



## **PUBLIC IMPROVEMENT PROJECT REQUEST FOR PROPOSAL**

**Solicitation No: 20-0014**

CM/GC for Beaverton Academy of Science and  
Engineering (BASE) Career and Technical Education  
(CTE) Upgrade Project

RFP Closing (Due Date & Time):  
**December 18, 2020 at 2:00 PM Pacific Time**

Issued by:  
**Beaverton School District 48J  
16550 SW Merlo Road  
Beaverton OR 97003  
November 18, 2020**

**PUBLIC IMPROVEMENT  
REQUEST FOR  
PROPOSAL**

Solicitation No: RFP 20-0014  
Summary

The purpose of this Request for Proposals (RFP, Solicitation, or like term) is to obtain competitive Proposals from qualified Proposers for the purpose of establishing a Construction Manager/General Contractor (CM/GC) contract between the selected Proposer and the Beaverton School District 48J (District or Owner). CM/GC Services shall be for the BASE CTE Upgrade Project ("Project").

This is a public works contract subject to 279C.800 to 279C.870.

A **MANDATORY** pre-Proposal conference will be held on December 1, 2020 at 2:00 PM at Beaverton Academy of Science and Engineering (BASE) located at 10740 NE Walker Road, Beaverton, OR 97006.

**PRIOR** to the Solicitation Closing date and time specified below, Proposers must submit a Proposal pursuant to the provisions of this Solicitation to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us).

**SOLICITATION CLOSING: December 18, 2020 at 2:00 PM Pacific Time  
LATE PROPOSALS WILL NOT BE ACCEPTED**

Timely received Proposals will be opened, recorded and prepared for evaluation. The District will not read Proposals aloud. The number of Proposals received, the identity of Proposers, or the contents of any Proposal will not be disclosed to the public until after execution of a Contract.

**Proposers are solely responsible for ensuring that the Beaverton School District receives its Proposal.**

Prospective Proposers must register with ORPIN – <http://orpin.oregon.gov/> to obtain the solicitation documents and to receive any associated information/updates. Proposers must familiarize themselves with the entire Solicitation Document.

**ALL Questions and comments regarding this Solicitation must be directed ONLY IN WRITING by email to: [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us)**

**THE DISTRICT MAY REJECT ANY PROPOSAL NOT IN COMPLIANCE WITH ALL PRESCRIBED REQUIREMENTS**

## SECTION II – STATEMENT OF WORK

Solicitation No: RFP 20-0014

### 1. INTRODUCTION:

This Solicitation is intended to support a CM/GC contracting and project delivery method. This Solicitation is issued pursuant ORS 279A, ORS 279C, the Oregon Attorney General Model Rules Divisions 46 and 49, and all applicable District policies.

### 2. DEFINITIONS:

The term "District" or "Owner" throughout this document means the Beaverton School District 48J. The term "Proposer" means the person or firm that submits a Proposal in response to this Solicitation. The term "Proposal" or "Offer" means a written response to provide services in response to this Solicitation. The term "Contractor" or "Supplier" means the Proposer awarded a CM/GC contract as a result of this Solicitation. "Closing" is the solicitation due date and time. "CM/GC" means a form of Procurement that results in a Public Improvement Contract in which a single Person/firm provides the Contracting Agency with Personal Services during pre-construction and upon execution of a Guaranteed Maximum Price amendment, all Construction Work necessary to construct the Project. This CM/GC is pursuant to 137-049-0690. "Guaranteed Maximum Price" or "GMP" means the total maximum price as negotiated by the Contracting Agency and the Contractor, and as accepted by the Contracting Agency. The GMP includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

### 3. SOLICITATION REVIEW:

Proposers must carefully review the Solicitation documents and are responsible for knowing and understanding all terms and conditions. Unless defects, ambiguities, omissions, or errors are brought to the District's attention by protest pursuant to REQUEST FOR CLARIFICATION OR CHANGE; SOLICITATION PROTESTS (Section III, Paragraph 5), protests or appeals based on such defects, ambiguities, omissions or errors received after issuance of the Notice of Intent to Award may not be favorably considered.

### 4. BACKGROUND:

- a. The Beaverton School District encompasses approximately 56 square miles in northwestern Oregon in Washington County. The District, located in the Portland, Oregon metro area, is the third largest School District in Oregon.
- b. The Beaverton School District has approximately 4,700 employees. The District is responsible for educating approximately 40,870 students in kindergarten through grade 12 at thirty-four (34) Elementary Schools, eight (8) Middle Schools, six (6)) High Schools, five (5) Options Schools, and nineteen (19) Options Programs.
- c. This Project is funded with Measure 98 High School Graduation and College and Career Readiness Act of 2016 funds. This Grant expires August 13, 2021 and all funds from within the Grant must be utilized by that date.

