

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

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

BETWEEN the Owner:

Beaverton School District #48J
16550 SW Merlo Road
Beaverton, OR 97003

and the Design-Builder:
(Name, legal status, address and other information)

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

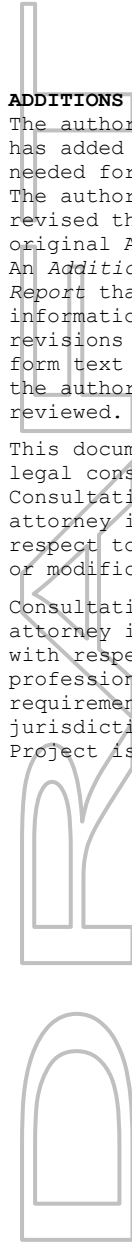
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The Owner and Design-Builder agree as follows.

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Article 1, and the documents listed in Exhibit C "Design-Build Documents in Order of Precedence". Notwithstanding the foregoing, any proposals attached to this Agreement are incorporated solely for: (i) any statement of fees and schedule that is consistent with the terms of Article 2 of this Agreement and (ii) any statement of scope of services that is consistent with the remainder of this Agreement, or that provides basic services in addition to those stated in this Agreement. 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. 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 Design-Build Documents is inconsistent with the Model Rules, the Model Rules shall govern.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1: []

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§ 1.2.3 The Owner may retain consultants and separate contractors.

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

Design-Builder's Representative:	Name:	[]
Project Manager:	Name:	[]
Project Superintendent:	Name:	[]

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

Arbitration pursuant to Section 14.4

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, signed by both parties, (3) a Change Directive (on BSD form CCD), or (4) a written order for a minor change in the Work issued by the Owner.

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

§ 1.4.3 **The Work.** The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work includes all work performed by Design-Builder and its subconsultants and subcontractors at any tier on the Project prior to the date of this Contract, if any. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models, and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 Owner. The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion and Final Completion of the Work.

§ 1.4.14 Day. The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.5 Correlation and Intent Of The Design-Build Documents

§ 1.5.1 The intent of the Design-Build Documents is to include all items necessary for the proper execution and completion of the Work by the Design-Builder. The Design-Build Documents are complementary, and what is required by one shall be as binding as if required by all. The Work shall include all items set forth in, required by or reasonably inferable from Design-Build Documents in order to fully complete the Project and as reasonably inferable from the Design-Build Documents as being necessary to produce the indicated results, including, unless specifically excluded, all design services, 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 Design-Build Documents. Design-Builder is responsible for performing and completing the Work in a manner that provides a complete and functional Project for Owner, and the Work includes all materials and labor required for provision of such a Project.

§ 1.5.2 Conflicts or discrepancies among Design-Build Documents shall be resolved in the following order of priority: (1) Change Orders, with Change Orders of a later date taking precedence over those of earlier date; (2) Amendment and revisions of later date take precedence over those of an earlier date; (3) Supplementary General Conditions or Special Conditions; (4) The Agreement; (5) Specifications; and (6) Drawings.

§ 1.6 Contract Time. The Contract Time shall be defined as the time from Notice To Proceed by the Owner to the Date of Final Acceptance of the Project. The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Completion of Construction Documents Date shall be: []
- .2 Commencement of construction date shall be: []
- .3 Substantial Completion date shall be: []
- .4 Project Final Completion Date shall be: []

§ 1.7 Business Equity.

§ 1.7.1 Pursuant to ORS 279A.100 to ORS 279A.110, the Design-Builder shall not discriminate against minority, women, or emerging small business enterprises in the awarding of subcontracts. Design-Builder 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.

§ 1.7.2 The Design-Builder understands that the Owner maintains a goal of engaging minority, women, emerging, service-disabled veteran and socially or economically disadvantaged businesses (MWSDVE) as service providers in delivering services necessary to implement our bond program. The District aspires to a goal of ten (10) percent MWSDVE content, by contract value, in completing our capital bond work, and the Design-Builder shall expend reasonable efforts to reach this content in the total value of their contracts with the District.

§ 1.7.3 The Design-Builder shall also report to the District updates of the percentage content of MWSDVE in their contract, once each month, to account for any contract amendments that may occur throughout the course of their service.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)-

« » on a Time and Materials Not-to Exceed basis.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

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

« »

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, consistent with the Owner's current reimbursement policy, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence, if approved in advance by Owner;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other similar Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred without mark-up.

§ 2.1.3.3 Costs may not be incurred for Reimbursable Expenses in excess of \$[] without prior written approval of the Owner, which may be given or withheld in Owner's discretion. To the extent any exhibit or other provision of this Agreement identifies an expense as included in the Design-Builder's fee, it shall not be subject to reimbursement as a Reimbursable Expense.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice in accordance with ORS 279C.570, and amounts unpaid when required under that statute shall bear interest at the rate therein.

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.1.5 Compensation For Use Of Work Product

If the Owner or Design-Builder terminates the Agreement for any reason, Design-Builder shall deliver to Owner all Work Product that is not already in Owner's possession, and the Owner shall not be required to pay any fee as compensation for the Owner's continued use of the Work Product.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

The Design-Builder's Preconstruction Phase responsibilities are set forth in Article 4. The Design-Builder's Construction Phase responsibilities are set forth in Article 5. The Owner and Design-Builder may agree in writing for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project. The Design-Builder may not remove or replace its designated representatives, or key personnel from the Project, so long as they are employed by the Design-Builder, without thirty (30) calendar days' advance written notice to the Owner. The Design-Builder will consult with the Owner and obtain the Owner's approval of any new designated representatives or key personnel for the Project. New or replacement designated representatives or key personnel must be qualified and must have adequate experience with similar projects.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall review and comply with all laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities applicable to the Design-Builder's services in effect at the time the services are provided.

- .1 Design-Builder shall use reasonable efforts, in accordance with applicable professional standards, to inquire into, anticipate, and incorporate into its services, without additional charge, changes to such requirements that will be in effect at the time of applicable permitting, construction and inspections. If

a conflict arises between any of these requirements, the Design-Builder will so notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

.2 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.3.3 The Design Builder's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services.

- .1 The Design Builder shall manage the Design Builder's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.
- .2 The Design Builder shall coordinate the designs and other services of its consultants and correlate the design documents to be consistent with each other.

§ 3.1.3.4 The Design-Builder shall provide the professional services as set forth in this Agreement. The Design-Builder shall be and operate as an independent contractor in the performance of the services and shall have control over and responsibility for all personnel performing the services. In no event shall the Design-Builder 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 Design-Builder accepts the relationship of trust and confidence between Design-Builder and 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 Owner. Design-Builder acknowledges that it has a relationship of special trust with Owner, and that Owner is relying on Design-Builder's expertise in entering into this Contract. Nothing in the Design-Build Documents is intended or shall be construed as creating any other relationship or designating Design-Builder as an agent for or joint venture with Owner.

§ 3.1.3.5 The Design-Builder, Architect and Consultants shall perform its architectural, engineering and related services consistent with the professional skill and care ordinarily provided by architects, consultants practicing in the same or similar locality under the same or similar circumstances. The Design-Builder shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Design-Builder will perform this Agreement in a timely manner to avoid delay in the progress of the Project and the Work. The Design-Builder shall work cooperatively to obtain for the Owner the improvements covered by the Owner's program and scope of Work at the lowest cost consistent with quality workmanship, materials, and durability. The Design-Builder shall, at no cost to the Owner, promptly and satisfactorily correct any services Owner reasonably finds to be defective or not in conformity with the requirements of this Agreement.

§ 3.1.3.6 The Design-Builder shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Design-Builder shall be entitled to reasonably rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants, but shall exercise proper precautions relating to the safe performance of the Work. The Design-Builder shall provide prompt written notice to the Owner if the Design-Builder becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Design-Builder or any of its subcontractors at any tier.

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review and discuss matters such as procedures, progress, coordination, design reviews, cost estimates and scheduling of the Work.

§ 3.1.5.1 The Design-Builder shall participate in progress meetings held at least once every week or at more or less frequent intervals as may be described in the Design-Build Documents, with the Owner, subcontractors at all tiers and other appropriate consultants. The Design-Builder shall fully brief the Owner on the progress of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project. The Design-Builder shall cooperate with and assist the Owner in any appeal or challenge to code or inspection requirements.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages 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 Design-Builder's solutions to same, and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.8.3 Throughout the Project, the Design-Builder shall:

- .1 Advise the Owner of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and soil pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; Hazardous Materials testing; or other tests or reports required by law or that should otherwise be procured;
- .2 Recommend and assist the Owner in arranging for the services of engineers or consultants for those tests and services when they are reasonably necessary or required, but shall not itself contract with the engineers or consultants;
- .3 Assist the Owner in arranging for and coordinating those tests or services that are approved and contracted for by the Owner;
- .4 Review all inspections and reports, advise the Owner of their results and recommendations, provide the Owner with copies of those reports or results, if necessary, and report to the Owner and the provider of the inspections or reports any errors or inconsistencies discovered;

- .5 Obtain from the Owner's consultants or engineers the soil bearing, percolation, elevation, and other values necessary to prepare the Design-Builder's designs and Construction Documents; and
- .6 Request verification of this information as necessary to perform its services.
- .7 Design-Builder shall propose, and comment on value engineering proposals as requested by Owner. If the Owner procures value engineering services, directly or indirectly, the Design-Builder and its Architect, Consultants, and Contractors shall coordinate with the value engineering efforts by briefing the value engineering consultant, answering its questions, and meeting with the Owner's representatives and the value engineer to determine the advisability of changes in the Design-Builder's design as recommended by the value engineer. The Design-Builder shall make such changes as the Owner directs after such consultation.
- .8 Attend project meetings.
- .9 The Design-Builder shall provide the Owner with digital records in nonproprietary pdf format, and paper records, of compiled record drawings showing significant approved changes to the Working Drawings during the Construction Phase.
- .10 The Design-Builder shall (a) submit to Owner such reports and notifications as Owner may reasonably request from time to time; and (b) keep a daily log of information reasonably relevant to the Work.
- .11 Design-Builder 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 Design-Build Documents shall immediately notify the Owner.

§ 3.1.8.4 Additional Reports: Design-Builder shall prepare and deliver such additional reports as Owner may reasonably request.

§ 3.1.8.5 Logs: Design-Builder shall prepare and keep current, for 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 Design-Builder with Design-Builder's construction schedule and which allows Owner reasonable time to review submittals or other such documents. Design-Builder 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.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, but in any event within twenty days after being awarded the Contract, shall prepare and submit for the Owner's approval a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits the-currently required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, no less than monthly, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project.

The Design-Builder must include a response time of at least ten days for the Owner's review and at least fourteen days for review by the Owner's consultants. The Owner cannot guarantee response times from governmental authorities, such as permitting agencies.

The construction schedule shall be prepared by Design-Builder in a detailed critical path management ("CPM") format satisfactory to the Owner that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) identify each phase of construction and orderly completion of the Work in accordance with the requirements of the Contract Documents. The Design-Builder shall load his labor resource requirements and constructed value to each task on the schedule unless Owner elects to waive this requirement in writing. The Design-Builder 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 Design-Builder to reflect actual conditions on a period described elsewhere herein. In the event any progress report indicates any delays, the Design-Builder shall propose an affirmative plan to adjust the schedule to correct the delay, including overtime and/or additional labor, if necessary.

