commingling with other materials.

### § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and Construction Manager payment and performance bonds required by the Contract Documents that can be directly attributed to this Contract at the following fixed rates: Bonding Rate \_\_\_% and Project Insurance Rate \_\_\_%.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable. The Oregon Corporate Activity Tax under HB 3427, (also known as the "Student Success Act" or the "Gross Receipts Tax") is excluded from the Cost of the Work and is not otherwise recoverable from the Owner.

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

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

### § 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017, that do not arise from the negligence of Construction Manager, its subcontractors or suppliers.

§ 7.7.3 Costs of repairing or correcting damaged Work executed by the Construction Manager, Subcontractors, or suppliers prior to Final Completion, provided that such damaged Work was not caused by the negligence of, or failure

to fulfill a specific responsibility by, the Construction Manager, or its subcontractors or suppliers and only to the extent that the cost of repair or correction is not recovered or recoverable by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others. Costs of repairing work damaged after Final Completion, and costs of repair or correction of nonconforming Work whether before or after Final Completion, are not recoverable.

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, unless any provision of AIA Document A201–2017 or other Conditions of the Contract require the Construction Manager to pay such costs, or unless such costs are excluded by the provisions of Section 7.9.

### **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.
- .10 Data processing or software costs related to the Work.
- .11 Any cost incurred by Construction Manager, including bond costs in response to any lien, stop notice, bonded stop notices or other such claims, unless the cost incurred by Construction Manager is solely the result of Owner's failure to make a payment to Construction Manager when due and payable with respect to the Work in question.
- .12 Costs to correct nonconforming work or to perform warranty work following Final Completion.
- .13 Travel, lodging, food, or relocation expenses.
- .14 Bonuses, profit sharing, incentive compensation, or other discretionary payments.
- .15 Costs of preparation of, and response to inquiries relating to, Construction Manager’s required monthly reports to Owner.
- .16 Corporate Activity Tax.
- .17 Any other cost or expense not expressly included in the definition of Cost of the Work.



## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. Construction Manager shall make Owner aware of any discount/rebate programs and the timing of payments required under such programs so that Owner will have, at its discretion, the opportunity to participate in such programs and accrue the discount or rebate.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## **ARTICLE 10 ACCOUNTING RECORDS**

### **§ 10.1 Accounting Records**

§ 10.1.1 The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. Construction Manager shall cooperate with any audits.

§ 10.1.2 The Construction Manager's system of cost control for the Work shall be in accordance with industry standards for projects of this scope, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and

estimated costs and report the variances to the Owner and Architect at regular intervals, using Construction Manager's job-cost tracking system.

§ 10.1.3 The Construction Manager's records 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), the items described in Section 10.1.1, 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. 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.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

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

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

§ 11.1.3 Progress Payments shall be made in accordance with the Oregon Prompt Payment Act, ORS 279C.570.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with lien/claim/bond waiver and check vouchers attached, and any other evidence reasonably required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee, as a separate line item.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values (unless objected to by the Architect or the Owner), the Construction Manager shall submit supporting documentation to the Architect using the process (including supporting documentation) required for change orders (AIA 201 7.5), and such allocations must be approved in writing prior to the submission of the applicable Application for Payment.

§ 11.1.6 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. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make and then actually makes payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3 of AIA Document A201-2017;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner determines to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 11.1.7.2 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 Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial 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 the entire amount of each progress payment»

§ 11.1.8.1.1 The following items are not subject to retainage:

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

«The entire amount of each progress payment is subject to retainage»

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

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

«To the fullest extent allowed by law, full retainage shall be held by the Owner until Final Completion»

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:



*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

«To the fullest extent allowed by law, full retainage shall be held by the Owner until Final Completion»

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 11.1.11 In accordance with ORS 279C.570, the Owner and the Construction Manager shall endeavor to agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements. Unless otherwise agreed in writing with the Owner or otherwise required by law, The Construction Manager agrees to withhold as retainage from each first-tier Subcontractor five percent of the amount of each progress payment to such first-tier Subcontractor, until completion of the entire Work (not just the Subcontract Work), and to otherwise apply such retainage in accordance with the applicable Subcontract to protect the interests of the Owner.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager provided this does not exonerate the Architect from Owner claims if the Architect discovers or has reason to know that inaccurate or incomplete information has been provided. Examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum (including any previously unreleased or unapplied retainage, if and to the extent required to be release under ORS 279C.570), shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2; and
- .4 All other conditions to Final Payment in the Contract Documents have been fulfilled.

§ 11.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2017. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2017.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article

9 of AIA Document A201–2017. The Architect is not responsible to the Construction Manager for verifying the accuracy of the Construction Manager’s final accounting.

§ 11.2.2.3 If the Owner’s auditors’ report concludes that the Cost of the Work, as substantiated by the Construction Manager’s final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount pursuant the modified AIA A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager’s receipt of a copy of the Architect’s final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner’s auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect’s final Certificate for Payment.

§ 11.2.3 The Owner’s final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment and fulfillment of the other conditions to Final Payment.

§ 11.2.4 If, subsequent to final payment and at the Owner’s request, the Construction Manager incurs costs to correct defective or nonconforming Work, the Owner shall not reimburse the Construction Manager such costs, and such costs are not Cost of the Work. If it incurs any costs in connection therewith and the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net savings amount to be paid by the Owner to the Construction Manager.

### § 11.3 Interest

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.)*

Payments shall be made, and interest shall be payable, in accordance with the Oregon Prompt Payment Act, ORS 279C.570.

« » % « »

## ARTICLE 12 DISPUTE RESOLUTION

### § 12.1 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 Article 15 of AIA Document A201–2017
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*  
« »

If the Owner and Construction Manager do not select a method of binding dispute resolution, or the parties 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.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days’ written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, for reasons other than Construction Manager’s default, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services, and any Owner damages for Construction Manager's default.

§ 13.1.6 Except in the event of Construction Manager default, the Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 Except in the event of Construction Manager default, if the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement arising after the date of assignment, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination, except in the event of Construction Manager default.

§ 13.1.6.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would otherwise have received under this Section 13, except that the Construction Manager's Fee shall be calculated proportionate to the Cost of the Work for Work actually completed.

## § 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause

the Guaranteed Maximum Price to be exceeded, nor shall it exceed the lesser of the amount identified in Article 14 of AIA document A201-2017, or an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

§ 13.2.2.2 If the Owner terminates for convenience, and at that time the Construction Manager is not in default of this Agreement, the Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. In any event, to the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, and as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017; in such case, unless suspension is the result of acts or omissions of the Construction Manager, the Guaranteed Maximum Price and Contract Time shall be increased or decreased as provided in Article 14 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201-2017. Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

### § 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, 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 14.2.2 of this Agreement, and in Section 13.2.2 of A201-2017, the Construction Manager shall not assign the Contract as a whole without written consent of the Owner. If the Construction Manager attempts to make an assignment, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

### § 14.3 Insurance and Bonds

#### § 14.3.1 Provision

The Construction Manager shall provide bonds not later than the time required under applicable Oregon law, and proof of insurance coverages required under the Agreement not later than any entry onto the Project site. See Exhibit B.

§ 14.3.2 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.3 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.

§ 14.3.4 If an owner-controlled (DSIP) or contractor-controlled insurance program for the Project is permitted under ORS 737.602 or other applicable law, the Owner may require such program for the Project. If so, this Contract shall identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives, and Article 11 of the AIA A201 shall be modified in a manner acceptable to the Owner to reflect the owner-controlled or contractor-controlled program and reduced charges from Construction Manager and subcontractors for their own insurance. In the event the Owner chooses to proceed with an owner-controlled or contractor-controlled program, Construction Manager shall, and shall cause its subcontractors to, comply with all requirements of such insurance program as necessary for coverage. Notwithstanding any provision of the Contract Documents to the contrary, if such program is put in place, neither Construction Manager nor any subcontractor shall charge or pass through, directly or indirectly any of its insurance costs or deductibles to Owner, as Cost of the Work part of the Fee, or otherwise.

## ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Form of Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified.
- .4 N/A
- .5 Other Exhibits:  
(Check all boxes that apply.)

AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
(Insert the date of the E234-2019 incorporated into this Agreement.)

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .6 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 Construction Manager’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.)