### 5. SCOPE OF WORK:

The Project Scope includes renovation of shop spaces for the applied engineering program and relocating applicable impacted programs within the Beaverton Academy of Science and Engineering (BASE) program located at the Capital Center site 18640 NW Walker Rd. Beaverton, OR 97006. The Contract scope includes provision of Construction Manager services in coordination with the design team that generate a net positive return in terms of costs and time saved, relative to the District's investment in the services. The CM/GC contractor will complete any early construction services as requested and authorized by the District prior to agreement on a GMP. The CM/GC will provide a comprehensive GMP that demonstrates the value provided by the CM/GC contractor and negotiate in good faith with the District to arrive at a GMP that is acceptable to the District. Provide all materials, services, labor, and other things necessary to construct the project and deliver on the Project Goals. See the Statement of Work for more details.

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### 6. CONTRACT:

- a. The successful Proposer, selected by the District, will receive an AIA A133 Owner Construction Manager as Constructor Agreement (modified) with the AIA A201 General Conditions (modified). If the District and Contractor arrive at an GMP that is acceptable to the District, the Contractor will receive an AIA A133 Exhibit A to execute the GMP amendment. These templates are included in this Solicitation as ATTACHMENT G Sample Contracts.
- b. **Proposers shall thoroughly review ATTACHMENT G. Time is of the essence in this project. The successful Proposer must promptly execute the AIA A133 (modified) and AIA A201 (modified) upon receipt of the documents. The District will not negotiate Contract terms and conditions.**
- c. The provisions of the sample AIA A133 Owner Construction Manager as Contractor Agreement and AIA A201 General Conditions are in addition to the requirements set forth in this Solicitation.
- d. The Contractor will be expected to sign the contracts listed above, including all standard terms and conditions contained in the sample contract as requested by the District.
- e. Personnel substitution – if the Contractor must substitute personnel included in the original Proposal, they must obtain written District approval of substituted personnel, prior to substitution. The District may, at its sole discretion, deny any such substitution requests.

### 7. AMENDMENTS:

The District may amend a Contract without additional competition pursuant to OAR 137-049-0910 and applicable District Policies.

### 8. DISTRICT REPRESENTATIVE:

The District Representative for the project is Jeff Hamman, Senior Project Manager.

### 9. SOLICITATION SCHEDULE:

The milestones for the selection process are set forth below. The dates are specific and will be followed to the extent reasonably possible. The purpose of this schedule is for Proposer information only. Required dates for Contract period milestones, submittals and any other activities are provided elsewhere in this Solicitation. The District reserves the right to deviate from this schedule at its sole discretion.

<u>Solicitation Milestone</u>	<u>Date</u>
Mandatory Pre-proposal conference	December 1, 2020, 2:00 PM Pacific Time
Deadline for submitting requests for clarification, change, substitution, or solicitation protest	December 7, 2020
Closing	December 18, 2020, 2:00 PM Pacific Time
Interviews (if required)	Target date range: 12/21/2020 – 01/11/2021
Issue Contract for Signature	No later than January 20, 2020
Begin Services (Contract Executed)	No later than January 28, 2020

### 10. CONTACT DURING SOLICITATION:

**Questions or any other contact regarding the solicitation must be submitted in writing via email to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us) as indicated on the Summary page of this Solicitation. Contact may also occur as otherwise stated within the Solicitation. No other contact regarding this solicitation during the solicitation process is permitted.** Unauthorized contact regarding this solicitation may subject the offender's Proposal to rejection.

11. Additional information regarding this solicitation and certain forms for download are available on the ORPIN website: [www.orpin.oregon.gov](http://www.orpin.oregon.gov)

SECTION III – PUBLIC CONTRACTING RULES  
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**1. PURPOSE AND INTRODUCTION:**

The purpose of this Solicitation is to establish a Construction Manager/General Contractor (CM/GC) contract with the selected proposer. The selected Contractor shall provide all labor, materials, plant, equipment, transportation and other facilities and services as necessary and/or required to execute complete CM/GC services for renovating the BASE program facilities.

The BASE program is located within the Capital Center building, which houses several different District programs. The building was originally constructed in 1970 and has been modified significantly over the years. The total building square footage is 189,241 sq. ft and the BASE program occupies nearly 105,883 sq. ft of the space.