The scheduled Substantial Completion date may be earlier than the required date for Substantial Completion. Any resulting schedule "float" or "slack" time shall be used or allocated only with the consensus of the Owner and Design-Builder shall

not be entitled to adjustment of the Contract Sum (including without limitation any claimed extended general conditions costs or expenses), Contract Time, or (if applicable) Guaranteed Maximum Price based on subsequent schedule changes, whether or not approved by Owner; any such Contract Time and Contract Sum adjustments may be implemented only by Change Order in connection with extension of the required date for Substantial Completion in accordance with this Contract.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 **Design-Builder's Submittals**

§ 3.1.11.1 Prior to submission of any Submittals, and thereafter as necessary to maintain a current submittal schedule, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals. Response times specified in Section 3.1.9.1 apply to Owner's review of submittals and submittal schedule.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will be performed in a first-class, skillful and workmanlike manner, and that the Work will conform to the requirements of the Design-Build Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by

the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Notwithstanding the above, the Design-Builder's warranty for all elements of the work shall hold regardless of normal wear and tear. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder shall assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. The Design-Builder shall not be relieved of its general warranty obligations by the specification of a particular product or procedure in the Design-Build Documents, Warranties in the Design-Build Documents shall survive completion, acceptance and final payment. Design-Builder shall at Design-Builder's expense promptly pay and perform, to the reasonable satisfaction of Owner, any repairs required of Design-Builder in fulfillment of the foregoing warranty obligations. Should Design-Builder fail to perform any maintenance or repair required of it pursuant to this Section 3.1.12 within seven (7) days of notice thereof from Owner (provided no notice shall be required for emergency repairs), Owner may make such repair and Owner shall be entitled to recover directly from Design-Builder the reasonable cost thereof (including attorneys' fees) plus interest at the statutory rate thereon from the date of repair, immediately and upon demand by Owner therefore.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify, defend and hold harmless the Owner, and its officers, agents and employees ("Indemnitees") from and against claims actions liabilities damages losses, costs and expenses, direct and indirect, or consequential, including but not limited to attorneys' fees, costs, design professional fees and attorneys' 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, to the extent caused, in whole or in part, by the acts or omissions of the Design-Builder, Architect, Consultant, Contractor or supplier of any tier, their agents and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, including without limitation for:

- .1 Breach of this Agreement by the Design-Builder;
- .2 Death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders, to the extent caused in whole or in part by the performance of the Design-Builder or those for whom the Design-Builder is responsible;
- .3 Violation or infringement of third-party intellectual property rights by the Design-Builder;
- .4 Any negligent or willful acts or omissions by the Design-Builder, Design-Builder's consultants and contractors, or other persons for whom the Design-Builder is responsible;
- .5 Claims for compensation asserted by the Design-Builder's employees (including wage and hour or benefit claims) or any violation of federal, state, or local wage and hour or labor laws and regulations by the Design-Builder or other persons for whom the Design-Builder is responsible; and
- .6 Any impermissible disclosure of proprietary or confidential Owner information.

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 3.1.14. Design-Builder'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 Design-Builder's duty of indemnification.

§ 3.1.14.2 In claims against any person or entity indemnified under this Section 3.1.14 by an employee of the Design-Builder, Architect, Consultant, Contractor or supplier of any tier, their agents and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.14.3 To the extent required under ORS 30.140, no provision of this Agreement shall require Design-Builder, or its surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by negligence of the indemnitee, provided this paragraph shall not affect any provision of this Agreement that requires Design-Builder or Design-Builder's surety or insurer to indemnify against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitor, or the fault of the indemnitor's agents, representatives or subcontractors.

§ 3.1.14.4 The Design-Builder's obligation to indemnify and hold harmless the Owner from liens shall not be affected by ORS 87.021(4), and ORS 87.021 (4) shall not apply to this agreement.

§ 3.1.14.5 The indemnities and other covenants of this Section 3.1.14 shall survive the termination of the Contract.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for obligations arising thereunder between the time Owner took assignment under Section 3.1.15.1 and the time Owner makes such further assignment.

§ 3.1.15.4 Design-Builder shall include in each subcontract and supply agreement a provision to the effect that in the event of the termination of the Design-Builder 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 3.1.15. Design-Builder also shall include with every subcontract agreement the following language: "Contractor binds itself to Design-Builder and Owner, and is obligated to Design-Builder and Owner, in the same manner and to the same extent that Design-Builder is bound and obligated to Owner under the Prime Contract. In the event of any dispute between the Owner and Design-Builder, Design-Builder shall be bound by all decisions, directives, interpretations and rulings of the Owner, at Owner's option, including Owner's termination or suspension of Design-Builder."

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

§ 3.2 Procurement Requirements

The provisions of this Section 3.2 collectively are referred to as the "Procurement Requirements." In the event of any conflict between the Basic Requirements and the Additional Requirements below, the Basic Requirements shall prevail.

Basic Requirements:

The Design-Builder's subcontractor selection process must meet the following parameters:

(A) Absent a written justification prepared by the Design-Builder and approved by the Owner as more particularly provided for in this section, the Design-Builder'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 Design-Builder 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 Design-Builder's need to utilize a key subcontractor member of the Design-Builder's project team consistent with the Design-Builder'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 Design-Builder 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 Design-Builder 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 Design-Builder must fully respond to any questions or comments submitted to the Design-Builder by the Owner; and

(v) The Owner must approve the Design-Builder's use of the non-competitive subcontractor selection process prior to the Design-Builder'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 Design-Builder 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 Design-Builder or an Affiliate of Design-Builder. If the Design-Builder or an Affiliate will be included in the subcontractor selection process to perform particular construction Work on the project, the Design-Builder must disclose that fact in the selection process documents and announcements. The Design-Builder 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.

(I) 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 Design-

Builder's roles and responsibilities in this process and whether the Design-Builder'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 Design-Builder's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.

(m) Design-Builder Self-Performance or Performance by Design-Builder Affiliates Without Competition. These Basic Requirements and the Additional Requirements establish the conditions under which the Design-Builder or an Affiliate of the Design-Builder 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 Design-Builder or an Affiliate of the Design-Builder to perform elements of the construction Work without competition from subcontractors, the Design-Builder must provide, or must have included in the Design-Builder's RFP Proposal to perform Design-Builder Services for the project, a detailed proposal for performance of the Work by the Design-Builder or an Affiliate of the Design-Builder. If required by the Owner, the Design-Builder'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.

(n) Unsuccessful Subcontractor Briefing. A subcontractor who was not selected by the Design-Builder to perform a particular element of the construction Work may obtain specific information from the Design-Builder, and meet with the Design-Builder to discuss the subcontractor qualification and selection process involved and the Design-Builder'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 Design-Builder. Nevertheless, the Design-Builder is not obligated to provide this briefing opportunity unless the Design-Builder receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Design-Builder agree on a different schedule:

(A) Subcontractor will be allowed 60 days from the Design-Builder's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the Design-Builder under this section; and

(B) The Design-Builder shall set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request. The Design-Builder 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 Design-Builder shall review the Design-Build Documents and verify, prior to bidding, that they are ready for subcontract and supplier bidding. The Design-Builder shall perform constructability review of each Bid Package prior to bidding.

2. The Design-Builder shall divide the portions of the Work (other than general supervisory and "general conditions" type work of the Design-Builder) into components suitable for bidding ("Work Components"). The Design-Builder shall deliver a list of proposed Work Components to the Owner's Representative for comment prior to preparation of the Requests for Proposal.

3. The Design-Builder shall prepare a template form of Request for Proposal for Work Component procurement. The Design-Builder 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 Design-Builder shall deliver a copy of each Request for Proposal to the Owner's Representative concurrent with publication.

4. The procurement by the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder shall obtain at least three competitive bids for each particular Work component to be complete, including work components which the Design-Builder 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, Design-Builder 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.

5. Except for "general conditions" type work, the compensation for which is included in the Design-Builder's Fee and General Conditions Charge, the Design-Builder shall identify to the Owner as required in the Basic Requirements and in advance of bidding, in writing, any work that the Design-Builder proposes be performed by the Design-Builder 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 Design-Builder 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 Design-Builder 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 Design-Builder or a related party is proposed for provision of work or services, the unopened bids for that work (including that of the Design-Builder Party) will be submitted directly to the Owner's District office in advance of bid opening, for opening by Owner's staff.

6. The Design-Builder 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.

7. The Design-Builder shall respond to questions from potential bidders and clarifications or interpretations of the Bidding Documents. The Owner's Representative shall assist as they determine appropriate.

8. All addendums, if any, shall be provided to the Design-Builder by the Owner. The Design-Builder shall, in turn, verify that all known potential bidders have received all addendums to incorporate in their bids.

9. The Owner shall open all bids and proposals for any work the Design-Builder intends to submit a bid or proposal for at the Beaverton School District Administration Center Facilities Development Main Portable in accordance with the Owner's public opening requirements. The Design-Builder shall open all bids and proposals for any work the Design-Builder does not intend to submit a bid or proposal for at the Design-Builder's offices. 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 Design-Builder's compliance with the required bidding procedures.

10. With respect to any contractor to whom Design-Builder proposes to subcontract a portion of the Work, Design-Builder 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 Design-Builder and the proposed subcontractor
- (g) such other evidence of the subcontractor's fitness and responsibility as Owner may reasonably request.

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

12. The Design-Builder shall review and respond to any recommendations of the Owner's Representative.

13. The Design-Builder 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 Design-Builder remains responsible for their selection.

14. The Design-Builder will announce which prospective subcontractors the Design-Builder intends to select by written notice given to the Owner and all bidders for the Work Component at issue. The Design-Builder shall make such announcement at least five business days prior to the date of prospective award. The Design-Builder 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 Design-Builder shall make no award without Owner's prior written authorization.

15. The Design-Builder 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 Design-Builder discusses with or communicates about the selection process for a subcontract with a prospective subcontractor or any entity that the Design-Builder did not select for the Work Component at issue, the Design-Builder shall maintain complete written minutes of such discussion and deliver a copy to the Owner's Representative.

16. After award, the Design-Builder 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, Design-Builder shall deliver copies of the executed subcontracts and supply agreements to the Owner's Representative within five business days after execution.

17. The Design-Builder 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 Design-Builder'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 Design-Builder shall comply with such agreed alternative procurement methodology in procurement of such Work Component.

18. Bidding is proceeding under special rules applicable to public Design-Builder contracts, and statutory formal bidding procedures for public contracts are not applicable to subcontractor and supplier bids. While Owner's approval is required for all bid awards, the Design-Builder's subcontracting records (including without limitation any bid dispute documentation) are not public records. 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 Design-Builder re-bidding of any Work Component, at Owner's discretion.

19. Firms responding to the Design-Builder's 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 Design-Builder, with a copy to the Owner's Representative, no later than noon on 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.

20. 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 Design-Builder, 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 Design-Builder shall be solely and exclusively responsible for resolving the dispute, at the Design-Builder's sole expense. The entire bid dispute and resolution file, including minutes of all conversations, will be delivered by Design-Builder 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. Design-Builder 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.

§ 3.3 The Design-Builder, its Architect, Consultants, and Contractors shall comply with all virus protection, access control, back-up, password, and other security and other information technology policies of the Owner when using, having access to, or creating systems for any of the Owners' computers, data systems, personnel, or other information sources.

§ 3.4 Taxes

The Design-Builder shall pay sales, consumer, use, Business & Occupation, income, and similar taxes for the Work provided by the Design-Builder that are legally enacted when bids are received whether or not yet effective or merely scheduled to go into effect. Design-Builder is advised that income taxes in Beaverton and surrounding areas may include, but not be limited to, taxation by the State of Oregon, by Washington County, and by Tri-Met. All such taxes paid by the Design-Builder are included in the Contract Sum established at the time of execution of this agreement.

§ 3.5 The Design-Builder agrees that each of its employees, architect's, consultants' and contractor's employees and principals/owners involved in the Work, may, at the option of the Owner, be subject to a security background check, at any time, through the Beaverton Police Department or other venue. The Owner retains the option to require immediate removal of any sub-consultant, sub-contractor, employee or agent. Notwithstanding the foregoing, the Design-Builder and not the Owner, remains solely responsible for performing background checks on and screening for public safety, all architects, consultants, contractors and employees and, to the extent allowed by law, shall provide such screening methodologies and information to Owner upon request.

§ 3.6 E-Builder: The Design-Builder will be provided with a license in the E-Builder program platform and all project communications shall be documented through this platform.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; 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.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1 The Design-Builder shall

thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues, each in terms of the other.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following: []
(List additional information, if any, to be included in the Design-Builder's written report.)

« »

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Design Phases as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Design Phases

The Design-Builder, Architect, Consultants, and Contractors shall comply with the Owner's guidelines, located at: www.beaverton.k12.or.us/District/Department/Facilities/FacilitiesDevelopment/ConstructionDesignStandards. If Design-Builder believes compliance with the design guidelines would not conform to applicable laws or the applicable professional standard of care, Design-Builder shall so advise the Owner prior to performance of the Services at issue. The Owner's review or approval of any design documents shall not relieve the Design-Builder of its responsibility for the accuracy and completeness of such documents.

§ 4.3.1 Schematic Design Phase Services.

- .1 Based on the Project's requirements agreed upon with the Owner, the Design-Builder shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.
- .2 Based on the Owner's approval of the preliminary design, the Design-Builder shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Design Documents will identify any systems, materials or equipment for which contractors will provide design services or certifications ("Delegated Design Components"), which Delegated Design Components shall be consistent with this Agreement and subject to Owner's approval.
- .3 The Design-Builder shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work.
- .4 The Design-Builder shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.
- .5 The Design-Builder shall submit to the Owner an estimate of the Cost of the Work.
- .6 The Design-Builder shall submit the Schematic Design Documents to the Owner, and request the Owner's approval. Before the Design-Builder proceeds with the Design Development Phase, the Design-Builder shall make a presentation of its Schematic Design to the Owner including, but not

- limited to, explaining its conformance with and any approved exceptions to the Owner's design guidelines.
- .7 Following the approval of the Owner, the Design-Builder shall seek and secure review of Schematic Design Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Design-Builder shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.
 - .8 The Schematic Design Phase shall include a thorough code search by Design-Builder identifying in writing all applicable building codes and ordinances and certification requirements.