Exhibit “A” Form of GMP Amendment  
Exhibit “B” Insurance Requirements  
Exhibit “C” Form of Claim Waiver  
Exhibit “D” Request for Proposal and Addenda  
Exhibit “E” Construction Manager’s Proposal  
Exhibit “F” Construction Manager’s General Conditions Charges  
Exhibit “G” Payment and Performance Bond Forms

Exhibit "H" Provisions from Oregon Public Contracting Code and Public Contracting Rules  
Exhibit "I" Owner Access Standards

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

**JACKSON COUNTY SCHOOL DISTRICT 5**

**TO BE DETERMINED**

**OWNER** *(Signature)*

«Scott Whitman» «Director of Business Services»

*(Printed name and title)*

**CONSTRUCTION MANAGER** *(Signature)*

« » « »

*(Printed name and title)*





# DRAFT AIA® Document A133™ - 2019

## Exhibit A

### Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")  
(In words, indicate day, month, and year.)

for the following **PROJECT:**  
(Name and address or location)

«Jackson County School District 5»  
«Ashland High School»  
«Science Building Seismic Rehabilitation Project»  
«201 S Mountain Avenue»  
«Ashland, OR 97520»

**THE OWNER:**  
(Name, legal status, and address)

«Jackson County School District 5»  
«885 Siskiyou Boulevard»  
«Ashland, OR 97520»

**THE CONSTRUCTION MANAGER:**  
(Name, legal status, and address)

«To Be Determined»« »  
« »

#### TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

#### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

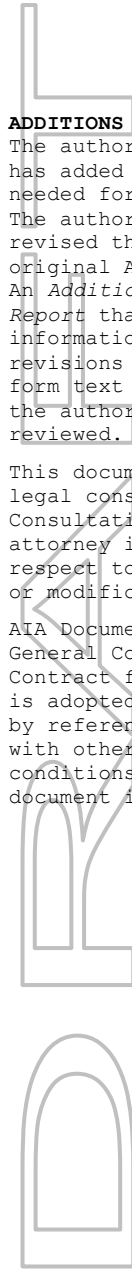
##### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

**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.

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

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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§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed  (\$  ), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.  
(Provide itemized statement below or reference an attachment.)

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 **Alternates**

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
<input type="text"/>	<input type="text"/>

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
<input type="text"/>	<input type="text"/>	<input type="text"/>

§ A.1.1.6 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.)

Item	Units and Limitations	Price per Unit (\$0.00)
<input type="text"/>	<input type="text"/>	<input type="text"/>

**ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ A.2.1 The date of commencement of the Work shall be:  
(Check one of the following boxes.)

The date of execution of this Amendment.

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

Upon issuance of a Notice to Proceed by the Owner.

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

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 **Substantial Completion** Unless the date or dates of Substantial Completion is/are stated in the Agreement:

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager 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: « » [INSERT DATE IN A133 IF STATED THERE]

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

Portion of Work	Substantial Completion Date

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

#### ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.3.1.2 The following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

« »

Section	Title	Date	Pages

§ A.3.1.3 The following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

« »

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:  
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:  
(Identify each allowance.)

Item	Price

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption and clarification.)

« »

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

« »

**ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

« »

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

**JACKSON COUNTY SCHOOL DISTRICT 5**

**TO BE DETERMINED**

\_\_\_\_\_  
**OWNER** (Signature)

«Scott Whitman» «Director of Business Services»

(Printed name and title)

\_\_\_\_\_  
**CONSTRUCTION MANAGER** (Signature)

« »« »

(Printed name and title)



## EXHIBIT B INSURANCE REQUIREMENTS

Contractor will at all times specified herein, and prior to any entry onto the job site, provide and maintain for itself and require the Subcontractors to provide and maintain the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/IX or better in the most recent edition of "Best's Insurance Guide" (or such lesser rating as may be approved by Owner in writing) and authorized to do business in the state where the Project is located. Continued compliance with these requirements is a condition precedent to payment.

### A. Workers' Compensation and Employer's Liability:

- (i) Workers Compensation, with limits as required by applicable law.
- (ii) Employers Liability:
  - \$1,000,000 Each Accident
  - \$1,000,000 Disease, Policy Limit
  - \$1,000,000 Disease, Each Employee

Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

### B. Commercial General Liability (Occurrence Form):

- (i) Combined Bodily Injury and Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
  - \$300,000 Fire Damage Legal Liability
  - \$10,000 Medical Expenses Per Person
- (ii) The scope of coverage must meet the following:
  - (1) Premises Operations must be included.
  - (2) Elevators and Escalators must be included.
  - (3) Coverage for Independent Contractors and work performed on Contractor's behalf by Subcontractors must be included.
  - (4) Contractual Liabilities must be included (including the contract obligations specified in the indemnification paragraph(s) of the Contract)
  - (5) The Products and Completed Operations Insurance will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
  - (6) There can be no exclusions for subsidence, collapse, explosion or underground property damage.



- (7) There can be no insured vs. insured cross-suit exclusion. The policies will provide for cross-liability coverage as would be achieved under the standard Insurance Services Office “separation of insureds” clause.
- (8) The limits will not be eroded or wasted by defense costs.
- (9) The policy will be endorsed to be primary and non-contributory with any insurance maintained by Owner, its affiliates, subsidiaries, members, directors, officers, employees and agents. (This endorsement must be shown on the insurance certificate provided to Contractor)
- (10) Maximum deductible will be \$10,000. Contractor shall pay all deductibles without reimbursement from Owner.
- (11) Contractor will secure Pollution Liability coverage with limits not less than \$1,000,000 per occurrence. Contractor’s Pollution Liability coverage will include insurance covering the Contractor’s liability for a third-party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing operations under the contract. The insurance coverage also shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be expressly accepted, in writing, by the Owner. The insurance coverage shall also respond to cleanup cost. The policy’s limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract.

**C. Commercial Business Auto:**

- (i) Combined Bodily Injury and Property Damage  
\$1,000,000 Each Accident
- (ii) The following coverages must be included:
  - (1) Owned Automobiles
  - (2) Non-Owned and Hired Automobiles

Will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

**D. Excess/Umbrella Liability Coverage:**

- (i) \$10,000,000 Each Occurrence
- (ii) \$10,000,000 Aggregate
- (iii) Coverage will be at least as broad as all liability policies described above.
- (iv) Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
- (v) The policy must provide that coverage will be triggered by exhaustion of the General Liability, Commercial Business Auto, Employer’s Liability policies above only and not any other policies; exhaustion of the applicable policies



above will be achieved by reasonable compromise for amounts less than the full limits of such applicable policies.

**E. Professional Liability Insurance.**

Covering performance of professional services by the Contractor or any Subcontractor or professional firm at any tier (e.g. for bidder-design or design-build components), whether or not performed by a licensed architect or engineer, with policy limits of not less than (\$1,000,000) per claim and (\$2,000,000) in the aggregate.

**F. Certificates and Certified Copies of Policies.**

Certificates of insurance for Contractor's and Subcontractors' insurance along with copies of all endorsements necessary to evidence compliance with all insurance requirements shall be filed with Owner and must be acceptable to Owner prior to commencement of the Work. For those insurance coverages that are required to remain in force after Final Completion, additional certificate evidencing continuation of such coverage will be submitted as part of the application for final payment and upon each annual renewal for the duration of coverage required. Upon Owner's request at any time, Contractor will immediately provide an actual certified copy of its and any subcontractor's insurance policies. Provision of the certificates and copies of policies as required herein will be a condition precedent to payment.

**G. Notice of Cancellation, Reduction or Expiration.**

The insurance policies required by this Exhibit will be endorsed to include a covenant that coverages or limits afforded under the policies will not be canceled, reduced or allowed to expire until at least 30 days' prior written notice has been given to Owner. In addition, Contractor and subcontractors will give immediate written notice to Owner immediately upon learning that their coverages may be cancelled, reduced or their limits impaired by claims. Information concerning cancellation or reduction of limits on account of claims paid or to be paid will be furnished by the Contractor to Owner not more than three (3) business days of when Contractor learns that revised or reduced limits are likely. When Contractor becomes aware of cancellation, expiration or reduction in coverage or available limits, Contractor within ten (10) business days will procure other policies of insurance that meet all requirements of this Exhibit.

**H. Owner's Right to Terminate or Cure.**

Failure of Contractor or a Subcontractor to secure and maintain insurance with the coverages and limits required by this Exhibit will be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Contractor for work





on the Project, (ii) terminate the Contractor for cause, and (iii) purchase any additional insurance it deems reasonable necessary to protect itself at the expense of the Contractor. Contractor consents to Owner procuring replacement insurance in Contractor's name and will cooperate in all respects with Owner's efforts in procuring additional or replacement insurance. Owner will have the discretion to purchase an Owner's protective policy or other similar policy that affords to Owner coverages and limits providing reasonably equivalent protections as Owner would have received if Contractor and Subcontractors maintained the insurance required by this Exhibit. Owner's costs incurred in finding replacement insurance or an Owner's protective policy will either be reimbursed directly by Contractor or may be offset against amounts owed by Owner to Contractor on the Project or other projects. These requirements will remain enforceable for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

**I. Insurance in Excess of Requirements.**

In the event Contractor or any Subcontractor(s) purchase insurance in excess of the coverages or limits required under this Exhibit, such excess coverages or limits will apply to the Project and inure to the benefit of Owner.

**J. No Waiver by Owner.**

The insurance requirements under this Exhibit can only be waived or modified by Owner by an express written instrument signed by Owner acknowledging the reduced coverages or limits. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, will amount to Owner's waiver of the insurance requirements of this Exhibit.