§ 4.3.2 Design Development Phase Services

- .1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design-Builder shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.
- .2 The Design-Builder shall update the estimate of the Cost of the Work.
- .3 The Design-Builder shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval. Before the Design-Builder proceeds with the Construction Document Phase, the Design-Builder shall make a presentation of its Design Development Documents to the Owner including, but not limited to, explaining its conformance with and any approved exceptions to the Owner's design guidelines.
- .4 Following the approval of the Owner, the Design-Builder shall seek and secure review of Design Development Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain ultimate approval by those agencies. The Design-Builder shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 4.3.3 Construction Documents Phase Services

§ 4.3.3.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Design-Builder shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Design-Builder acknowledge that in order to construct the Work the Design-Builder will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Owner may review.

- .1 The Construction Documents shall be provided to the Owner for review and comment at the following points of completion: 50% and 100%. Refer to Exhibit D for detailed requirements. Design-Builder shall incorporate or address Owner comments, as applicable, in the Construction Documents not later than the next required iteration.
- .2 When Construction Documents are 80% complete, the Design-Builder shall make a presentation to the Owner which will include, but not be limited to, explaining its conformance with and any approved exceptions to the Owner's guidelines. The Owner's approval shall not be deemed approval of the construction means, methods or techniques, which are the responsibility of the Design-Builder.
- .4 The Design-Builder shall provide final Construction Documents to the Owner with the Design-Builder's Proposal.

§ 4.3.3.2 The Design-Builder shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project, shall prepare the Construction Documents to meet all requirements of the most recent applicable codes, regulations, and industry standards adopted in the jurisdiction. The Design-Builder will respond to all comments, requests, or changes requested by federal, state and local governments, or certification agencies with jurisdiction over the Project or its use, including, when required, filing and prosecuting routine appeals and modifying Construction Documents. If a conflict arises between any of these

requirements, the Design-Builder will so notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 4.3.3.3 The Design-Builder shall submit the Construction Documents to the Owner. The Design-Builder's and its Architect's and Consultants' Construction Documents submitted to the Owner and to permitting or certification agencies shall be effectively complete, coordinated, and internally consistent, and shall contain no undisclosed missing elements.

§ 4.3.3.4 The Design-Builder will provide three sets of Construction Documents to the Owner (and such documents in electronic format, if requested) for use by the Owner and others who must review or approve the Project, as may be reasonably requested. The Design-Builder will furnish additional sets of the Construction Documents as required to authorized recipients at the recipients' expense, at Design-Builder's cost of reproduction.

§ 4.3.3.5 Following the approval of the Owner, the Design-Builder shall seek and secure review of Construction Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain ultimate approval by those agencies. The Design-Builder shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 4.3.3.6 Statutory Requirements. In addition to all other applicable legal requirements and professional standards:

- .1 Pursuant to ORS 671.020, all Drawings and the title page of all specifications intended to be used as construction documents shall bear the stamp of a registered architect and shall be signed by the Design-Builder's Architect.
- .2 Pursuant to ORS 671.025, the plans and specifications shall bear identification which shall include without limitation the Project name and location, the name, address and telephone number of the person responsible for the preparation of the documents, the name, address and telephone number of the Owner, and the date the document was issued.
- .3 All Drawings and plans as required in ORS 455.645 for the structure shall be certified by a qualified professional engineer or qualified architect. The design shall provide for resistance to lateral forces including wind and earthquakes, as well as gravity loads, in accordance with accepted engineering practice and governing building codes. The design shall be accompanied by supporting lateral load calculations.

§ 4.3.2 The Owner shall review the Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 3.1 and 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

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

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution and completion of the Work and Substantial Completion of the Project. Without limitation to the foregoing, Design-Builder 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 Owner by Design-Builder 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 Design-Build Documents, and the final certificate of occupancy prior to (and as a condition to) Final Completion. The Owner will reimburse the Design-Builder for the actual cost, without markup of the building permit, permanent utility connection permits and fees, and permits required for construction of work in the public right and associated bonds or assurances, outside of the Contract Sum. The Owner may, at its election, retain a firm to perform and pay for the permitting jurisdictions required special inspections. Any other required permits including trade permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work shall be the responsibility of the Design-Builder and are included in the Contract Sum. Design-Builder shall deliver an electronic copy in a PDF format of the building permit and attachments to Owner as soon as it is issued. Upon final completion, the Design-Builder shall deliver to the Owner all original permits, licenses and certificates of occupancy with photocopies to the Owner.

§ 5.5.2 The Design-Builder 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.

§ 5.5.2.1 The Design-Builder shall assist the Owner in any negotiations with authorities in achieving a certificate of occupancy.

§ 5.5.2.2 To the extent applicable to ORS 279C.540 (6), a laborer shall be paid at least time and a half for all work performed on the legal holidays specified in subsection (1) (b) (B) to (G) of ORS 279C.540 and for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.

§ 5.5.2.3 To the extent applicable pursuant to ORS 279C.530, all employees working under this Contract are subject to employers that will comply with ORS 279C.656 (Workers' Compensation) or employers that are exempt under ORS 656.126, and the Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical, and hospital care or other needed care and attention incident to sickness or injury to the Design-Builder's employees, of all sums which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder collected or deducted from the wages of employees pursuant to any law or Contract for the purposes of providing or paying for such services.

§ 5.5.2.4 If the Design-Builder performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, or performs or fails to perform any permit requirements, the Design-Builder shall assume appropriate responsibility for such Work and shall pay and bear the resultant costs, including without limitation those attributable to correction, and any penalties, extensions, additional fees or fines assessed.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build 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 Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions; otherwise Design-Builder's Claim will be barred. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14. No increase to the Contract Sum or Contract Time shall be allowed if the Design-Builder knew of the concealed conditions prior to its executing the Contract or such conditions were reasonable discernable from the bidding documents or a careful review of the project site. If the Design-Builder 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 Owner, Design-Builder will be deemed to have acknowledged that such condition does not entitle Design-Builder to any additional compensation or extension of the Contract Time.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder 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 14.

§ 5.5.5 Prevailing Wages/Labor Laws/Public Contract Laws

§ 5.5.5.1 Design-Builder shall comply in all respects with ORS 279C.840. Pursuant to ORS 279C.840, the hourly rate of wage of any contractor or subcontractor or other person doing or contracting to do any part of the Work pays to workers employed in the performance of any part of this Contract shall be not less than the “prevailing rate of wage” (the effective date to be determined by BOLI rule or administrative guideline) for an hour’s work in the same trade or occupation in the locality where such labor is performed.

§ 5.5.5.2 The “prevailing rate of wage” as published by the Oregon Bureau of Labor and Industries in effect at the time the initial specifications were first advertised for bid solicitations (“Publication Date”) apply, as those which may be paid to workers in each trade or occupation required for the Work, employed in the performance of the Work, either by the Design-Builder or subcontractor or other person doing or contracting to do the whole or any part of the Work is referenced in the Design-Build Documents and made a part of this Contract by this reference. For this contract, the ‘prevailing rate of wage’ as published by the Oregon Bureau of Labor and Industries are the Prevailing Wage Rates for Public Works Contracts in Oregon effective July 1, 2017, and the Prevailing Wage Rate Amendments effective October 1, 2017. The rates may be found at the Bureau’s web site www.boli.state.or.us, and are incorporated herein by this reference.

§ 5.5.5.3 Pursuant to ORS 279C.840, the Design-Builder 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 Design-Builder 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.

§ 5.5.5.4 Pursuant to ORS 279C.845, the Design-Builder or its surety and every subcontractor and their respective sureties shall file with the Owner written statements on oath and in the form prescribed by the Commissioner of the Bureau of Labor and Industries certifying the hourly rate of wage paid each worker it has employed upon the Work and certifying that no worker employed upon the Work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Design-Build Documents. The certificate and statement shall be verified by the oath of the Design-Builder or subcontractor that the Design-Builder or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Design-Builder or subcontractor’s knowledge. The certified statements shall be set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker’s correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Design-Builder or subcontractor employs a worker upon the Work shall be submitted to Owner once a month, by the fifth business day of the following month. Design-Builder or subcontractor shall preserve the statements for a period of three years from the date of completion of the Contract.

§ 5.5.5.5 The Design-Builder shall indemnify, defend, and hold the Owner harmless, including attorneys’ fees, from any violation or alleged violation of ORS 279C.800 et seq.

§ 5.5.5.6 Hours. Pursuant to ORS 279C.520, no person shall be employed for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, the laborer shall be paid at least time and a half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279C.540.

§ 5.5.5.7 Liens. Pursuant to ORS 279C.505, the Design-Builder shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor of material furnished.

§ 5.5.5.8 Withholding Taxes. Pursuant to ORS 279C.505, the Design-Builder shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

§ 5.5.5.9 Payment for Medical Care. Pursuant to ORS 279C.530:

- .1 The Design-Builder shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to its employees, of all sums which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder collected or deducted from the wage of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

- .2 All employers working under this Contract are subject employers that will comply with ORS 656.017, “Workers’ Compensation Combined Health Coverage”, or are employers that are exempt under ORS 656.126.

§ 5.5.5.10 If the Design-Builder is not domiciled in or registered to do business in the State of Oregon, the Design-Builder shall comply with the requirements of ORS 279A.120.

§ 5.5.5.11 Drug Testing. Pursuant to ORS 279C.505, the Design-Builder shall demonstrate to the Owner that an employee drug testing program is in place.

§ 5.5.5.12 Design-Builder shall comply with any and all other public contracting laws applicable to the Owner, whether or not articulated herein.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may approve or direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder’s costs for unloading and handling at the site, labor, installation costs, overhead, profit, general conditions, and other expenses contemplated for stated allowance amounts, are included in the allowance and there shall be no additional charge for the same;
- .3 whenever actual costs, as agreed to in writing by Owner, are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2;
- .4 Materials and equipment required under an allowance shall be proposed by Design-Builder and approved in writing by the Owner prior to procurement; and
- .5 Periodically, during the course of construction, representatives of the Design-Builder shall advise the Owner of the cost status of each allowance.

The Design-Builder shall provide this information in a timely manner, but always prior to the completion 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.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

The Design-Builder shall employ a competent project manager and superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work as required by this Contract or as otherwise necessary or appropriate. The project manager and superintendent shall be the persons designated in the Design-Build Documents unless the Owner’s Project Manager approves another person in writing. The project manager and/or superintendent shall represent the Design-Builder, and communications given to the project manager and/or superintendent shall be as binding as if given to the Design-Builder. Important communications shall be confirmed by Design-Builder in writing. Other communications shall be similarly confirmed on written request of Owner in each case. For smaller projects, the project manager and the superintendent may be the same person subject to approval by the Owner Representative.

Unless otherwise agreed in writing, the Design-Builder 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 Design-Builder, termination of the contract in accordance with the Design-Build Documents, until Final Completion is attained.

Neither the project manager or the superintendent shall be changed without the approval of the Owner's Project Manager.

Within ten days after issuance of the Notice to Proceed, the Design-Builder shall furnish to 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 Design-Builder 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 Design-Builder, 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 Design-Builder shall also provide the Owner with a list of telephone numbers for all key personnel of the Design-Builder and its principal subcontractors at all tiers for purposes of contacting personnel as Owner reasonably determines necessary. Design-Builder shall periodically update the list as necessary to ensure the Owner has the most current information.

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.1.1 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Owner may require in writing the Design-Builder 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 Design-Builder shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by Owner.

§ 5.7.1.2 The Design-Builder 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 Beaverton Police Department or other venue. Notwithstanding the foregoing, Design-Builder, 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 Owner upon request.

§ 5.7.1.3 Design-Builder acknowledges that it is Design-Builder's responsibility to hire all personnel for the proper and diligent prosecution of the Work, and Design-Builder 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, Design-Builder shall not be entitled to an increase in the Contract sum or Contract Time if the dispute was caused by acts or omissions of Design-Builder, or Design-Builder's agents, subcontractors at any tier or suppliers.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection. If the Owner reasonably 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", the Design-Builder shall replace the subcontractor. Such a replacement shall not relieve the Design-Builder of its responsibility for the performance of the work or compliance with all of the requirements of the Contract within the Contract Sum or the Contract Time, except that the Owner will be responsible for the difference between the original subcontractor's sub-bid and the replacement subcontractor's sub-bid including any schedule impact. Notwithstanding the above, if the Owner finds the subcontractor irresponsible based on past performance which was known to the Design-Builder or reasonably should have been known to the Design-Builder, then replacement with another subcontractor shall not result in any change to Contract Sum and/or Contract Time.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity 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 shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.7.3.2 The Design-Builder shall not substitute a Contractor, person or entity previously selected if the Owner makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Design-Builder is not being prosecuted in accordance with the Design-Build Documents, the Design-Builder shall, upon request of the Owner, remove the Contractor performing such work. Such removal shall not relieve the Design-Builder 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.