**K. Subcontractor Insurance.**

All Subcontractors' insurance will meet all insurance requirements of Contractor as provided in this Exhibit, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for Subcontractors will be no less than the following:

*Design Professional:*

- (i) Workers' Compensation and Employer's Liability: same as above except for the following limits for Employer's Liability:
  - \$500,000 Each Accident
  - \$500,000 Disease, Policy Limit
  - \$500,000 Disease, Each Employee
- (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:



- \$1,000,000 Each Occurrence
- \$1,000,000 Personal and Advertising Injury
- \$2,000,000 General Aggregate
- \$2,000,000 Products/Completed Operations Aggregate
- (iii) Business Auto: same as above.
- (iv) Excess/Umbrella Liability Coverage: none required.
- (v) Professional Liability (\$1,000,000) per claim and (\$2,000,000) in the aggregate.

*Sub Contractor:*

- (i) Workers' Compensation and Employer's Liability: same as Contractor
- (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
  - \$1,000,000 Each Occurrence
  - \$1,000,000 Personal and Advertising Injury
  - \$2,000,000 General Aggregate
  - \$2,000,000 Products/Completed Operations Aggregate
- (iii) Business Auto: same as above.
- (iv) Excess/Umbrella Liability Coverage: \$4,000,000.
- (v) Pollution Liability and Hazardous Materials Liability
  - \$1,000,000 Each Occurrence
  - \$1,000,000 General Aggregate

**L. Waiver of Subrogation – Liability.**

All of Contractor's and Subcontractors' liability insurance policies, including worker's compensation, will contain a waiver of subrogation against Owner, its affiliates, subsidiaries, directors, officers, employees and agents.

**M. Additional Insureds.**

All of Contractor's and Subcontractors' liability insurance policies will be endorsed to expressly name Owner, its affiliates, subsidiaries, directors, officers, employees and agents (including but not limited to those listed below) as additional insureds. The coverage under the additional insured endorsement will (i) be primary and noncontributory with respect to any insurance of the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Exhibit, and will not be limited to vicarious liability, (iii) not be limited to on-going operations, and include completed operations (iv) be maintained for the same durations as the coverages afforded to the primary insured as required by this Exhibit and blanket endorsements will not be acceptable. The following persons or entities affiliated with Owner will be expressly named as Additional Insured: (i) Owner, (ii) Project Manager HMK Company.



**N. Builder's Risk Insurance.**

- (1) The Contractor shall purchase and maintain in force during the term of this Contract, at its own expense, Builder's Risk insurance in an amount equal to the Contract Amount, including any subsequent modifications for the entire project at the site on a replacement cost basis, including covering all costs needed to repair the structure or work based on the value figured at the time of rebuilding or repairing, not at the time of loss. Such coverage shall be maintained, unless otherwise provided in the Contract Documents, or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until no person or entity other than the Owner has insurable interest in the property to be covered, or 90 days after construction is complete, whichever is later. The Builder's Risk insurance shall include interests of the Owner, the Owner's Project Manager, the Architect, the Contractor, Subcontractors and sub-tier contractors in the project. If the Contract Sum does not exceed \$5,000,000, the Owner may, on notice to the Contractor, itself procure Builders Risk coverage, instead of the Contractor purchasing it, on such terms and with such coverages as Owner determines, and no charge shall be made to the Owner, directly or indirectly, for Builders Risk coverage.
- (2) **Insured Loss.** The owner shall have sole power and authority to adjust and settle a loss with insurers. A loss insured under the Builder's Risk Insurance or any Builder's Risk Installation Floater shall be adjusted by the Owner and any payments or settlements shall be made payable to the Owner for the insureds, as their interests may appear. The Owner shall be entitled to full payment of its loss from the insurance proceeds before payment of the remainder to any other beneficiaries of the policy. The Contractor shall pay Subcontractors their just share of remaining insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors make payments to the Sub-subcontractors in similar manner.
- (3) **Deductible.** Payment of the deductible on the Builders Risk policy claims, up to \$50,000 per claim, is the responsibility of the Contractor and is not subject to reimbursement by the Owner. The Contractor promptly shall pay such 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.
- (4) **Special Covered Cause of Loss Form.** The Contractor's Builder's Risk Coverage shall be on a special covered cause of loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of



construction, architect's fees and expenses, flood and earthquake coverage, materials and equipment in transit, and all below and above ground structures, water and sewer mains. Other coverage may be required if provided in contract documents. Coverage shall be written for 100% of the completed value (replacement cost basis) of the work being performed.

(5) **Amendments and Provisions.** The Contractor's Builder's Risk shall also include the following amendments and provisions.

- a. **Waiver of Subrogation.** Waiver of subrogation against all parties named as insured, to the extent the loss is covered;
- b. **Beneficial Occupancy Clause.** The policy shall specifically permit partial or beneficial occupancy at or before substantial completion or final acceptance of the entire work. The Contractor shall take reasonable steps to obtain any necessary consent of the insurance company or companies and agrees to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse or reduction of insurance;
- c. **Equipment Breakdown Coverage.** Equipment breakdown coverage (aka boiler & machinery coverage) shall be provided that specifically covers insured equipment during installation and testing;
- d. **Interior Damage.** Any clause that excludes recovery of damage to the interior of building shall be deleted. The Builder's Risk policy shall provide for recovery for damage to the interior of a building if caused by perils insured against in the Builder's Risk Policy;
- e. **Design Error.** The Builder's Risk policy shall not exclude coverage of damages caused by design error;
- f. **Settlement, Cracking, Etc.** The Builder's Risk policy shall cover settling, cracking, shrinking or expansion (including coverage for loss resulting from settling, cracking, shrinking or expansion) of foundation walls, floors and other parts of the structure; and

(6) **Deductible.** Any deductible shall not exceed \$50,000 for each loss.

(7) **Waiver of Subrogation.** To the fullest extent permitted under the property insurance applicable to the Project, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) separate contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for



damages caused by fire, or other causes of loss, to the extent those losses are covered by and paid for by property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Contractor shall require similar written waivers in favor of the individuals and entities identified above from all subcontractors and sub-subcontractors.

- (8) Copies of Policies.** The Contractor shall file with Owner prior to proceeding with procurement or performance of any Work, certificates of insurance acceptable to the Owner as well as copies of all Builder's Risk insurance policies, with all riders and endorsements, all separate exclusions, conditions and waivers, and all other amendatory documents attached, evidencing the insurance required of the Contractor. No progress payment will be due until all such Certificates and policies are furnished. All policies and certificates must be signed copies and shall contain a provision that coverage's afforded under the policies cannot be materially altered (i.e., the coverage's reduced, the limits decreased, or the additional insured removed), allowed to expire, or cancelled without first giving 30 days' prior written notice to the Owner. The Contractor shall furnish to the Owner copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits. If any of the required coverages are to renew during the period when such coverage is to remain in effect, or are required to remain in force after final payment to the Owner's prime contractor on the Project, an additional certificate evidencing continuation of such coverage shall be submitted upon renewal or with the Contractor's final invoice.



**Exhibit C – Waiver Forms**

From: \_\_\_\_\_  
(Name of Firm Giving Release)

Project: \_\_\_\_\_  
(Project Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Project Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(City, State, Zip Code)

Contact Person: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Contact Telephone: \_\_\_\_\_

Project Telephone: \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE – PROGRESS PAYMENT**

The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from (Name of Firm writing check:) \_\_\_\_\_ in the sum of \$\_\_\_\_\_ and when the check has been properly endorsed and has been paid by the institution upon which it was drawn, this document shall become effective to waive and release pro tanto any and all Claims which the undersigned has or may now have on the above referenced job, the Owner of the Project. This release covers all payment for labor, services, equipment or materials furnished and/or other claims through and for work forward through (date) \_\_\_\_\_, including changes if any, but does not cover the right to payment of unreleased 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. The undersigned represents and warrants that this waiver and release is effective to waive and release all Claims of persons or entities providing labor, services, equipment, or materials furnished to the below-referenced job by or on behalf of the undersigned company, or its subcontractors or suppliers at any tier. As used herein "Claims" includes claims of any nature, known or unknown, including without limitation all suits, debts, demands, stop notice rights, causes of action and claims for payment, claims on bonds, claims under the laws or statutes of the municipality, state or federal government, rights under prompt payment statutes, claims of negligence, breach of contract, time, delay or impact claims, and any claim of or right to lien under municipal, state or federal laws or statutes relating to construction or mechanics' liens with respect to and on the above referenced Project and the improvements thereon. "Claims" does not include claims against an insurance company on an insurance policy.

In consideration of the foregoing, the undersigned agrees to indemnify, defend and hold harmless Owner and any upper-tier contractor ("Upper-Tier Contractors") from any Claims made by the undersigned and/or its subcontractors, suppliers, laborers, employees, materialmen, or other assigns of such persons against Owner, Upper-Tier Contractors or the Project. The undersigned further agrees to indemnify and reimburse all persons so relying on this release and acknowledgment for any and all sums, including attorney fees and costs that may be incurred as a result of such claims.

This instrument shall constitute a full, final, and complete release of all claims, rights, and demands of the undersigned arising out of or relating to the above Project for the period ending on the above-referenced date, subject to any express exceptions herein.

NOTICE: THIS DOCUMENT WAIVES RIGHTS CONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

IN WITNESS WHEREOF, Contractor has executed this Conditional Waiver and Release and final discharge as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit C – Waiver Forms**

From: \_\_\_\_\_  
(Name of Firm Giving Release)

Project: \_\_\_\_\_  
(Project Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Project Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(City, State, Zip Code)

Contact Person: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Contact Telephone: \_\_\_\_\_

Project Telephone: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE – PROGRESS PAYMENT**

The undersigned does hereby acknowledge that the undersigned has received progress payments in the sum of \$ \_\_\_\_\_ for labor, services, equipment or materials furnished to the above referenced job and does hereby waive and release pro tanto any and all Claims which the undersigned has or may have on the above referenced job. This release covers all payment for labor, services, equipment or materials furnished and/or other claims to the above referenced job through and for work forward through (date) \_\_\_\_\_, including changes if any, but does not cover the right to payment of unreleased retention or items furnished after that date. The undersigned represents and warrants that this waiver and release is effective to waive and release all Claims of persons or entities providing labor, services, equipment, or materials furnished to the below-referenced job by or on behalf of the undersigned company, or its subcontractors or suppliers at any tier. As used herein "Claims" includes claims of any nature, known or unknown, including without limitation all suits, debts, demands, stop notice rights, causes of action and claims for payment, claims on bonds, claims under the laws or statutes of the municipality, state or federal government, rights under prompt payment statutes, claims of negligence, breach of contract, time, delay or impact claims, and any claim of or right to lien under municipal, state or federal laws or statutes relating to construction or mechanics' liens with respect to and on the above referenced Project and the improvements thereon. "Claims" does not include claims against an insurance company on an insurance policy.

In consideration of the foregoing, the undersigned agrees to indemnify, defend and hold harmless Owner and any upper-tier contractor ("Upper-Tier Contractors") from any Claims made by the undersigned and/or its subcontractors, suppliers, laborers, employees, materialmen, or other assigns of such persons against Owner, Upper-Tier Contractors or the Project. The undersigned further agrees to indemnify and reimburse all persons so relying on this release and acknowledgment for any and all sums, including attorney fees and costs that may be incurred as a result of such claims.

This instrument shall constitute a full, final, and complete release of all claims, rights, and demands of the undersigned arising out of or relating to the above Project for the period ending on the above-referenced date, subject to any express exemptions herein.

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. 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.

IN WITNESS WHEREOF, Contractor has executed this Unconditional Waiver and Release and final discharge as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit C – Waiver Forms**

From: \_\_\_\_\_  
(Name of Firm Giving Release)

Project: \_\_\_\_\_  
(Project Name)

\_\_\_\_\_  
(Business Address)

\_\_\_\_\_  
(Project Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(City, State, Zip Code)

Contact Person: \_\_\_\_\_

Project Manager: \_\_\_\_\_

Contact Telephone: \_\_\_\_\_

Project Telephone: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT**

The undersigned does hereby acknowledge that the undersigned has been paid and has received total payments in the sum of \$\_\_\_\_\_ for, labor, services, equipment or materials furnished to the above-referenced job, and does hereby unconditionally waive and release any and all Claims which the undersigned has or may have on the above-referenced job. The undersigned represents and warrants that this waiver and release is effective to waive and release all Claims of persons or entities providing labor, services, equipment, or materials furnished to the below-referenced job by or on behalf of the undersigned company, or its subcontractors or suppliers at any tier, and that all such persons and entities have been paid in full for their work on the below-referenced job. As used herein "Claims" includes claims of any nature, known or unknown, including without limitation all suits, debts, demands, stop notice rights, causes of action and claims for payment, claims on bonds, claims under the laws or statutes of the municipality, state or federal government, rights under prompt payment statutes, claims of negligence, breach of contract, time, delay or impact claims, and any claim of or right to lien under municipal, state or federal laws or statutes relating to construction or mechanics' liens with respect to and on the above referenced Project and the improvements thereon. "Claims" does not include claims against an insurance company on an insurance policy.

In consideration of the foregoing, the undersigned agrees to indemnify, defend and hold harmless Owner and any upper-tier contractor ("Upper-Tier Contractors") from any Claims made by the undersigned and/or its subcontractors, suppliers, laborers, employees, materialmen, or other assigns of such persons against Owner, Upper-Tier Contractors or the Project. The undersigned further agrees to indemnify and reimburse all persons so relying on this release and acknowledgment for any and all sums, including attorney fees and costs that may be incurred as a result of such claims.

This instrument shall constitute a full, final, and complete release of all claims, rights, and demands of the undersigned arising out of or relating to the above Project.

NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID.

I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.

IN WITNESS WHEREOF, Contractor has executed this Unconditional Waiver and Release and final discharge as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Company)

By: \_\_\_\_\_

Title: \_\_\_\_\_



**EXHIBIT G**

**FORMS OF PAYMENT AND PERFORMANCE BONDS**



PERFORMANCE BOND

(Bond No. \_\_\_\_\_)

The undersigned, \_\_\_\_\_ as Principal and \_\_\_\_\_ as Surety, a corporation organized and existing under the laws of the state of \_\_\_\_\_ are held and bound unto JACKSON COUNTY SCHOOL DISTRICT 5 and its heirs, executors, administrators, and assigns as Obligee, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS Principal has entered into a Construction Contract (“Contract”) dated \_\_\_\_\_, 2023 with Obligee for Ashland High School Science Building Seismic Rehabilitation Project (“Project”), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall faithfully, punctually and completely perform and abide with the covenants, terms, conditions and provisions of said Contract and any extensions thereof in all respects and within the time prescribed therein, including, but not limited to, the terms of any warranty and guarantee required under the said Contract; shall pay all laborers, mechanics, subcontractors, material and equipment suppliers and all persons supplying to Principal or its subcontractors and suppliers at any tier labor, materials, supplies or equipment for the prosecution of the work or any part thereof; shall fully defend, indemnify and hold Obligee harmless from all cost and damage that Obligee may suffer by reason of Principal’s failure to do so; and shall in all respects perform said Contract according to applicable law, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event that Principal shall be, and declared by Obligee to be in default under the Contract, the Surety, at the request of the Obligee, shall promptly remedy the default in a manner acceptable to the Owner.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal’s payments to Subcontractors or Contractor’s use of Project funds.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee’s favor, Surety shall pay all of Obligee’s costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees.

In the event there is an arbitration clause in said Contract, Surety agrees to participate in and to be bound by any such arbitration to the same extent Principal is bound.





ASHLAND SCHOOL DISTRICT  
SIEMIC REHABILITATION PROJECT  
CONSTRUCTION MANAGER|GENERAL CONTRACTOR  
REQUEST FOR PROPOSAL

**Nonpayment of the bond premium will not invalidate this bond, nor shall any Obligee be obligated for the payment of any premiums.**

**This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

COUNTERSIGNED:

\_\_\_\_\_  
Resident Agent

\_\_\_\_\_  
Address



PAYMENT BOND

(Bond No. \_\_\_\_\_)

The undersigned, \_\_\_\_\_ as Principal and \_\_\_\_\_, as Surety, a corporation organized and existing under the laws of the state of \_\_\_\_\_, are held and bound unto JACKSON COUNTY SCHOOL DISTRICT 5\_ and its heirs, executors, administrators, and assigns as Obligee, for the use and benefit of all persons or entities that provide labor, materials, equipment or supplies for use under the Contract described below, in the penal sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS the Principal has entered into a Construction Contract (“Contract”) dated \_\_\_\_\_, 2023 with Obligee for the Ashland High School Science Building Seismic Rehabilitation Project (“Project”), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall promptly make payment to all persons or entities that provide labor, material, equipment or supplies for use under said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event that Principal shall be, and declared by Obligee to be in default under the Contract, the Surety, at the request of the Obligee, shall promptly remedy the default in a manner acceptable to the Owner.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal’s payments to Architect, Subcontractors or Principal’s use of Project funds.

Principal and Surety hereby jointly and severally agree that any person or entity that provides labor, material, equipment or supplies for use under said Contract and has not been paid in full, and any other party entitled to make claim on the bond under ORS 279C, if notice is given within the applicable time period set forth in ORS 279C.605, may sue on this bond for the use of such person or entity, prosecute the suit to final judgment for such sums as may be justly due and owing claimant and have execution thereon. Obligee shall not be liable for the payment of any damages, costs or expenses (including attorney fees) awarded in any such suit.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee’s favor, Surety shall pay all of Obligee’s costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees.



ASHLAND SCHOOL DISTRICT  
SEISMIC REHABILITATION PROJECT  
CONSTRUCTION MANAGER|GENERAL CONTRACTOR  
REQUEST FOR PROPOSAL

**Nonpayment of the bond premium will not invalidate this bond, nor shall any Obligee be obligated for the payment of any premiums.**

**This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.**

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
PRINCIPAL

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
SURETY

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

COUNTERSIGNED:

\_\_\_\_\_  
Resident Agent

\_\_\_\_\_  
Address



## EXHIBIT H

### 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 Owner's 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.
- 2.9 WITHHOLDING FUNDS.** Should Contractor withhold payment from a first-tier Subcontractor due to a bona fide dispute, Contractor shall notify the Owner. The Owner may then withhold such funds from Contractor until the dispute is resolved; provided that this Section 2.9 shall not be construed or applied to prevent Contractor from receiving payment from the Owner for Work performed by Contractor or by another subcontractor when such Work is the subject of a backcharge by 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, 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 Contractor or Contractor's surety from obligation with respect to any unpaid claims.