§ 5.7.4 Notwithstanding the foregoing procedures, the Design-Builder may only engage and substitute first tier subcontractors as permitted by ORS 279C.585, and 279C.590.

§ 5.7.5 Subcontractual Relations

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

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

§ 5.7.5.3 Pursuant to ORS 279C.580, the Design-Builder shall include in each subcontract for property or services entered into by the Design-Builder and a Subcontractor, including a material supplier, for the purpose of performing the Work:

- .1 A payment clause that obligates the Design-Builder to pay the Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Design-Builder by the Owner;
- .2 An interest penalty clause that obligates the Design-Builder to pay the Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the above payment clause for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, computed at the rate specified in ORS 279C.515 (2).
3. A provision requiring the Subcontractor to include a payment clause and an interest penalty clause conforming to the above standards in each of its subcontracts and to require each of its Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor, including material suppliers.

§ 5.7.5.4 The Design-Builder shall promptly pay (and secure the discharge of any liens or claims asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited, to any subcontractors of any tier). The Design-Builder shall furnish to the Owner such releases of claims, payment, bond and surety claims, and other documents as the Owner may request from time to time to evidence such payment and discharge. The Owner, at its option, may withhold payment, in whole or in part, to the Design-Builder until such documents are furnished. The Design-Builder shall defend, indemnify, and hold harmless the Owner from any liens and subcontractor claims, including all expenses and attorneys' fees.

§ 5.7.6 Supervision and Construction Procedures

§ 5.7.6.1 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences, assembly details and procedures and for coordinating all portions of the Work under the Contract.

§ 5.7.6.2 The Design-Builder 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 Design-Builder, who shall maintain coordination control at all times.

§ 5.7.6.3 The Design-Builder 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 Design-Build Documents, including the then current issue of the Drawings and Specifications. The Design-Builder shall be responsible for examination, inspection and quality surveillance of all Work performed by any subcontractor of any tier, and for such subcontractors' performance of such Work itself. The Design-Builder shall determine when it is necessary to perform, and shall perform, tests (in addition to those requested by the Owner or required by the Specifications or any other provision of the Design-Build Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Design-Build Documents. If any of the Work is required to be inspected or approved by any public authority, Design-Builder shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by Owner hereunder shall be a waiver of any of Design-Builder's obligations hereunder.

§ 5.7.6.4 The Design-Builder shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. The Design-Builder shall establish and maintain existing lot lines, restrictions, and bench marks. The Design-Builder shall establish and maintain all other 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 Design-Builder 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 Design-Builder shall review placement of the improvements on the site with the Owner after all lines are staked out and before foundation work is started.

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

§ 5.8 Documents and Submittals at the Site

§ 5.8.1 The Design-Builder shall maintain at the site for the Owner, and update at least weekly, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and shall be delivered to the Owner, in accordance with Section 9.10.2, upon completion of the Work, sufficient to show a record of the Work as completed.

§ 5.8.2 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 Owner at the site.

§ 5.8.3 Design-Builder shall submit to Owner with each Application for Payment an accurate and updated set of field drawings, in such format as the Owner may reasonably request, marked currently to record field changes and selections. Upon final completion of the Work the Design-Builder 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 Owner in accordance with the provisions of the Design-Build Documents. Design-Builder 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 Design-Builder, the Design-Builder shall not be relieved of any responsibility under its contract with Owner for the execution and completion of Work in compliance with the Design-Build Documents.

§ 5.9 Use of Site

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

§ 5.9.2 Prior to the commencement of construction, the Design-Builder 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.

§ 5.9.3 The Design-Builder 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.

§ 5.9.4 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. Design-Builder 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.

§ 5.10 Cutting and Patching

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

§ 5.10.2 The Design-Builder 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 Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder’s consent to cutting or otherwise altering the Work.

§ 5.10.3 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 Design-Builder to the satisfaction of 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 Design-Builder shall abide by such regulations and it shall pay for such work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area in a clean condition, free from accumulation of waste materials or rubbish caused by operations under the Contract on a daily basis. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder’s tools, construction equipment, machinery and surplus materials from and about the Project, and clean all surfaces. If Design-Builder fails

to perform clean-up operations on a daily basis or the above removal and cleaning at the end of the Work, the Owner, after 24 hours' notice to the Design-Builder, may (but shall not be required to) perform this function, and Owner shall be entitled to immediate reimbursement from the Design-Builder, or offset of charges from the Design-Builder, for the costs incurred by Owner.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located.

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 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 individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 Unless the Owner requests that Design-Builder do so, the Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement by Owner and Design-Builder. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder 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 Design-Builder's construction and operations with theirs as required by the Design-Build Documents. If the Design-Builder receives items from a separate contractor or from the Owner for storage, erection or installation, the Design-Builder shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 5.14.2 If part of the Design-Builder's Work depends, for proper execution or results, upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner, 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 Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

§ 5.16 Documents and Samples At The Site

§ 5.17 Shop Drawings, Product Data and Samples

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

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

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

§ 5.17.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. Their purpose is to demonstrate the way by which the Design-Builder proposes to conform to the information given and the design concept expressed in the Design-Build Documents for those portions of the Work for which the Design-Build Documents require submittals. Review by the Owner is subject to the limitations of Section 7.11.7. Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Design-Build Documents. Submittals that are not required by the Design-Build Documents may be returned by the Owner without action.

§ 5.17.5 The Design-Builder shall review for compliance with the Design-Build Documents, approve and submit to the Owner Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents in accordance with the submittal schedule approved by the Owner with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of separate contractors.

§ 5.17.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents to Owner that the Design-Builder 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 Design-Build Documents.

§ 5.17.7 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed and approved or released for use by the Owner.

§ 5.17.8 The Work shall be in accordance with approved/reviewed submittals except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval or review of Shop Drawings, Product Data, Samples or similar submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner 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 Design-Builder shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner's approval or review thereof. Any corrections or modifications to Shop Drawings made by the Owner shall be deemed accepted by the Design-Builder, without change in Contract Sum or Contract Time, unless the Design-Builder provides the Owner with written notice specifically identifying the deviation and impact before commencing any Work from such Shop Drawings. The Design-Builder shall make all corrections requested by the Owner and, when requested by the Owner, provide a corrected Submittal. Notwithstanding the foregoing, the Design-Builder 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 Owner.

§ 5.17.9 The Design-Builder 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 Owner on previous submittals. In the absence of such written notice the Owner's approval of a resubmission shall not apply to such revisions.

§ 5.18 Substitutions

§ 5.18.1 The Design-Builder may make substitutions only with the consent of the Owner, in accordance with an executed Change Directive or Change Order. After the Contract has been executed, the Owner may consider a written request for the substitution of material or products in place of those specified in the Design-Build Documents. The written request must include the specifications for the material or product and any proposed change in the Contract Sum or Time. In additions, the Owner may order a substitution of material or products at any time with or without approval of the Owner.

§ 5.18.2 By requesting a substitution, the Design-Builder represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other know or unknown Claim for an increase in the Contract Sum or Time due to the substitution, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. The Design-Builder will be responsible for the reasonable costs of any time the Owner expends in reviewing a Design-Builder substitution request. Should the Design-Builder or Owner Representative request substitution with a material or system of lesser quality and/or cost, if approved by the Owner Representative, the Design-Builder shall compensate the Owner for the difference in cost through a deductive Change Order or Change Directive.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, Change Directive, or order for minor change in the Work, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder; a Change Directive requires signature by the Owner and may or may not be agreed to by the Design-Builder; an order for a minor change in the Work may be issued by the Owner.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order, Change Directive or order for minor change in the Work.

§ 6.1.4 Before effectuating a change the Design-Builder shall propose the amount of change in the Contract Sum, if any, and the amount of change in the Contract Time, if any, arising from a proposed change in the work in the form of a Change Order Proposal. The Design-Builder shall submit its responsible proposal within no longer than seven days after request from Owner, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. If the Design-Builder fails to respond within this time or an agreed to extension thereof, the Design-Builder shall be liable for any delays or costs to other Work associated with accepting or denying the change. The Owner may accept the proposal in writing, in which case the Owner and Design-Builder are bound to the terms of the proposal, it will be deemed a Change Order, and the Design-Builder shall commence the change in the Work immediately in accordance with the proposal. The Owner shall include the accepted proposal in the next available formal Change Order. The Owner may reject the proposal, in which case the Owner may either not effectuate the change or may order the change through a Change Directive or an order for a minor change in the Work.

§ 6.2 Change Orders

A Change Order is a written instrument, prepared by the Owner or Design-Builder and signed by the Owner and Design-Builder 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.1 Methods used in determining adjustments to the Contract Sum may include those listed in Section 6.3.7.

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

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the

adjustment in the Design-Builder's compensation, or Contract Time, or both. The Owner may by 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 or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, 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 Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved. As soon as possible, but no longer than seven days after receipt of the Change Directive, the Design-Builder shall advise the Owner of the Design-Builder's agreement or disagreement with the cost or the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. If the Design-Builder does not timely disagree with the adjustments, the Construction Change Directive will be deemed an agreed "Change Order". The Design-Builder'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 Design-Builder shall conclusively be deemed to have accepted the Owner's adjustment. The Design-Builder's disagreement shall not relieve the Design-Builder of its obligation to comply promptly with any written notice issued by the Owner. 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 Design-Build Documents.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.6 Additional costs of supervision and field office personnel directly attributable to the change.

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 6.5. When cost items in excess of \$2,500 arise from subcontractors of any tier, these items shall also be itemized and presented to 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 Design-Builder and of any subcontractor or supplier of any tier seeking a change in the Contract Sum.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be the larger of the reasonable value of the deletion or change, or the actual net cost as confirmed by the Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, 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 14.

§ 6.3.10 When the Owner and Design-Builder agree with the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 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.

§ 6.4 Minor Changes in the Work

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 Design-Build Documents. Such changes will be effected by written order signed by the Owner and shall be binding on the Owner and Design-Builder. The Design-Builder shall carry out such written orders promptly and the Design-Builder shall be entitled to no additional compensation and no change in the Contract Time as a result thereof.

§ 6.5 Pricing Components

Unless otherwise agreed in writing, an increase or decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, from a Change Order or Change Directive, including through a Claim under Section 6.3.7, shall be limited to the following itemized components:

§ 6.5.1 Direct Labor Costs

These are the labor costs determined by either the estimated or actual number of additional craft hours and the hourly cost necessary to perform the change in the Work, or the unit labor costs applied to the material quantities and extended, provided the unit labor costs are developed from the above craft hour cost, whichever is applicable, according to industry practice. The hourly cost shall be based upon the following:

- .1 Basic wages: The hourly wage for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. Neither the premium portion of overtime wages, per-diem, or other subsistence or travel costs may be included unless pre-approved by the Owner. Hourly wage shall not exceed applicable PWR, unless actual wage usual and customary for the worker, and then only by prior authorization of the Owner. Supervisory time may not be charged to the work of a change order unless the supervisory time is directly linked to the work of the change order and the supervisor was not otherwise on the site.

- .2 Fringe benefits: Fringe benefits paid by the Design-Builder as established by the State of Oregon or contributed to labor trust funds as itemized fringe benefits, whichever is applicable.
3. Worker's insurances: Direct contributions to the State of Oregon as industrial insurance; medical aid; and supplemental pension by class and rates established by the State of Oregon.
- .4 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 6.5.2 Direct Material Costs

This is an itemization, including material invoice, of the quantity and cost of additional materials necessary to perform the change in the Work. These costs shall be by the item cost applied to the quantity and extended. The item 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 Owner.

§ 6.5.3 Construction Equipment Usage Costs

This is an itemization of the actual length of time 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 prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, or the actual rate paid 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 more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the Change 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 standing by for future use on the Work shall be 50% of the rate established above. 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 that equipment, which rate and use must be approved by the Owner prior to performing the changed Work.

§ 6.5.4 Cost of Change in Insurance or Bond Premium.

This is defined as:

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

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

§ 6.5.5 Subcontractor Costs

These are payments the Design-Builder makes to Subcontractors for changed Work performed by subcontractors. The subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 6.5. Payments to subcontractors or suppliers that are affiliates of Design-Builder for change work shall not exceed market rates for the services provided.