### 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 and in good standing 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.

**5.12 [FOR CONTRACTS WITH SCHOOL DISTRICTS ONLY] NO UNSUPERVISED 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. Contractor will ensure that 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. Contractor will work with the Owner to ensure compliance with this requirement. If 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"), Contractor shall so notify the Owner prior to beginning any Work that could result in such contact. Contractor authorizes the Owner to conduct a criminal background check of any such officer, agent, or employee. Contractor also agrees to cause its Subcontractors and/or suppliers and all employees, if any, that might have unsupervised contact with students to authorize the Owner to conduct such background checks, and to identify the same to the Owner prior to their entry onto the Project. The Owner shall pay any fees for the background check assessed by the Oregon Department of Education for processing the background check. If fingerprinting is required by law,



Contractor shall arrange for such fingerprinting through local law enforcement agencies and for reporting and recordkeeping of the same as and to the extent required by law, including as required under Oregon SB155, OAR 581-021-0511 and applicable Owner rules, policies and procedures. If fingerprinting is required the cost will be borne solely by Contractor without reimbursement. In addition, 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 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. Contractor will discuss any questions or concerns about these requirements with the Owner's designated Point of Contact before beginning Work. Compliance with this Section 5.12 shall not be grounds for any increase in compensation nor extension of the Contract Time. Failure of compliance by Contractor or any Subcontractor or supplier shall be grounds for immediate termination of this Contract by Owner for cause.

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:



ASHLAND SCHOOL DISTRICT  
SEISMIC REHABILITATION PROJECT  
CONSTRUCTION MANAGER|GENERAL CONTRACTOR  
REQUEST FOR PROPOSAL

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. LAWS, RULES AND REGULATIONS

**15.1** The following laws, rules and regulations are incorporated herein by this reference whether or not specifically mentioned above. The Owner and Contractor shall comply with their respective obligations therein:

- (A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- (B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
- (C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- (D) If the Contract calls for lawn or landscape maintenance, a condition requiring Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- (E) Payment of claims by public officers (ORS 279C.515(1));
- (F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- (G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- (H) Hours of labor in compliance with ORS 279C.520;
- (I) Environmental and natural resources regulations (ORS 279C.525);
- (J) Payment for medical care and attention to employees (ORS 279C.530(1));





- (K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this 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." (ORS 279C.530(2));
- (L) Maximum hours, holidays and overtime (ORS 279C.540);
- (M) Time limitation on claims for overtime (ORS 279C.545);
- (N) Prevailing wage rates (ORS 279C.800 to 279C.870);
- (O) BOLI Public Works bond (ORS 279C.830(2));
- (P) Retainage (ORS 279C.550 to 279C.570);
- (Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- (R) Contractor's relations with subcontractors (ORS 279C.580);
- (S) Notice of claim (ORS 279C.605);
- (T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
- (U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

**15.2 COMPLIANCE WITH ALL GOVERNMENTAL LAWS AND REGULATIONS.**

Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and this Agreement. ORS Chapters 279A, 279B and 279C and the Owner's Public Contracting Rules ("Rules") contain certain requirements for public contracts, including but not limited to certain required contract provisions. Required contract provisions are incorporated herein by this reference. Furthermore, Contractor and the Owner agree to comply with all requirements of ORS Chapter 297A, 279B and 279C, the Rules and all other applicable laws and regulations (collectively "Laws"), whether or not such applicable provisions are included elsewhere herein and whether or not such provisions are excised herein. In the event of a conflict between any applicable Law and the provisions of this Contract, the Law shall prevail and control.

**15.3 IMMUNITY.** The parties acknowledge that the Owner is immune from certain suits as provided by law under the Oregon Constitution and relevant statutes. Notwithstanding anything else in herein seemingly to the contrary, nothing in this Agreement shall be construed to waive or to otherwise affect Owner's sovereign immunity and/or the protections given the Owner under the Oregon Constitution, the Oregon Tort Claims Act, ORS 30.265 et seq, and other immunity statutes and laws.



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- [16. **ADD ANY NECESSARY CONTRACTOR COMPLIANCE/REPORTING PROVISIONS FOR AGENCY'S WMBE GOALS PROGRAM UNDER ORS 200.090, OR LOCAL OUTREACH PROGRAMS.**]



## EXHIBIT I OWNER ACCESS STANDARDS

Contractors working on, in and/or around any properties owned by District shall comply maintain and/or provide the information as described in the Work Agreement. Failure to comply with this agreement could be grounds for termination if the District so Chooses.

### 1. Contractor Use of Premises

#### a. General

- i. District Representative will define work areas, access, staging, storage.
- ii. Access to locations and schedules will be arranged in advance with the District Representative.
- iii. All contractors and their employees will be required to submit background information checks as determined by the district and allowed or required by law. These checks may include but not be limited to a nationwide criminal records check by fingerprint.

#### b. Existing Buildings

- i. Contractor personnel are prohibited from undesignated areas.
- ii. Provision of toilet facilities is typically the Contractor's responsibility. Use of existing facilities is not encouraged. Allowance must be pre-arranged with the District Representative.
- iii. A room/area may be designated for use as a Field Office if coordinated through the District Representative.
- iv. Limit/contain smoke, dust, dirt, fumes, volatile organic compounds, and noise (including radios), to immediate work area. Maintain noise levels such that they do not interfere with school while in session.
- v. Broom-clean work areas daily.
- vi. Restore existing surfaces where damaged or modified by construction operations to their original condition.

### 2. Occupancy Requirements

#### a. Existing Buildings

- i. Provide for continued occupancy, access, and egress. Existing utilities shall be maintained to the building. Provide minimum 48-hour notice for disruption.
- ii. Provide safety protection for occupants.

### 3. Project Utility Sources

#### a. General



- i. Contractor shall contact and make arrangements with utility providers and the contact information on the drawings. Contractor shall coordinate utility provider's work and assure that utilities are provided as shown.

#### 4. Safety Requirements

- a. The following requirements, as applicable, apply to Work:
  - i. Associated General Contractors of America, Incorporated's Manual of Accident Prevention in Construction.
  - ii. Workmen's Compensation Board's Safety Code for Construction Work.
  - iii. Oregon State Employment Act Safety Requirements.
  - iv. Oregon Occupational Safety and Health Act (OROSHA).

#### 5. Security Procedures

- a. Construction/Maintenance Building Security Rules
  - i. No Unsupervised 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 District. 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 District's property. The Contractor will work with the District 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 District prior to beginning any Work that could result in such contact. The Contractor authorizes the District to conduct a criminal background check of any such officer, agent, or employee. The Contractor also agrees to cause its subcontractors and/or suppliers and all employees, if any, that might have unsupervised contact with students to authorize the District to conduct such background checks, and to identify the same to the District prior to their entry onto the Project. The District shall pay any fees for the background check assessed by the Oregon Department of Education for processing the background check. If fingerprinting is required by law, the Contractor shall arrange for such fingerprinting through local law enforcement agencies and for reporting and recordkeeping of the same as and to the extent required by law, including as required under Oregon SB155, OAR 581-021-0511 and applicable District rules, policies and procedures. If fingerprinting is required the cost will be borne solely by the Contractor without reimbursement. In addition, the Contractor shall comply with all other Oregon Senate Bill 155 requirements and any requirements of the District related to Senate Bill 155, including, but not limited to, providing District 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 District's designated Point of Contact before beginning Work. Compliance with this Section 3.4.8 shall not be grounds for any



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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 District for cause.

- ii. The Contractor shall enforce strict discipline and good order among the Contractor's employees, Sub-Contractors, and other persons carrying out the contract on District property. The District may require that the Contractor immediately remove, from the project site and District property, any employee or other person carrying out the contract who the District considers objectionable.
- iii. District Personnel (i.e., Building Administrator, Custodian, or a building monitor) should be present when a Contractor is performing work within an existing school facility.
- iv. Only District Personnel will deactivate the security system upon arriving and reactive the system when they leave the facility. (Note: If the responsible District Personnel for a particular day changes during the day, the District Personnel shall coordinate this change in responsibility and advise the Contractor's superintendent.)
- v. Contractor personnel shall not be furnished District security badges and/or access codes to the Building security system.
- vi. The Contractor shall have a responsible party such as a superintendent, foreman, or supervisor on site during any work performed by either their own forces or that of their subcontractors.
- vii. The superintendent shall check in with responsible District Personnel upon arrival and advise when all work is complete, contract personnel have left, and the area is secure.
- viii. The Contractor's superintendent shall be responsible for security in areas where work is being performed as well as ingress and egress to that area.
- ix. At the District Representative's discretion, the superintendent may be issued a building key to allow access to areas where work is being performed.
- x. The superintendent shall maintain a daily log defining what areas within the building were accessed by Contractor personnel, which personnel from their firm were in the building, and which subcontracting firms were in the building.
- xi. Each of the Contractor's employees, subcontractor's employees, and principals/owners involved at the site may, at the option of the District, be subject to a security check, at any time, by the La Grande Police Department or other venue.

b. Criminal Background Checks

- i. It is the responsibility of the Contractor to submit the names of all Contractor employees and all Subcontractor employees who will be on the job site for more than one day. These employees shall fill out a criminal history form provided by the District and the Contractor must submit the completed forms to HMK Company (HMKCO). Criminal history checks will be run through the Oregon



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State Police as provided for in ORS 326.603. The District shall bear the cost of processing such Criminal history checks, with the exception of an employee whom needs to be fingerprinted, for every employee on all projects prior to that employee's admittance to the project site. Once an employee passes the criminal background check, he or she will receive an ID badge and/or a hard hat sticker which they must wear at all times while they are on site. Contractor may be fined up to \$500.00 for every worker working on site without the proper ID badge or hat sticker.

- ii. Through the signature on the criminal history form, authorization is also given to HMK Company and its representative to investigate this information. Further, with this signature, consent is given to all governmental agencies, public or private companies and individuals to release information regarding the individual to the HMK Company and to their representative. The District shall bear the cost of processing such Criminal history checks.
- iii. In accordance with ORS 326.603(8) the District is required to terminate the employment or contract status of any individual who refuses to consent to a criminal history check or to be fingerprinted or falsely swears to the non-conviction of any crime.
- iv. In accordance with ORS 326.603(7)(a) no individual found to have been convicted of any crime listed in ORS 342.143 or of an attempt to commit one of the listed crimes shall be allowed to work on any District site.
- v. It is vital that employees are instructed to accurately complete criminal history forms. Crimes listed in ORS 342.143 which automatically bar an individual from employment with or contracting with the District are primarily crimes of violence, crimes against children, and sex related crimes. However, falsely swearing that you have not been convicted of a crime obligates the District to terminate employment or contract status even if the crime is not listed in ORS 342.143.
- vi. No Contractor's employee or subcontractor's employee, or principal/owner who has been convicted of a crime listed in ORS 163.095, 163.115, 163.185, 163.235, 163.355, 163.365, 163.375, 163.385, 163.395, 163.405, 163.408, 163.411, 163.415, 163.425, 163.427, 163.432, 163.433, 163.435, 163.445, 163.465, 163.515, 163.525, 163.547, 163.575, 163.670, 163.675, 163.680, 163.684, 163.686, 163.687, 163.688, 163.689, 164.325, 164.415, 166.005, 166.087, 167.007, 167.008, 167.012, 167.017, 167.057, 167.062, 167.075, 167.080, 167.090, 475.808, 475.810, 475.812, 475.818, 475.820, 475.822, 475.828, 475.830, 475.832, 475.848, 475.852, 475.858, 475.860, 475.862, 475.868, 475.872, 475.878, 475.880, 475.882, 475.888, 475.890, 475.892, 475.904 or 475.906 shall be allowed on District property.
- vii. No Contractor's employee or subcontractor's employee, or principal/owner who has been convicted under ORS 161.405 of an attempt to commit any of the crimes listed in subparagraph (ii) of this paragraph shall be allowed on District property.
- viii. No Contractor's employee or subcontractor's employee, or principal/owner who has been convicted in another jurisdiction of a crime that is substantially equivalent, as defined by rule, to any of the crimes listed in subparagraphs (ii) and (iii) of this paragraph shall be allowed on District property.





c. Other

- i. All contractors shall comply with OAR 581.021.0110 and ORS 326.051 regarding Tobacco Use on Public Grounds. Smoking and any use of tobacco products will not be allowed on District property. For the purpose of this document “tobacco” is defined to include any lighted or unlighted cigarette, cigar, pipe, clove cigarette, vape, and any other smoking product, spit tobacco, also known as smokeless, dip, chew, snuff, in any form, nicotine or nicotine delivering devices, chemicals or devices that produce the physical effect of nicotine substances or any other tobacco substitute (e.g., e-cigarettes). This does not include FDA approved nicotine replacement therapy products used for the purpose of cessation. No employee, sub-contractor, material supplier, or project visitor is permitted to smoke, inhale, dip, or chew or sell tobacco at any time, including non-education hours in any building facility, or education facility grounds, athletic grounds, or parking lots. Contractor may be fined up to \$500.00 for each incident of tobacco use within the area of work by the Contractor or Subcontractor. Tobacco is defined in Board Policy GBK/JFCG/GC Tobacco-Free Environment.
- ii. Firearms shall not be allowed on District property. Law enforcement will be contacted if any Contractor or subcontractor personnel are in possession of a firearm on site. This includes firearms locked in a vehicle.
- iii. Abusive, inappropriate, and/or foul language is strictly prohibited on active campus projects. Employees who abuse this rule will be asked to leave the project site.



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**ATTACHMENT F**  
**DRAFT AIA A133 - 2019 EXHIBIT A Guaranteed**  
**Maximum Price Amendment**

See Exhibit A following the Draft AIA A133 - 2019.



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**ATTACHMENT G**  
**DRAFT AIA A201 – 2017**  
**General Conditions of the Contract for Construction**

See Draft AIA A201-2017 General Conditions of the Contract for Construction following this cover page.

# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address)

«Jackson County School District 5»  
«Ashland High School»  
«Science Building Seismic Rehabilitation Project»  
«201 S Mountain Avenue»  
«Ashland, OR 97520»

### THE OWNER:

(Name, legal status and address)

«Jackson County School District 5»  
«885 Siskiyou Boulevard»  
«Ashland, OR 97520»

### THE ARCHITECT:

(Name, legal status and address)

«arkitek:design&architecture»  
«426 A Street, Suite 101»  
«Ashland, OR 97520»

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- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
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- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 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.

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*.

14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES



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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 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. 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 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 (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.

§ 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. 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 Architects.

### **§ 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.

## **§ 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 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.

### **§ 2.2 Confidentiality of Owner Information**

Where the Owner has submitted financial, strategic or planning information or has designated information furnished 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.

### **§ 2.3 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 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 and 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.

#### **§ 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 ten-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 Controls**

**§ 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.

§ 2.6.4 The Owner's agents or authorized representatives shall have access to all of the Contractor's facilities and, to the extent relevant to the Project, 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.

### § 2.7 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 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 as required by this Clause shall not unreasonably be withheld. The Senior Project Manager and Project Manager 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. 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 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. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, 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. Design Build 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 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 Bidders and the Sub-bidders 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.

**§ 3.2.5** 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, building codes and 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, (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, and (f) except as otherwise expressly provided for herein, no Claim for unforeseen or unforeseeable conditions or limitations that exist or may arise affecting the Work or difficulties in performing the Work will be accepted, nor shall it give rise to a Claim, nor shall it constitute an excuse or basis for any failure or omission by the Contractor or for extra compensation, or as a basis for an extension of time in which to complete performance of the Contract. 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, 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. 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. 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.

§ 3.3.10 The Contractor shall, and shall cause its employees and subcontractors at all tiers to, procure and familiarize themselves with and comply with (i) all Owner property access rules, policies and regulations, and (ii) all Owner rules, policies and regulations regarding Covid-19 and regarding political signage, if any.

#### § 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.

**§ 3.4.2** 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:

- .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 Representative request substitution with a material or system of lesser quality and/or cost, if approved by the Owner Representative, 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 vaping, illegal use of drugs or other controlled substances, 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.

**§ 3.4.4** 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.

**§ 3.4.5** 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; provided that the Contractor's obligations under this Section 3.4.5 shall be limited to events and circumstances which occur substantially where the Work is performed or which result substantially from the actions of persons or entities performing the Work.

**§ 3.4.6** 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.

**§ 3.4.7** 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.

**§ 3.4.8 No Unsupervised 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 authorizes the Owner to conduct a criminal background check of any such officer, agent, or employee. The Contractor also agrees to cause its subcontractors and/or suppliers and all employees, if any, that might have unsupervised contact with students to authorize the Owner to conduct such background checks, and to identify the same to the Owner prior to their entry onto the Project. The Owner shall pay any fees for the background check assessed by the Oregon Department of Education for processing the background check. If fingerprinting is required by law, the Contractor shall arrange for such fingerprinting through local law enforcement agencies and for reporting and recordkeeping of the same as and to the extent required by law, including as required under Oregon SB155, OAR 581-021-0511 and applicable Owner rules, policies and procedures. If fingerprinting is required the cost will be borne solely by the Contractor without reimbursement. 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. 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, 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 either separately stated or included in the Contract Sum. 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.

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** The Contractor shall secure the building permit as well as all 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 pay the charges for the building permit, permanent utility connection permits and fees, and permits required for construction of work in the public right-of-way, outside of the Contract Sum or GMP. 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 and GMP. 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** If the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, permits, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction and such other costs and damages to the Owner as would have been avoided if the Contractor had performed its obligations.