§ 6.5.6 Overhead and Profit

This is the allowance for all combined overhead, profit, fees and other costs, including all home office, site office and site overhead, including but not limited to the project manager and/or superintendent, delay costs, safety costs, small or hand tools, acceleration and impact costs of any kind ("Overhead and Profit"), added to the total direct cost to the Owner of any Change Order or any claim for additional work or extra payment of any kind on this Project. The maximum Overhead and Profit shall be limited in all cases to the following schedule, unless specifically agreed to by Owner in advance in writing:

- .1 The Design-Builder shall receive as Overhead and Profit its Fee percentage of the cost of any materials or work performed by the Design-Builder's or its Affiliates' own forces or that labor performed or materials supplied by subcontractors; provided total Overhead and Profit charges cumulatively at all tiers shall not exceed 20%.

- .2 Each subcontractor at any tier (including lower tier subcontractor involved, but excluding any Affiliates of Design-Builder) shall receive 10% of the cost of any materials or work directly performed by its own forces, and 5% of the cost of any materials and labor performed by its sub-tier subcontractors.

If a change in the Work involves both additive and deductive items, the appropriate 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. The total Fee payable shall be reconciled by Owner at Final Payment to reflect the net Contract Sum adjustment under all cumulative Change Orders.

§ 6.5.7

The total cost of any change, including a Claim under Article 14, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article 14), of the items in this Section 6.5. 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 may confer directly with Subcontractors or Suppliers of any tier concerning any item chargeable to the Owner under this Article to confirm balances due and to obtain statements or lien waivers.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The only entity or person authorized to act for the Owner means the authorized representative outlined above. Teachers, staff, a principal, custodians or others at the school who are not the Owner's authorized representatives are not authorized to act for Owner as to any matter regarding this Contract. The Owner's Representative may execute Change Orders, Construction Change Directives, Payment Requests and other matters for which Owner's authorization or approval is required. Such matters shall not be effective unless signed by the above-named individual. The Owner may change the person named above by written notice to the Design-Builder.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner.

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

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.8 Communications by and with Subcontractors and material suppliers shall be through the Design-Builder, unless at that time Owner has reasonable cause to communicate with them directly or determines the Design-Builder is in breach of the Design-Build Documents. Communications by and with separate contractors shall be through the Owner.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.11 The Owner shall furnish tests, inspections and reports required by law or the Design-Build Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials. This paragraph does not limit or define the scope of tests or inspections to be provided by Design-Builder or its Architect, Consultants, or Contractors.

§ 7.2.12 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that Owner determines to be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 7.2.13 The Owner's approval, acceptance, use of or payment for all or any part of the Design-Builder's services hereunder shall in no way alter the Design-Builder's obligations or the Owner's rights hereunder, nor excuse Design-Builder or its consultants or contractors from any failure to perform in accordance with the applicable standard of care.

§ 7.2.14 Design-Builder acknowledges that the provisions of the Oregon Tort Claims Act (ORS 30.260-30.300) apply to the obligations of the Owner, and any such obligation shall be limited as provided in the applicable provisions of the Oregon Tort Claims Act and other applicable law notwithstanding any other provision of this Agreement seemingly to the contrary.

§ 7.2.15 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work; (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 budget for the Cost of the Work, the Owner shall thereafter notify the Design-Builder of material changes in budget or resources, and the Design-Builder shall advise the Owner concerning the resulting effects on the Project's scope and quality.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of 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 installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal

schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of 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 Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder 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 Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3. This right shall be in addition to, and not in restriction of, Owner's other rights under this Agreement and at law, and its exercise shall not excuse the Design-Builder from damages caused by breach of this Agreement or its responsibility for full performance of this Agreement.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue to make reasonable progress to correct such default or neglect with diligence and promptness, the Owner may, after such seven-day period and, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the additional services made necessary by such default, neglect or failure. The right of the Owner to correct the Work pursuant to this Subsection shall not give rise to any duty on the part of the Owner to exercise this right, not excuse any default by Design-Builder. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.10 Nonwaiver of Rights by 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.

§ 7.11 Administration Of The Contract

§ 7.11.1 At the discretion of the Owner, the Owner may contract with a separate consultant to provide administration of the Contract as described in the Design-Build Documents and to the extent Owner so elects, will be an Owner's representative,

- .1 During design and construction,
- .2 Until final payment is due and certified as such pursuant to this Contract, and
- .3 With the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 11.2.

In acting on behalf of the Owner, the separate consultant will have authority to the extent provided in the Design-Build Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. The separate consultant is not the agent of the Owner and is not authorized to agree to changes in the Contract Sum or Contract Time, nor to direct the Design-Builder to take actions that change the Contract Sum or Contract Time (this sentence does not apply to Owner's Project Manager).

§ 7.11.2 The Owner or Owner's consultant will visit the site at intervals appropriate to the stage of construction, or as otherwise determined by 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 as observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Design-Build Documents. However, the Owner or Owner's consultant will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Owner or Owner's consultant will have control over or charge of, nor be responsible 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 Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.11.3 Neither the Owner or Owner's consultant will be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. Neither the Owner or Owner's consultant will have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, subcontractors at any tier, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 7.11.4 Communications by and with Subcontractors and material suppliers shall be through the Design-Builder, unless at that time Owner has reasonable cause to communicate with them directly or determines the Design-Builder is in breach of the Design-Build Documents. Communications by and with separate contractors shall be through the Owner.

§ 7.11.5 Based on the Owner or Owner's consultant's observations and evaluations of the Work and the Design-Builder's Applications for Payment, the Owner or Owner's consultant will make recommendations to determine the amounts due the Design-Builder and will issue Certificates for Payment in such amounts.

§ 7.11.6 The Owner or Owner's consultant will have authority to reject Work that does not conform to the Design-Build Documents. Whenever the Owner or Owner's consultant considers it necessary or advisable, the Owner or Owner's consultant will have authority to require inspection or testing of the Work in accordance with Sections 15.5, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner or Owner's consultant 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 Owner or Owner's consultant to the Design-Builder, subcontractors at any tier, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.11.7 The Owner or Owner's consultant will review and approve or take other appropriate action upon the Design-Builder'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 Design-Build Documents. Design-Builder shall provide such submittals for review so as to cause no delay in the Work and to allow sufficient time in the Owner or Owner's consultant's professional judgment to permit adequate review. 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 installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner or Owner's consultant's review of the Design-Builder's submittals shall not relieve the Design-Builder of the obligations under the Design-Build Documents. The Owner or Owner's consultant's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Owner or Owner's consultant's approval of a specific item shall not

indicate approval of an assembly of which the item is a component. The Design-Builder should expect a submittal review cycle time of up to 14 days, although the Owner may in its discretion, at the request of Design-Builder, cause the Owner or Owner's consultant to accelerate certain submittal reviews where these are shown to Owner to be necessary for the Project schedule. Neither the Owner or Owner's consultant can guarantee response times from governmental authorities.

§ 7.11.8 The Owner or Owner's consultant will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 6.4.

§ 7.11.9 The Owner or Owner's consultant will investigate and make observations and recommendations in determining the date or dates of Substantial Completion and the date of Final Completion, will 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 Design-Builder, and will issue a final Certificate for Payment upon compliance with the requirements of the Design-Build Documents.

§ 7.11.10 The Owner or Owner's consultant will interpret and decide matters concerning performance under and requirements of, the Design-Build Documents, including without limitation the Drawings and Specifications. If no agreement is made concerning the time within which interpretations required of the Owner or Owner's consultant shall be furnished in compliance with this Section 7.11, then delay shall not be recognized on account of failure by the Owner or Owner's consultant to furnish such interpretations until at least 15 days after written request is made for them accompanied by sufficient information for the determination.

§ 7.11.12 Interpretations and decisions of the Owner or Owner's consultant will be consistent with the intent of and reasonably inferable from the Design-Build Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Owner or Owner's consultant will endeavor to secure faithful performance of the Contract by Design-Builder, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 7.11.13 The Owner's decisions on all matters will be final.

§ 7.11.14 Neither the Owner or Owner's consultant has any responsibility to assist the Design-Builder in the supervision or performance of the Work. No action, approval or omission to act or failure to advise the Design-Builder as to any matter by the Owner or Owner's consultant shall in any way relieve the Design-Builder from its responsibility for the performance of the Work in accordance with the Design-Build Documents. Neither the Owner or Owner's consultant will be responsible for defining the extent of any subcontract or dealing with disputes between the Design-Builder and third parties. The presence of the Owner or Owner's consultant at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Design-Build Documents, nor as evidence that any requirement of the Design-Build Documents of any kind, including notice, has been met or waived.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence the Work prior to the effective date of insurance required by Exhibit B, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the dates specified in this agreement.

§ 8.1.4 The Timely Completion of this Project is Essential to the Owner

The Owner will incur serious and substantial special, incidental and consequential damages if Substantial Completion and Final Completion of the Work does not occur within the respective specified dates. However, it would be difficult if not impossible to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, design fees, governmental fees, storage costs, portable rental costs, loss of use, inconvenience, loss of aesthetic value, and lost opportunities. Consequently, provisions for liquidated damages as a reasonable estimate of loss

may be included in the Design-Build Documents. Such liquidated damages are a reasonable estimate of actual damages from 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 Design-Build Documents, then the liquidated damages of this Section shall apply separately to each such phase. The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation the right to collect actual damages in any case where liquidated damages are unenforceable or otherwise unavailable.

§ 8.1.5 The provisions in the Contract for liquidated damages are intended to be in lieu of the liability of the Design-Builder for actual damages sustained by the Owner for late Substantial Completion or Final Completion but shall not relieve or release the Design-Builder 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.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes not reasonably foreseeable on the date the Work commenced and which are beyond the Design-Builder's control and not caused by the acts or omissions of Design-Builder or any Subcontractor or sub-subcontractor; or by delay authorized by the Owner pending mediation and arbitration; or 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 Owner may determine. Extension shall not exceed the change in the actual critical path of the Design-Builder'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 Design-Build Documents. The Design-Builder shall use best efforts to mitigate both the necessity of the delay and the period of the delay. No extension of time for completion will be allowed for delays or suspensions caused or contributed to by the negligence of Design-Builder or anyone for whose acts Design-Builder is responsible. Any such extension of the Contract Time shall be net of any contingency, weather delay, or "float" time allowance included in the Design-Builder'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 Design-Builder to an extension of time, then to the extent of such concurrency, the Design-Builder shall not be entitled to an extension of time.

§ 8.2.2 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 waived. The Design-Builder shall provide an estimate of the probable effect of such delay on the progress of the Work and shall notify Owner within ten (10) days after the event causing the delay has ceased.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

§ 8.2.4 When the Contract Time has been extended, such extension of time and the additional compensation, if any, allowed to Design-Builder thereby shall be the Design-Builder's sole remedy for such delay, and the Design-Builder shall not be entitled to any delay or impact damages, or other increase in time or compensation due to such extension. Notwithstanding any other provision of this Contract to the contrary, the Design-Builder 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, other than as provided in this Article 8.

§ 8.2.5 Claims relating to time shall be made in accordance with applicable provisions of Article 14. The Owner's awareness of the occurrence of the delay through means other than the Design-Builder's written notification shall not constitute a waiver of a timely or written notice or Claim.

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

avoided the delay by the exercise of due diligence. The Design-Builder shall be entitled to an equitable adjustment or an increase in the Contract Sum under this Section only if a delay beyond the Contract Time was caused by the Owner or persons acting therefore;

§ 8.2.7 To the fullest extent allowed by law, the Design-Builder 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 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's 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.

§ 9.3.1.1 Draft Application: On or about the 25th of each month, the Design-Builder shall submit to the Owner, a report on the current progress of the Work as compared to the Design-Builder'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 Design-Builder and Owner shall confer regarding the current progress of the Work and the amount of payment to which the Design-Builder is entitled. The Owner may request the Design-Builder to provide data substantiating the Design-Builder's right to payment, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage as provided elsewhere in the Design-Build Documents. The Design-Builder shall not be entitled to make a payment request, nor is any payment due the Design-Builder, until such data is furnished. As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Payment Request: After the Design-Builder and the Owner have met and conferred regarding the draft Application for Payment, and the Design-Builder has furnished all progress information required as well as all data requested by the Owner under Section 9.3.1.1, the Design-Builder may submit an Application for Payment request on the first day of the month in the agreed-upon amount to the Owner. The application shall be in the form of an itemized Application for Payment for Work performed during the prior calendar month on a form approved by the Owner (or absent such approval, on AIA forms G702, G703 AND G706), along with a release of liens and claims from Design-Builder and each subcontractor for whose Work the Owner paid the Design-Builder for the prior month, in form acceptable to Owner. 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 DESIGN-BUILDER'S CONSTRUCTION SCHEDULE, unless otherwise noted on the application. Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Disputed Amounts: If the Application for Payment includes amounts in dispute, the Owner need only approve the portions not in dispute. Approval of an Application for Payment does not waive Owner's right to later dispute amounts included in the Application for Payment.

§ 9.3.1.4 Validity of Payment Requests: An Application for Payment request shall not be valid unless it complies with the requirements of the Design-Build Documents.

§ 9.3.2 If specifically approved by Owner in advance, 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 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 Owner's approval conditioned upon compliance by the Design-Builder 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 Design-Builder warrants that title to all Work, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 RETAINAGE

§ 9.3.4.1 Pursuant to ORS 279C.555, the Owner will reserve 5% retainage from the moneys the Design-Builder earns on progress payments during the progress of the Work.

§ 9.3.4.2 The moneys retained may, at the option of the Design-Builder, be:

- (a) Retained in a fund by the Owner and paid to the Design-Builder in accordance with ORS 279C.570; or
- (b) Paid to the Design-Builder in accordance with ORS 279C.560 (3) or (4) in a manner authorized by the Director of the Oregon Department of Administrative Services.

§ 9.3.4.3 The Design-Builder may withhold payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Design-Builder pays interest to the subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Design-Builder shall specify the amount of the retainage and interest due a subcontractor

§ 9.4 Certificates for Payment

§ 9.4.1 The Owner will, within a reasonable period after receipt of the Design-Builder's Application for Payment, either issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, or notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will not excuse Design-Builder from (1) defects in the quality or quantity of the Work, (2) Design-Builder's responsibility for construction means, methods, techniques, sequences or procedures, (3) deficiencies in requisitions received from subcontractors and material suppliers and other data requested by the Owner to substantiate the Design-Builder's right to payment, (4) Design-Builder's duty to properly use money previously paid on account of the Contract Sum or (5) any other obligation of Design-Builder under the Design-Builder Documents.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner 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 to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied (150% of the estimated value of such defective Work may be withheld);
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, 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;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 Unsatisfactory prosecution of the Work by the Design-Builder, including but not limited to failure to carry out the Work in accordance with the Design-Build Documents;
- .8 Delay by the Design-Builder and/or its subcontractor(s) of any tier, or failure to comply with the Design-Builder's Construction Schedule requirements;
- .9 Failure to submit affidavits pertaining to wages paid as required by statute;
- .10 Failure to comply with a requirement of the Design-Build Documents in which the Owner has reserved the right to withhold payment;
- .11 Liquidated damages; or
- .12 Any other grounds for withholding allowed under this Agreement or applicable law, including without limitation ORS 279C.

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractors, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

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

§ 9.6 Progress Payments

§ 9.6.1 In accordance with ORS 279C.570, after the Owner has issued a Certificate for Payment, the Owner will make a progress payment within 30 days of its receipt of the Design-Builder's acceptable Application for Payment, but shall be entitled to withhold payment according to Section 9.5.1.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to sub-Consultants and sub-Contractors in a similar manner. If the Design-Builder 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 Design-Builder shall pay that subcontractor on demand, made at any time after which such payment to the Design-Builder would have been made, for its satisfactorily completed work of such subcontractor, less the retained percentage.

- .1 Pursuant to ORS 279C.505, the Design-Builder shall make payment promptly, as due, to all persons supplying to the Design-Builder labor or materials for the prosecution of the Work.
- .2 No payment request shall include amounts the Design-Builder 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 Design-Builder

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 Design-Builder may withhold the amount as allowed under the subcontract, but it shall give the subcontractor and the Owner 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.

- .3 Pursuant to ORS 279C.515, if the Design-Builder fails neglects or refuses to make prompt payment of any claim for labor or services furnished to the Design-Builder or a subcontractor by any person in connection with the Work as such claim becomes due, Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Design-Builder by reason of such contract.
- .4 Pursuant to ORS 279C.515, if the Design-Builder or first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Work within 30 days after receipt of payment from the Owner or a contractor, the Design-Builder or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Design-Builder or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment is received from the public contracting agency or from the Design-Builder, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.
- .5 Pursuant to ORS 279C.515, if the Design-Builder or a subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the Work, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in OR 279C.580.
- .6 Pursuant to ORS 279C.515, the payment of a claim in the manner authorized in this section shall not relieve the Design-Builder or the Design-Builder's surety from obligation with respect to any unpaid claims.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, if practical information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment 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 not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, 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 Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not pay the Design-Builder undisputed sums within the earlier of 30 days after receipt of the properly submitted Application for Payment and supporting documents from the Design-Builder or 15 days after the payment is approved by the Owner the amount due and owing to the Design-Builder less amounts permitted to be withheld pursuant to Section 9.5, then the Design-Builder may, upon fourteen additional days' written notice to the Owner, 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 Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in ORS 279C.570. To the fullest extent allowed by law, however, Design-Builder shall not stop or suspend the Work, withhold services or Work, or terminate this Agreement in the event Owner disputes any Application for Payment, so long as Owner pays the undisputed portion of the Application for Payment after applicable withholdings.

§ 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 Design-Build 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 the Certificate of Substantial Completion. The Work will not be considered not Substantially Complete if the Owner determines that the Work will not achieve Final Completion on the specified date, 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, nor does such occupation toll or change liquidated damages owed to the Owner.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner 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. The Design-Builder will further provide a written request to have the Owner certify that this Work has reached Substantial Completion and is ready for use or occupancy as applicable. The Owner will then inspect this Work for acceptance as Substantially Complete, pending completion of all work items necessary for Final Completion. The Design-Builder shall then expeditiously complete all work items necessary in the judgment of the Owner to achieve Substantial Completion, after which the Owner, upon Substantial Completion, will issue a Certificate of Substantial Completion and the Owner may use and occupy this portion of the Work for his beneficial use. If the Owner determines that the Work or designated portion is not Substantially Complete, the Design-Builder shall expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection.

§ 9.8.3 Once Substantial Completion of the Work has been certified, the Owner and Design-Builder will jointly tour all of the area of the Work and record items still remaining to be finished and/or corrected to achieve Final Completion. This list will be referred to as the Punchlist. The Design-Builder shall expeditiously complete the Punchlist items before the required Final Completion date. Any proposed Punchlist items that the Design-Builder does not agree is his work scope will be identified by the Design-Builder in writing on the Punchlist, which the parties shall endeavor to resolve by negotiation; alternatively, the Owner may remove the disputed items from the Punchlist or direct the Design-Builder to perform such disputed items, and the issue of whether the Design-Builder is entitled to additional compensation for the disputed items shall be subject to Claims resolution as provided in the Design-Build Documents. Any items missed by the inspection but required or necessary for Final Completion of the Contract shall be supplied and installed by the Design-Builder as a part of the Contract Sum, notwithstanding their not being recorded on the Punchlist.

§ 9.8.4 The Certificate of Substantial Completion issued by the Owner shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Design-Build 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. Upon execution of the Certificate of Substantial Completion, the Design-Builder shall attach a list of each outstanding and unresolved Claim; any Claim not so attached and identified, other than retainage and the

undisputed balance of the Contract Sum identified by Design-Builder in writing at that time, shall be deemed waived and abandoned.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Design-Builder for their written acceptance of responsibilities assigned to them in such Certificate. Upon such written acceptance of the Certificate of Substantial Completion and consent of surety, if any, and upon the Design-Builder's application, the Owner shall make payment as provided in the Design-Build Documents. Such payment shall be adjusted for a value of 150% of Work that is incomplete or not in accordance with the requirements of the Design-Build 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 Design-Build 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 Design-Builder considers that the Critical Systems are up and running and ready for normal operation as specified for each phase, the Design-Builder shall so notify the Owner in writing a minimum of 14 days prior to the Date of Substantial Completion for that portion or phase as fixed in the Design-Build Documents. The Owner 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 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 Design-Build Documents, the Design-Builder shall expeditiously, and before the Date of Substantial Completion, complete or correct such item upon notification by the Owner. The Design-Builder shall then submit a request for another inspection by the Owner to determine completion of the Critical Systems and pay the costs associated with the re-inspections, including fees of the Owner's consultants. When the Critical Systems are ready for operation, the Design-Builder will notify the Owner in writing, which shall establish the Date of Commissioning. Warranties on the Critical Systems required by the Design-Build Documents shall commence on the later of the Date of Commissioning or Date of Substantial Completion, unless otherwise provided in the Design-Build 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 Design-Builder, 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 Design-Builder 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 Design-Builder of any of its obligations under the Contract. If the Design-Builder 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 and Design-Builder 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 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 Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Final Completion:

- .1 The Design-Builder shall cause all Punchlist items to be completed by the Final Completion date. In the event that the Design-Builder fails to correct the deficiencies within the time period required for the Design-Builder to do so, the Owner may upon seven days' written notice to the Design-Builder, 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 Design-Builder that the Work (or Owner-designated portion) is ready for final inspection and acceptance, the Owner will promptly make such inspection accompanied by the Design-Builder. If it is determined that some or all of the Punchlist items are not

accomplished, the Design-Builder shall be responsible to the Owner for all costs, including re-inspections fees, for any subsequent Owner's inspection to determine compliance with the Punchlist. When the Owner 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 Design-Build Documents and the Contract fully performed, the Owner will promptly notify the Design-Builder in writing that to the best of the Owner's knowledge, information and belief, and on the basis of the Owner's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Design-Build Documents.

- 3 When the Owner 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 Design-Builder has submitted all the items in Section 9.10.2 to the Owner, the Design-Builder may submit a final Application for Payment. The Owner will then promptly issue a Certificate of Final Completion and a Certificate for Final Payment stating the entire balance found to be due the Design-Builder and noted in said final Certificate is due and payable. The Owner's Certificate of Final Completion will establish the date the Work reaches Final Completion upon its execution by the Owner.
- 4 The Design-Builder is liable for, and the Owner may deduct from any amounts due the Design-Builder, all fees and expenses incurred by the Owner for services performed after the required Final Completion date of all the Work due to the delay of the Design-Builder, whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.2 Final Acceptance and Payment

§ 9.10.2.1 Neither final payment nor any remaining retained percentage shall become due until the Owner has formally accepted the Project. To achieve final acceptance, the Owner 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 Design-Builder submits to the Owner

- (1) 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;
- (2) a certificate evidencing that insurance required by the Design-Build 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;
- (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents,
- (4) consent of surety, if any, to final payment,
- (5) as-constructed record copy of the Design-Build Documents marked to indicate field changes and selections made during construction,
- (6) All manufacturer's warranties, guarantees, product data, maintenance and operations manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, and other documents or items required by the Design-Build Documents
- (7) Certification that the materials in the Work are "lead-free" and "asbestos-free";
- (8) Originals of all permits, licenses and certificates, together with a certified statement that the Design-Builder 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 Owners and utility Owners, provided to Owner with a copy of all closed or signed off permits,
- (9) Proof satisfactory to Owner that the Design-Builder has fully complied with the requirements of ORS 279C.845(7)
- (10) That, if the Design-Builder is not domiciled in or registered to do business in the State of Oregon, the Design-Builder has complied with the requirements of ORS 279A.120.2
- (11) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner.

§ 9.10.2.2 If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Owner may:

- (1) Retain funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or
- (2) may accept a bond from the Design-Builder satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances.

If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted to the extent permitted by statute. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 Waiver of Claims

- .1 Final Payment to Design-Builder: Acceptance of final payment by the Design-Builder, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.
- .2 Change Orders: The execution of a Change Order shall constitute a waiver of Claims by the Design-Builder 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 Design-Builder shall maintain books, records, documents, and other evidence pertaining to the costs incurred by the Design-Builder 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 Design-Builder 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 Design-Builder agrees to make available at the office of the Design-Builder 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

§ 10.1.1 The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

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

- .1 Relieve the Design-Builder 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 to inspect or review the Design-Builder's safety program or precautions or to enforce the Design-Builder's compliance with the requirements of this Article 10; and
- .3 Impose any continuing obligation upon the Owner to provide such notice to the Design-Builder or any other person or entity.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and

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

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

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder 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 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Design-Builder 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 Design-Builder 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. Design-Builder 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 Design-Builder shall submit his 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. Owner's review, comment upon, approval or disapproval of such Safety Plan or any portion thereof shall not relieve Design-Builder for full responsibility for Project safety.

§ 10.2.10 The Design-Builder, in all cases, shall comply with OSHA, EPA and all other Governmental Workplace Requirements. The term "Governmental Workplace Requirements" as used in the Design-Build 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 Design-Builder 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 Design-Build Documents.

§ 10.2.12 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Design-Builder 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. Design-Builder shall not permit open fires or smoking on the Project site.

§ 10.2.13 The Design-Builder 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.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build 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 Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up, unless Section 10.3.4 applies.