**§ 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.

### **§ 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 ten (10) 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 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. 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. 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 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 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 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** 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 reasonable and 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 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. 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 load his labor resource requirements and constructed value to each task on the schedule unless the Owner elects to waive this requirement in writing. 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 days for the Architect's review and at least fourteen 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.

§ 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. Contractor shall post all logs to eBuilder or if eBuilder is not used, 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 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 marked Drawings shall be on drawings in PDF format and in reproducible hardcopy, with each hardcopy sheet stamped "As-Built" and signed by the Contractor. The final act of marked Specifications shall be in PDF format on disk and in reproducible hardcopy, with each hardcopy page stamped "As-Built" and signed by the Contractor.

§ 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 with each Application for Payment 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 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 approval of progress payments. Notwithstanding the completion of the as-built drawings and any review and correction of such drawings by Contractor, neither the Architect nor 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. 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.

**§ 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.

### **§ 3.14 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 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.

**§ 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 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, 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, 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 may also provide administration. 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, 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 Representative. Communications by and with Subcontractors and suppliers shall be through the Contractor. 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 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 13.4, 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. 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 request, the Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Owner. 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. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 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.

### § 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, 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.

**§ 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 reasonable 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 unreasonably rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order 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.

**§ 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 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.

**§ 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 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 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 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. 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.

§ 5.4.4 Contractor shall include in each subcontract and supply agreement a provision to the effect that in the event of the termination of the Contractor under the prime contract, the subcontractor or supplier shall, upon request of Owner, perform thereunder for the benefit of Owner in accordance with the terms and conditions thereof, subject to the provisions of this Section 5.4.

§ 5.4.5 Contractor shall 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 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.

#### § 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 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 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.

§ 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.

## § 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.

§ 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.

### § 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.

§ 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 7.3.7.

### § 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 Sections 7.3.4 and 7.5.

§ 7.3.4 Unit prices are inclusive of all costs for the unit price Work, including but not limited to costs of labor, services, materials, equipment, supervision, and general conditions, as well as applicable taxes and overhead and profit for that Work, but shall exclude additional insurance and bond charges and Fee on the Unit price.

§ 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 (but in any event excluding 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 7 and 8 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 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 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 the 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**

**§ 7.4.1** The Architect and the Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and/or Owner and shall be binding on the Owner and Contractor unless objected to by Owner prior to implementation of the change. The Contractor shall carry out such written orders promptly and the Contractor shall be entitled to no additional compensation and no change in the Contract Time as a result thereof.

#### **§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 "Intent to Pay Prevailing Wage" 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 may be included, however, if the Contractor offers but the Owner declines the opportunity.

**§ 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, if this is a CM/GC contract, as further limited pursuant to Sections 4 and 5 of the A133 Agreement).

**§ 7.5.6** Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (excluding the project manager, project engineers, project foreman, superintendent, safety costs, small or hand tools or expendable charges, to the extent within the defined Cost of the Work), taxes (except for sales and use 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. 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) on the amount owed directly to a Subcontractor or Supplier for materials supplied or work properly performed by that Subcontractor or Supplier.

The maximum Fee for work performed by Subcontractors shall be based on the following schedule:

- .1 For each Subcontractor involved, for Work performed by that Subcontractor's own forces, the following percent of the allowed cost:

Costs between \$1 and \$10,000:	15%
Costs over \$10,000:	12%
- .2 For each Subcontractor involved (and for Contractor), for Work performed by Contractor or that Subcontractor's Subcontractors, the following percent of the amount due the Subcontractor:

Costs up to \$1000:	10%
Costs over \$1,000:	8%
- .3 The cost to which this Fee is to be applied shall be determined in accordance with Paragraph 7.5.1-7.5.4.
- .4 The total summed Fee of the Contractor and all Subcontractors of any tier shall not exceed 25%. None of the fee percentages authorized in this Paragraph 7.5.6 may be compounded with any other fee percentage or percentages authorized in this paragraph



If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction.

**§ 7.5.7** The total cost of any change, including a Claim under Article 15, shall not exceed 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 tier concerning any item chargeable to the Owner under this Article to confirm balances due and to obtain statements or lien or claim 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 or a Construction Change Directive, 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 or the Construction Change Directive, but in no event later than thirty (30) days after the Contractor's receipt of the Request For Change Order Proposal or the Construction Change Directive.

**§ 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 or the Owner's Project Manager, a Construction Change Directive issued, a Change Proposal approved by the Owner or the Owner's Project Manager in writing, or a similar written Authorization has been issued by the Owner or the Owner's Project Manager, 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 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 within the Contract Time.

**§ 8.2.4** If a receiving area is specified in the Contract Documents and access to it by semi-tractor/trailers for unloading purposes are not substantially complete and ready for the Owner's use by the date specified in the Contract Documents, the Owner may incur costs and expenses for leasing of alternate space, transportation, labor,



overtime, reshipment, delay, and other damages. For each calendar day after the date specified in the Contract Documents that the receiving area and access are not substantially complete and ready for the Owner's use, liquidated damages may be payable under the Contract Documents, or in the absence of such a provision, actual damages may be payable for such late completion.

### **§ 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.

**§ 8.3.3** This Section 8.3 does not preclude recovery of damages for delay by either party under other express 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.

### **§ 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 ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 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 C, 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 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 Subcontractors 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 C 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 C 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 seven (7) days 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 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.

## § 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 failure of the Contractor to submit updates of the Contractor's construction schedule as required by Section 3.10.1.1;
- .9 failure to submit affidavits pertaining to wages paid as required by statute; failure of the Contractor to provide satisfactions of claims of mechanics', material suppliers', design professionals', construction or similar liens or claims;
- .10 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment; failure of the Contractor to provide waivers and releases from the Contractor and first-tier Subcontractors;
- .11 liquidated damages; or
- .12 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.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment and the Owner has approved, 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 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 backcharge 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 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 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** 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 may 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.

### **§ 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 seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor the required undisputed amount within seven days after the date established in the Contract Documents, 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 (which the Owner shall have agreed 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 temporary certificate of occupancy or passage of any necessary governmental inspection; or (b) the date of Owner's receipt of the Certificate of Substantial Completion from the Architect. The Work will not be considered Substantially Complete if appropriate cleaning has not occurred, if all systems and parts are not commissioned and usable, including balancing of the HVAC system, if utilities are not connected and operating normally, if all required occupancy permits or inspections have not been issued and/or passed, or if the Work is not safely accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, not does such occupation toll or change liquidated damages owed to the Owner. 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 occupancy 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 items identified by architect and engineers Punchlist.
- .4 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.
- .5 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.
- .6 Turn over all extra stock to the Owner.
  - .7 Make final changeover of locks and transmit new keys to the Owner and advise the Owner of the changeover in security provisions.
  - .8 Discontinue or change over and remove temporary facilities and services from the Project site.
  - .9 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
  - .10 Complete building commissioning as required by the Specifications.

**§ 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 a comprehensive list of items to be completed or corrected prior to Final Acceptance, to indicate the readiness level of that part of the Work for Substantial Completion. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will further provide a written request to have the Architect certify that this Work has reached Substantial Completion and is ready for use or occupancy as applicable. The Architect and Owner will then inspect this Work for acceptance as Substantially Complete, pending completion of all Work items necessary for Final Completion. The Contractor shall then expeditiously complete all Work items necessary in the judgment of the Architect and the Owner to achieve Substantial Completion, after which the Architect, upon Substantial Completion, will issue a Certificate of Substantial Completion and the Owner may use and occupy this portion of the Work for its beneficial use. If the Owner or Architect determines that the Work or designated portion is not Substantially Complete, the Contractor shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect or Owner will make an inspection to determine whether the Work or designated portion thereof (which the Owner has agreed to accept separately) is Substantially Complete. If either the Architect's or Owner's inspection discloses any item, whether or not included on the Contractor's 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 and/or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and/or Owner to determine Substantial Completion.

**§ 9.8.4** The Certificate of Substantial Completion issued by the Architect shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 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 such Certificate. Upon such written acceptance of the Certificate of Substantial Completion and upon the Contractor's application, the Owner shall make payment as provided in the Contract Documents. The Owner may, but is not obligated to, require consent of surety as an additional condition to payment. 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, the life safety system(s);
- .5 Security 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 seven (7)

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 which 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.

§ 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

- .1 The Contractor shall cause all Punchlist items to be completed by the Final Completion date. In the event that the Contractor fails to correct the deficiencies within the time period required for the Contractor to do so, the Owner may upon seven days' written notice to the Contractor, take over and perform some or all of the Punchlist items. The Owner may deduct the actual cost of performing this Punchlist work, including any design costs from the Contract Sum.
- .2 Upon receipt of written notice from the Contractor that the Work (or Owner-designated portion) is ready for final inspection and acceptance, the Architect will promptly make such inspection accompanied by the Contractor. If it is determined that some or all of the Punchlist items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspections fees, for any subsequent Architect's inspection to determine compliance with the Punchlist. When the Architect finds all Punchlist items complete (or the Owner has agreed to accept a deductive Change Order in lieu of completion of designated Punchlist items), the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing 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 terms and conditions of the Contract Documents.
- .3 When the Architect finds that the Work has been concluded, the Punchlist completed, an occupancy permit has been issued, any commissioning process and validation process have been successfully concluded and the Contractor has submitted all the items in Section 9.10.2 to the Architect, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a Certificate of Final Completion and a Certificate for Final Payment stating the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's

Certificate of Final Completion will establish the date the Work reaches Final Completion upon its execution by the Owner.