§ 10.3.3 The Design-Builder 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. The Design-Builder shall not have violated this Subparagraph if (a) the Design-Builder, any Subcontractor or Sub-subcontractor temporarily uses or stores Hazardous Substances at the Project and such Hazardous Substances are reasonably required for and are in quantities appropriate to the performance of the Work then being done; and (b) the Design-Builder exercises reasonable oversight over the use and storage of such Hazardous Substances and compliance with Governmental Requirements applicable to such use and storage. The Design-Builder shall store all hazardous materials safely, whether or not required by the Design-Build Documents. To the extent required by applicable Governmental Requirements, the Design-Builder 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.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site. The Design-Builder 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.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Article 14 and Article 6.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

§ 11.1.2 If a portion of the Work has been covered that the Owner has not specifically requested to examine prior to it's being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build 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 Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner (if Owner-caused) or separate contractor (if separate contractor-caused) shall be responsible for payment of such costs and the Contract Time may be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build 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 any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense, which costs shall not be passed on to the Owner whether as part of the Contract Sum or otherwise. Roadways, pavements and curbs that are broken, damaged, settled or otherwise defective as a result of receiving, handling, storage of materials or the performance of any Work under the Design-Build Documents shall be fully restored to the satisfaction of the Owner.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within (i) one year after the date of Substantial Completion of all the Work, (ii) two years after the date of Substantial Completion of the Work, as to those components of the Work that include, alter or affect any portion of the building envelope and penetration components; or (iii) the period established by the terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it according to the requirements of this section with no change in the Cost of the Work promptly after receipt of written notice from the Owner to do so. If the Design-Builder does not promptly initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work, the Owner may

dispose of materials and equipment as it sees fit, and the Design-Builder will be liable for all costs. The obligations of Design-Builder under this Section 11.2 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.

- .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.), Design-Builder shall initiate corrective work on site the same day if the Design-Builder 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.), Design-Builder 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 Design-Builder shall initiate corrective work on site within 14 calendar days and shall complete corrective action within 28 calendar days.

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

§ 11.2.2.3 The period for correction of Work shall be extended with respect to corrective work performed by the Design-Builder for a period of one (1) year from the date of completion of such corrective work or until the expiration of the original warranty period, whichever is later.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build 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. 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 Owner shall be entitled to full removal and correction of defective or non-conforming Work.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents, including those in electronic form, prepared by the Design-Builder and the Design-Builder's consultants for the Project are the "Instruments of Service." The Design-Builder and its consultants warrant that in transmitting Instruments of Service, or any other information, the transmitting party has the right to transmit such information for its use on the Project. The Design-Builder may be required to

supply Instruments of Service in electronic form. The Design-Builder must also provide printed and physically stamped Instruments of Service for each Project, however, and will be bound by the printed and stamped Instruments of Service after their delivery to the Owner. The Design-Builder will not be responsible for any change made in, or misuse of, electronic forms of its Instruments of Service, whether intentional or unintentional, after the Instruments of Service leave the Design-Builder's control. If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they may endeavor to establish necessary protocols governing such transmissions.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 It is intended that the Instruments of Service of Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, are work made for hire by an independent contractor under provisions of the U.S. Copyright Act and that therefore the Owner shall be deemed the Work Product's owner. If Design-Builder's, Architect's, Consultant's, or Contractor's work does not meet the definition of work made for hire by an independent contractor, then Design-Builder hereby irrevocably and unconditionally assigns and transfers to the Owner (and shall cause its consultants/contractors in their consultant/contractor agreements, or otherwise, to irrevocably and unconditionally assign and transfer to the Owner) all right, title and interest in all Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrines. Design-Builder waives and releases (and shall cause its consultants and contractors to waive and release) all rights relating to the ownership of the Work product produced under this Contract, including any rights arising under 17 U.S.C. § 106A. As owner of the Work Product, the Owner shall have the right to use or grant licenses to use the Work Product, including licenses for use to contractors, subcontractors, sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Work Product for use in performing the services on the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1, Design-Builder may be equitably entitled to additional compensation for the rights conveyed under this Article 12. Design-Builder and its consultants and contractors retain the right to use standard architectural and engineering details included in the Work Product for other projects.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The terms of this Section 12.3.2 shall not apply (i) if the Owner terminates this Agreement for cause under Section 13.1.4 or 13.2.2 or (ii) to negligent, deficient or nonconforming services of Design-Builder or its consultants. To the extent provided in this Section 12.3.2, any unauthorized use of the Work Product shall be at the Owner's sole risk and without liability to the Design-Builder and the Design-Builder's consultants.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make undisputed payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement for more than thirty (30) calendar days, such failure may be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted. Design-Builder shall not suspend services, withhold documents or terminate this Agreement for nonpayment in the event of a good faith dispute, so long as Owner continues to make undisputed payments.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for reasonable expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Except as otherwise provided, either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement, in whole or in part, upon written notice to the Design-Builder for the Owner's convenience and without cause. If Owner terminates for cause, Owner at any time may, by notice to Design-Builder, convert the termination to a termination for convenience. In the event Owner terminates for cause and it is determined that Owner did not have sufficient cause for termination, such termination shall be deemed at Owner's convenience under this Section. Termination for convenience shall not impair Owner's other rights, including without limitation its rights and remedies for negligence and breach of this Agreement. In no event shall Design-Builder have a claim for damages, lost profits on services not performed, or otherwise on account of the termination of the Contract by Owner, with or without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.1.7 Termination Expenses are in addition to compensation for the Design-Builder's services and include expenses directly attributable to termination for which the Design-Builder is not otherwise compensated, excluding the Design-Builder's anticipated profit or overhead on the value of the services not performed by the Design-Builder.

§ 13.1.8 The Owner's rights to use the Design-Builder's Work Product in the event of a termination of this Agreement are set forth in Article 2.1.5 and Section 12.

§ 13.1.9 Upon any termination of this Agreement, the Owner shall be free to contract with any of Design-Builder's Architect, Consultants, and Contractors for performance of continued or further services on this project. Design-Builder shall cooperate in such process and shall take no action to prevent or delay such contracting.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 Subject to the other provisions of this Contract, the Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, 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 Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment (other than disputed sums) within the time stated in the Design-Build Documents; or

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly and persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

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

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may, upon at least one business day written notice to the Design-Builder, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Design-Builder:

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.
- .6 refuses or fails to supply enough properly skilled workers or proper materials;
- .7 fails to make prompt payment to subcontractors for materials or labor in accordance with the respective agreements between the Design-Builder and the subcontractors;
- .8 fails to abide by laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .9 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .10 is adjudged bankrupt makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .11 otherwise is guilty of a breach of or default under a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, at least one business days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid earned balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. Design-Builder shall be responsible and shall pay all Owners' claims for costs and damages upon demand, pending reconciliation pursuant

to this Section 13.2.2.4. The amount to be paid to the Design-Builder or Owner, as the case may be, shall be determined by the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.2.5 If, after Design-Builder has been terminated pursuant to this paragraph 13.2.2, it is determined that none of the circumstances set forth in paragraph 13.2.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Paragraph 13.2.4.

§ 13.2.3 Suspension by the Owner for Convenience

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

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall be consistent with the terms of the Design-Build Documents, provided to the fullest extent allowed by law Design-Builder waives all claims for additional profit as a result of such suspension. No adjustment shall be made to the extent:

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

§ 13.2.4 Termination by the Owner for Convenience

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

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder 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, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment consistent with the Design-Build Documents for Work executed, and costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders), along with reasonable profit on the Work executed, not to exceed the profit in Design-Builder's bid. The total sum to be paid to the Design-Builder under this Section 13.2.4 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 Design-Builder 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 13.2.5.

§ 13.2.5 Effects Of Termination By Owner

§ 13.2.5.1 Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner pursuant to Section 13.2.2 or 13.2.4, the Design-Builder 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 Design-Builder under all orders and subcontracts, in which case the Owner shall have the right, in its discretion, to accept such assignments or any of them, and settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 With the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;

- .6 Transfer title and deliver to the entity or entities designated by the Owner the fabricated or un-fabricated parts. Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 Use its best efforts to sell any property of the types referred to in Section 13.2.5.1.6. The Design-Builder 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 Design-Builder;
- .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 Design-Builder in which the Owner has an interest; and
- .9 Continue performance only to the extent not terminated.

§ 13.2.5.2 The Design-Builder 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 Design-Builder, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Design-Builder under this Contract and relating to the terminated Work.

§ 13.2.5.3 In arriving at any amount due the Design-Builder 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 Design-Builder applicable to the terminated portion of the Contract;
- .2 Any claim pursued under the Contract which the Owner may have against the Design-Builder, including without limitation liquidated damages;
- .3 An amount necessary to protect the Owner against outstanding or potential liens or claims;
- .4 The agreed priced for or the proceeds of sale of any materials, suppliers or other things acquired by the Design-Builder or sold, pursuant to the provisions of Section 13.2.5.1.7, and not otherwise recovered by or credited to the Owner.

§ 13.2.5.4 If (and only if) the termination pursuant to Section 13.2.4 is partial, the Design-Builder 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 Design-Builder 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.

§ 13.2.5.5 The Design-Builder shall refund to the Owner any amounts paid by the Owner to the Design-Builder in excess of costs reimbursable under the Design-Build Documents.

§ 13.2.5.6 The Owner may have costs reimbursable under this Article 13 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Design-Builder.

§ 13.2.5.7 To the fullest extent allowed by law, the damages and relief from termination by the Owner specifically provided in Article 13 shall be the Design-Builder's sole entitlement in the event of termination.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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 Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.3 Notice Of Claims

Claims by either the Owner or Design-Builder must be initiated by written notice to the other party. Unless a different period for assertion of particular Claims is specifically identified in this Agreement, Design-Builder must give written notice of any Claim to Owner not later than seven days after occurrence of the event giving

rise to the Claim or Design-Builder first becomes aware of the Claim, whichever is sooner, or the Claim shall be deemed forever time barred and waived. Design-Builder'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 Design-Builder (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:

Administrator, Facilities Development
Beaverton School District
16550 SW Merlo Road Beaverton, Oregon 97003

In addition, a copy of the Claim notice shall be sent concurrently to the Owner's Representative.

All unresolved Design-Builder Claims shall be deemed waived and released by Design-Builder unless Design-Builder has strictly complied with the time limits of the Design-Build Documents.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 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, and that either the Work was on schedule (or not behind schedule through the fault of the Design-Builder) 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. No claim for additional time will be granted where the scheduled construction adversely affected was not on the critical path, was within the schedule float or contingency (or would have been in float or contingency had Design-Builder appropriately rescheduled Work on account of weather conditions), or could be avoided by Design-Builder through temporary weather protection measures. Claims for additional time will not be granted where the delays for which Design-Builder is responsible result in moving Work into an adverse weather season. Design-Builder shall provide copies of weather reports to the Owner, produced from 'NOAA'- National Oceanic & Atmospheric Administration' for dates affected, as well as, a 5 year historical average report for same period of time. In addition, Design-Builder to submit a revised construction schedule to Owner showing critical path activities affected by the delay. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, 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. Rainfall, even extreme rainfall, is normal. 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.

§ 14.2 Initial Matters

§ 14.2.1 In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.1.1 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, by mediation, or by arbitration.

§ 14.2.1.2 Design-Builder shall make its employees and principals, as well as its work and project records, available to Owner upon Owner's request, in the event that there is any dispute concerning the compliance of the Work with the Agreement or the Design-Build 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 Owner is required to utilize some form of legal process to obtain such ability, 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 Owner is the prevailing party in connection with any later dispute resolution, mediation, arbitration, or litigation regarding such matters.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 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 14.1.7, shall be subject to mediation, at the election of Owner. If the Owner has given written notice to Design-Builder requiring mediation of the claim, Design-Builder may not commence litigation against Owner until the mediation is concluded, except as is necessary to avoid a time bar from commencement of litigation under this Contract or applicable law. Owner may commence arbitration at any time.

§ 14.3.2 At 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. 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 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 proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 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.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation (if Owner elected to mediate) shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, except that there shall only be one arbitrator regardless of the amount in dispute. 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.

§ 14.4.1.1 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 or statute of repose. For statute of limitations or statute of repose 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.

§ 14.4.1.2 Any arbitration or other legal proceeding must be initiated by Design-Builder within the earlier of (a) 120 days after Substantial Completion as designated in writing by the Owner or (b) 60 days after Final Acceptance, or the Claim will be considered waived and time-barred. This requirement cannot be waived except by an explicit written waiver signed by the Owner. The pendency of mediation shall toll these deadlines unless and until Owner terminates mediation.

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

§ 14.4.3 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.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). In addition, at Owner's election, the Design-Builder agrees to joinder in any arbitration or litigation proceeding in which the Owner is a party with third parties in which the Owner or such third party alleges indemnification or contribution from the Design-Builder, any of its subcontractors of any tier, any one directly or indirectly employed

by any of them, or anyone for whose acts any of them may be liable. The Design-Builder agrees that all of its subcontractors of any tier will, in the subcontracts, similarly stipulate; in the event any does not, the Design-Builder shall be liable in place of such subcontractor(s).