### § 9.10.2 Final Acceptance And Payment

- .1 Neither final payment nor any remaining retained percentage shall become due until the Owner has formally accepted the Project. To achieve final acceptance, the Architect must issue a Certificate of Final Completion and a final Certificate for Payment under Section 9.10.1, a final occupancy permit must have been issued or all governmental inspections necessary for use and occupancy must have been unconditionally made and passed (as applicable), and the Contractor must have submitted to the Architect:
  - (a) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in anyway be responsible or encumbered have been paid or otherwise satisfied, except for any claims of Subcontractors of any tier that are specifically identified on the affidavit;
  - (b) A certificate evidencing that insurance required by the Contract Documents shall remain in force 30 days after final payment is due is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
  - (c) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
  - (d) Consent of surety, if any, to final payment;
  - (e) Certification that the materials in the Work are "lead-free" and "asbestos-free";
  - (f) 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;
  - (g) 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 utilities, provided to Owner with a copy of all closed or signed off permits,
  - (h) Proof satisfactory to Owner that the Contractor has fully complied with the requirements of ORS 279C.845(7); and
  - (i) That, if the Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor has complied with the requirements of ORS 279A.120.
- .2 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may:
  - (a) Retain funds in such amount as to defray the cost of the claim or of foreclosing the lien or bond assertion of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or
  - (b) Accept a bond from the Contractor satisfactory to the Owner to indemnify the Owner against such claim or lien.

If any such claim or lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claim or lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.3 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 C.

§ 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.

#### § 9.10.4 Waiver of Claims

- .1 Final Payment to Contractor: Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing, not previously settled or waived, and identified by that payee as unsettled at the time of final Application for Payment.
- .2 Change Orders: 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.

#### § 9.11 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 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; 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, and otherwise shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, 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 Sections 10.2.1.2 through 10.2.1.4 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. 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.

§ 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.

§ 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 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 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**

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, 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 immediately by telephone or messenger to the Owner. 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.

**§ 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 not permit open fires or smoking on the Project site.

### **§ 10.3 Hazardous Materials and Substances**

**§ 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.

**§ 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 10.3.1, 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.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable discretion, 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 environmental pollution during performance of the Contract which occur as a result of, or are contributed to by, 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, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) 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. 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 reportable quantity releases 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 B.

**§ 11.1.2** In lieu of Contractor insurance for on-site operations, the Owner may elect to procure an Owner-Controlled Insurance Policy (OCIP Policy) for the Project. If so procured, the OCIP Policy will name Owner, the Contractor, and enrolled Subcontractors and sub-subcontractors as insureds, and will be procured prior to commencement of on-site construction operations to the extent required for OCIP coverage (certain Early Work such as clearing may not require that the OCIP policy be in place at that time). The Owner shall provide the Contractor with the Project Insurance Manual and requirements for OCIP coverage ("OCIP Requirements"). Contractor shall, and shall cause subcontractors at all tiers to comply with, the OCIP Requirements, including without limitation enrollment requirements and maintenance of insurance for off-site operations. The Contractor and all subcontractors shall be obligated to provide the Owner and the insurer with all information that may be required under the OCIP Requirements. The OCIP Requirements shall be incorporated and made part of the Subcontract between Contractor and subcontractors. Owner shall provide an actual copy of the policy to Contractor, and Contractor shall provide a copy to enrolled subcontractors, upon request. A summary of the coverages will be provided to Contractor before execution of the GMP Amendment. The Cost of the Work and GMP shall reflect an appropriate deduction for cost savings to Contractor and enrolled subcontractors for being provided OCIP coverage in lieu of such coverage under their commercial liability policies.

**§ 11.1.3** Any OCIP deductible shall be allocated as follows: In the event of any loss or claim that would be covered under a OCIP Policy, Contractor, with Owner's prior approval, shall allocate, to each Enrolled Contractor contributing to such loss or claim, a share of the deductible or self-insured retention equal to the greater of (1) the amount of the deductible or self-insured retention of the commercial general liability policy carried by the Enrolled Contractor and effective at the time their Contract is executed, or (2) \$5,000 USD. If the total allocation to Enrolled Contractors exceeds the applicable deductible or self-insured retention, each contributing Enrolled Contractor's allocation will be reduced proportionately. The Owner and Contractor shall equally share the costs not covered because of the deductible that remain after such allocations. Contractor shall pay the share of any Enrolled Contractor and shall be entitled to recover such share from the Enrolled Contractor. The obligation to contribute towards deductible shall survive final completion of the Work and continue for the Completed Operations Period. Contractor and each Enrolled Contractor will pay its allocated share of the deductible to the Owner within 30 days of Owner's request.

### **§ 11.2 The Owner's Liability Insurance**

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

### **§ 11.3 Performance Bond 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 amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The form of the bonds shall be as set out in the procurement documents and the identity of the surety shall be acceptable to the Owner in its reasonable discretion. 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. The Contract shall not be executed by the Owner until the bonds have been received and validated.

**§ 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 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.

**§ 11.3.4** 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.

**§ 11.3.5** 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.

**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. 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.

**§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents or by law, 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 applicable 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:

- .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 afternoon, 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.

§ 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 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, grants or construction financing for the Project or to 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 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 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 accrual would be under appropriate law before such completion of the Project 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.

### § 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 H and are incorporated herein by this reference. Furthermore, Contractor and the Owner agree to comply with all requirements of ORS Chapter 297A and 279C, the Rules and all other applicable laws and regulations (collectively "Laws"), whether or not such applicable provisions are included in Exhibit H and whether or not such provisions are excised in Exhibit H. In the event of a conflict between any applicable Law and the provisions of this Contract, including Exhibit H, 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; or

§ 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 days' 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.

§ 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;
- .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 seven (7) days' 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. 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. Termination for convenience shall not impair Owner's other rights, including without limitation its rights and remedies for negligence and breach of this Agreement, and including without limitation rights of self-help, deduction and offset.

§ 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. 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 unfabricated 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 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, suppliers 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.

#### § 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. Claims by the Contractor shall be initiated within seven (7) days after occurrence of the event giving rise to such Claim or within seven (7) days after the Contractor first recognizes or should have recognized the condition giving rise to the Claim. 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 the Owner unless an earlier time for notice of the Claim is established under another provision of this Agreement. In addition, a copy of the Claim notice shall be sent concurrently to the Owner's Representative. 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.

#### § 15.1.4 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.



### § 15.1.5 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.

### § 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 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.

### § 15.2 Initial Matters

§ 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.

### § 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 at the election of the Owner.

**§ 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.

#### **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim, if not resolved by mediation (if Owner elected to mediate), shall be subject to arbitration. The arbitration, 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, except there shall be a single arbitrator. 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.

**§ 15.4.2** 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, the Owner, or with Owner approval 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).

**§ 15.4.4.2** Subject to the rules of the Arbitration Service or other applicable arbitration rules, the Owner, or with Owner approval 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 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.

§ 15.4.4.4 With respect to any claim for allegedly defective work or warranty item asserted by or against Owner, or its assignee, successor or subrogee, through court action or arbitration ("Defect Claims"), Owner shall have the right to join 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 pending resolution of the Defect Claim proceeding to the extent allowed by law.

§ 15.4.4.5 The Contractor may bring no action on Claims unless such Claims have been properly raised and considered in the procedures of Section 15. All unresolved Claims of the Contractor shall be waived and released unless the Contractor has complied with the time limits of the Contract Documents, and demand for arbitration is served and filed within the earlier of (a) 120 days after the Date of Substantial Completion approved in writing by the Owner or (b) 60 days after Final Acceptance. This requirement cannot be waived except by an explicit written waiver signed by the Owner.

§ 15.4.4.6 If a Claim is litigated, the Claim shall be tried in state courts of competent jurisdiction in the county where the Project is located.

#### § 15.5 Attorneys' Fees

In the event a suit, action, arbitration, or other proceeding of any nature whatsoever, including without limitation any proceeding under the U.S. Bankruptcy Code, is instituted, or the services of an attorney are retained, to interpret or enforce any provision of this Agreement or with respect to any dispute relating to this Agreement, the prevailing party shall be entitled to recover from the losing party its attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith. In the event of suit, action, arbitration, or other proceeding, the amount thereof shall be determined by the judge or arbitrator, shall include fees and expenses incurred on any appeal or review, and shall be in addition to all other amounts provided by law. The prevailing party shall be the party receiving the net award/determined as to each separate claim.



ASHLAND SCHOOL DISTRICT  
SCIENCE BUILDING SEISMIC REHABILITATION PROJECT  
CONSTRUCTION MANAGER|GENERAL CONTRACTOR  
PRE-PROPOSAL CONFERENCE SIGN-IN  
OCTOBER 2, 2024

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