§ 14.4.4.2 Owner, at its sole discretion, 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.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

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

§ 14.5 Dispute Expenses

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to an institutional lender providing construction financing for the Project or to a successor school Owner or government agency. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment in connection with financing or revenue bonds, the Design-Builder shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Owner for review at least fourteen (14) calendar days

prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

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

§ 15.2.3 If the majority of the ownership or the control of the Design-Builder 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, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Article 13, except that the Owner shall give the Design-Builder thirty days written notice of termination and the opportunity for the Design-Builder to cure prior to termination.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by fax, electronic mail, registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual receipt by fax, electronic mail, or three calendar days after the date of postmark.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations of Design-Builder imposed by the Design-Build Documents, and rights and remedies of Owner available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The Design-Builder's sole remedy for claims, disputes and other matters in question of the Design-Builder, direct or indirect, arising out of, or relating to the Design-Build Documents or breach thereof, except claims which have been waived under the terms of the Design-Build Documents, is the dispute resolution procedure of Article 14.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder 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 in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made at an appropriate time as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall 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. If the services of an independent testing firm are required, the Design-Builder shall make arrangements for such tests, inspections and approvals with the independent testing firm has been retained by and being paid for by the Owner. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. 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 (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner or public authorities having jurisdiction determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Owner's services and

expenses shall be at the Design-Builder's expense. If the Design-Builder 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 Design-Builder shall be responsible for all such costs to the extent caused by the Design-Builder. If the Design-Builder 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 Design-Builder on the next progress payment the amount plus a 10% handling fee.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner chooses to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.5.7 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, 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, or any other person shall relieve the Design-Builder of its responsibility for meeting the requirements of the Design-Build 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.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 The Design-Build Documents have been carefully reviewed by Design-Builder 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 Design-Build Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof. In the interest of brevity, the Design-Build 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.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

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

§ 15.10 Waiver, Amendment And Extension

No waiver, amendment, extension or variation in the terms of the Design-Build Documents shall be valid against a party unless in writing and signed by such party and then only to the extent specifically set forth in the writing. No failure or delay on the part of a party in exercising any right, power or privilege under the Design-Build Documents, nor any course of dealing between the parties, will waive, amend or vary the terms of the Design-Build Documents.

§ 15.11 Extent Of Contract

The terms of the Design-Build 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 Design-Build Documents shall be effective unless it is made in a writing signed by the parties hereto.

§ 15.12 Severability

If any clause or provision of the Design-Build Documents is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of the Design-Build Documents shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there shall be added as a part of the Design-Build Documents a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

§ 15.13 Counterparts

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

§ 15.14 Survival

If the full performance of an obligation is not required prior to the termination of this Contract, such obligation shall survive the termination and be fully enforceable thereafter.

§ 15.15 Statutes

§ 15.15.1 The Design-Builder shall abide by the provisions of all applicable Oregon statutes. Although a number of statutes are referenced in the Design-Build Documents, it is not meant to be a complete list and should not be relied upon as such. Without limitation, the applicable required public contract provisions identified in the following statutes are incorporated herein by reference, whether or not specifically referenced in this Agreement. In the event any of the following provisions conflict with any provision of this Agreement, the following provisions shall prevail:

- .1 Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- .2 Demonstration that an employee drug testing program is in place (ORS 279C.505(2));
- .3 If the Contract calls for demolition Work described in ORS 279C.510(1), the requirement that the Design-Builder to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- .4 If the Contract calls for lawn or landscape maintenance, the requirement that the Design-Builder to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- .5 Payment of claims by public officers (ORS 279C.515(1));
- .6 Design-Builder and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- .7 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));

- .8 Hours of labor in compliance with ORS 279C.520;
- .9 Environmental and natural resources regulations (279C.525);
- .10 Payment for medical care and attention to employees (ORS 279C.530(1));
- .11 The following requirement: "All employers, including Design-Builder, 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. Design-Builder shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));
- .12 Maximum hours, holidays and overtime (ORS 279C.540);
- .13 Time limitation on claims for overtime (ORS 279C.545);
- .14 Prevailing wage rates (ORS 279C.800 to 279C.870);
- .15 BOLI Public Works bond (ORS 279C.830(3));
- .16 Retainage (ORS 279C.550 to 279C.570);
- .17 Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- .18 Design-Builder's relations with subcontractors (ORS 279C.580);
- .19 Notice of claim (ORS 279C.605);
- .20 Design-Builder certifies compliance with the Oregon tax laws in accordance with ORS 305.385; and
- .21 Design-Builder certifies 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.

§ 15.16 Authority

Design-Builder represents and warrants that he or she or it has the full right, power, legal capacity and authority to enter into and perform Design-Builder's respective obligations hereunder, and that such obligations shall be binding upon Design-Builder 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 Design-Builder represents and warrants that he or she has the full right, power, legal capacity and authority to sign the Contract on behalf of Design-Builder.

§ 15.17 Contractor Registration

The Design-Builder, Architect, Consultants and Contractors shall be registered or licensed as required by the laws of the State of Oregon, including but not limited to ORS 701 et seq. Design-Builder represents that Design-Builder and its subcontractors have all requisite endorsements required for performance of the Work under ORS 701 et seq.

§ 15.18 Representations

Design-Builder 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 Design-Build Documents. Design-Builder acknowledges and warrants that any exceptions to this representation have been specifically identified in the Design-Build Documents.

§ 15.19 Clean Air Act And Federal Water Pollution Control Act

Design-Builder 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.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below in order of precedence:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds.
- .4 Exhibit C, Submittal Requirements & Milestones
- .5 Exhibit D, Costs for General Conditions Work
- .6 Specifications, once accepted
- .6 Drawings, once accepted
- .7 Solicitation #[]
- .8 Proposal dated []

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

Beaverton School District

Design-Builder

District Representative Date

Signature of Person Authorized to Bind Design-Builder -
Date

Department Administrator Date

Printed Name and Title

Executive Administrator for Facilities Date

Telephone Number

Business Services Administrator Date

e-Mail Address

Business Services Purchasing Date

Federal Tax Identification Number

Not a valid contract until all signatures are complete.

DRAFT AIA® Document A141™ – 2014

Exhibit A#

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder dated the « » day of « » in the year « » (the “Agreement”)
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

« »
« »

THE OWNER:

(Name, legal status and address)

« »
« »

THE DESIGN-BUILDER:

(Name, legal status and address)

« »
« »

The Owner and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER’S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder’s performance of the Contract after the execution of this Amendment. The Contract Sum shall be the following and shall include compensation as stated in Article 2.1.1:

Cost of the Work plus the Design-Builder’s Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below.

§ A.1.2 – Deleted -

§ A.1.3 – Deleted -

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.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

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§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed << >> (\$ << >>), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

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 Design-Build 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.

The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Design-Build Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Design-Build Documents.

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price.

(Provide information below or reference an attachment.)

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§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

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§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

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§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

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§ A.1.5.1.3 Provided that an Application for Payment is received not later than the « » day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the « » day of the « » month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than « » (« ») days after the Owner receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such 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.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 – Deleted -

§ A.1.5.3 – Deleted -

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

Based upon Applications for Payment submitted to the Owner by the Design-Builder and Certificates for Payment issued by the Owner or the Owner's consultant, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

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

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

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 the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to

substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price 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 Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual 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.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take 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 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 6.3.9 of the Agreement.
- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee. The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5 %) from the entire amount of the progress payment;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

§ A.1.5.4.3 In accordance with ORS 279C.570, the Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4.4 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.4.5 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder unless the Owner 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.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 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 released under ORS 279C.570), shall be made by the Owner to the Design-Builder when:

- .1 the Design-Builder has fully performed the Contract except for the Design-Builder's responsibility to correct Work as provided in Section 11.2 of the Agreement, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Design-Builder has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Owner or Owner's consultant.
- .4 All other conditions to Final Payment in the Design-Build Documents have been fulfilled.

The Owner's final payment to the Design-Builder shall be made no later than 30 days after the issuance of the Owner's or Owner's consultant's final Certificate for Payment and fulfillment of the other conditions to Final Payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement. The time periods stated in this Section supersede those stated in Section 9.4.1 of the Agreement. The Owner or Owner's consultant is not responsible for verifying the accuracy of the Design-Builder's final accounting.

§ A.1.5.5.2 If the Owner's auditors report the Cost of the Work as substantiated by the Design-Builder's final accounting to be less than claimed by the Design-Builder, the Design-Builder shall be entitled to request mediation of the disputed amount pursuant to the Agreement. A request for mediation shall be made by the Design-Builder within 30 days after the Design-Builder's receipt of a copy of the Owner's or Owner's consultant'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 Design-Builder. Pending a final resolution of the disputed amount, the Owner shall pay the Design-Builder the amount certified in the Owner's or Owner's consultant's final Certificate for Payment.

§ A.1.5.5.2 If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs to correct defective or nonconforming Work, the Owner shall not reimburse the Design-Builder such costs, and such costs are not Cost of the Work.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than << >> (<< >>) days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

<< >>

Portion of Work	Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

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ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

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

Document	Title	Date	Pages

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

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Section	Title	Date	Pages

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

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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 Design-Builder'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:

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§ A.3.1.5 Allowances and Contingencies:
(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

<< >>

.2 Contingencies

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§ A.3.1.6 Design-Builder's assumptions and clarifications:

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§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

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§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

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ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

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.2 Project Manager

<< >>

.3 Others

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§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

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ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work in accordance with this Article 6 and Article 7. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

Where any cost is subject to the Owner's prior approval, the Design-Builder shall obtain this written approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site, or with the Owner's prior written approval, offsite while working exclusively on the Project.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)

§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, 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.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Fully-loaded hourly rates of certain personnel, as may be identified in this Design-Build Amendment shall be applied in making calculations under this Section A.5.1.1.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts for work properly performed.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 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 Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder 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 Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval. In addition to other requirements of the Design-Build 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, 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 by the Owner verifying 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.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent.

However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ **A.5.1.5.6** With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ **A.5.1.5.7** Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ **A.5.1.5.8** With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder or its Architect, Consultants, Contractors or Suppliers, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ **A.5.1.6 Other Costs and Emergencies**

§ **A.5.1.6.1** Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ **A.5.1.6.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, that do not arise from the negligence of Design-Builder, its Architect, Consultants, Contractors or suppliers.

§ **A.5.1.6.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers prior to Final Completion, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder, or its Contractors or suppliers and only to the extent that the cost of repair or correction is not recovered or recoverable by the Design-Builder from insurance, sureties, Contractors, suppliers, or others. Costs of repairing damaged or nonconforming Work after Final Completion are not recoverable.

§ **A.5.1.6.4** The costs described in Sections A 5.1.1 through A 5.1.6 shall be included in the Cost of the Work, notwithstanding any provision of the Design-Build Documents which may require the Design-Builder to pay such costs, unless such costs are excluded by the provisions of Section A 5.2.

§ **A.5.1.7 Related Party Transactions**

§ **A.5.1.7.1** For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ **A.5.1.7.2** If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder 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, in accordance with the Procurement Requirements included in the Design-Build Documents. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ **A.5.2 Costs Not to Be Reimbursed as Part of this Contract**

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;

- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.
- .8 Data processing or software costs related to the Work.
- .9 Any cost incurred by Design-Builder, including bond costs in response to any lien, stop notice, bonded stop notices or other such claims, unless the cost incurred by Design-Builder is solely the result of Owner's failure to make a payment to Design-Builder when due and payable with respect to the Work in question.
- .10 Costs to correct nonconforming work or to perform warranty work following Final Completion.
- .11 Travel, lodging, food, or relocation expenses.
- .12 Bonuses, profit sharing, incentive compensation, or other discretionary payments.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained. Design-Builder 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.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder 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 Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants or Contractors identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ A.5.5 Accounting Records

§ A.5.5.1 The Design-Builder 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 the 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 Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve

these records for a period of three years after final payment, or for such longer period as may be required by law. Design-Builder shall cooperate with any audits.

§ A.5.5.2 The Design-Builder'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 Design-Builder shall identify variances between actual and estimated costs and report the variances to the Owner at regular intervals, using Design-Builder's job-cost tracking system.

§ A.5.5.3 The Design-Builder'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), 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.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder'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.

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

Beaverton School District

District Representative Date

Administrator for Facilities Date
Development

Executive Administrator for Facilities Date

Business Services Administrator Date

Business Services Purchasing Date

Contractor

Signature of Person Authorized to Bind Contractor -
Date

Printed Name and Title

Address

City State Zip

e-Mail Address

Telephone # Fax#

Federal Tax Identification Number

Oregon Contractor's License Number