The schematic design narrative is described in detail in the attached documents. The District is seeking a CM/GC to partner with us on this renovation at the BASE program. The project budget is \$850,000. We expect construction to begin in the Spring of 2021 and must be substantially completed by August 13<sup>th</sup>, 2021. The project is primarily a tenant improvement project with varying levels of work.

**2. PROJECT GOALS:**

The District has the following goals for this project:

- a. Timely Completion: This Project is funded with Measure 98 High School Graduation and College and Career Readiness Act of 2016 funds, which must be utilized prior to August 13th, 2021. Therefore, the District seeks a CM/GC with a demonstrated ability, proven track record, and proposed approach to complete the project before that date, with the least amount of schedule risk possible.
- b. At or under budget: As stated above, this Project has a sum-certain dedicated funding source. Therefore, completing the Project within the allocated budget is an important goal. Moreover, the District seeks to obtain the maximum educational benefit from every dollar spent. To that end, the District would like a CM/GC with a demonstrated ability, proven track record, and proposed approach to not only realize savings, but also develop options to turn those savings into additional educational opportunities for students.
- c. Space flexibility: The District wishes to have flexibility designed/built into the program attributes to accommodate expansion or potential changes to those elements.
- d. Others: ?

**3. PROJECT TEAM:**

The Design Team has been selected and contracted to develop the design documents for this project. The members of the team are listed below. Proposers may not contact any members of the Design Team about this Solicitation. All communications shall only be directed to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us).

**Architect:**

CIDA  
15895 SW 72nd Ave., Ste 200  
Portland, OR 97224  
Jennifer Beattie, President  
Dustin Johnson, Associate  
Architect.

**Mechanical Engineer**

R& W Engineers  
9615 SW Allen Blvd.  
Suite #107  
Beaverton, OR 97005  
503-292-600  
Edward Carlise, Vice President  
Project Manager, Senior Mech  
Engineer

**Electrical Engineer**

R& W Engineers  
9615 SW Allen Blvd.  
Suite #107  
Beaverton, OR 97005  
503-292-600  
Jonathon Lilly, Senior Electrical  
Engineer

**Structural Engineer**

CIDA

**Asbestos Services**

TRC Solutions

**Commissioning Agent**

TBD

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15895 SW 72nd Ave., Ste 200  
Portland, OR 97224  
Curtis Cagner, Principal  
Structural Engineer

4120 SE International Way,  
Suite A110  
Ron Landolt, Practice Manager

#### **Owner Representative**

Jeff Hamman  
Sr. Project Manager  
Facilities Development  
Beaverton School District  
16550 SW Merlo Rd.  
Beaverton, OR 97003  
503-456-4571

#### **Owners Representative**

Angela Knotts  
Project Coordinator  
Facilities Development  
Beaverton School District  
16550 SW Merlo Rd.  
Beaverton, OR 97003  
503-456-4500

#### **4. PROJECT CONSIDERATIONS:**

The District's facility goals and work processes will require that the District focus on the following with its Contractor partner during design and construction of BASE CTE programs:

- a. Collaborative work effort between the Designer(s), the District, the Contractor, and regulatory oversight agencies leading to an effective implementation.
- b. Use of Value Engineering to ensure that optimized form and function are implemented for the budget available. VE efforts will conform to ASTM E1699-14, and not merely be a tool for cutting scope or quality.
- c. Use of the District's internet-based e-Builder Project Management System for coordination of efforts, approvals and expedited communication is required.
- d. Conformance with the District's Technical Standards; deviations may be proposed by the Designer(s) with appropriate rationale for District consideration. Since the CM/GC contract will be in effect during the design, the Contractor should be familiar with the standards that will carry into construction. The Technical Standards can be viewed at: <https://www.beaverton.k12.or.us/departments/facilities-development/technical-standards>
- e. Use of the CM/GC delivery model for construction of the BASE CTE program.
- f. All contractors and subcontractors working on school property while students are present are required to have background check completed and have badges provided by the CM/GC.

#### **5. WORK PROCESSES:**

The District uses several work processes in collaborating with our design and construction firms during the course of our projects. These work processes are documented in the form of Beaverton School District Facilities Development Department Standard Operating Procedures (SOP). Applicable portions of these work processes are installed in our e-Builder project management system so that the work-flow in that system aligns with our SOP. While the need for brevity in this solicitation does not allow replication of our entire SOPs, the following key work processes are listed and summarized below. The awarded Contractor shall actively implement and adhere to the District's SOPs during the design phase of this project.

- a. **Open Issues Process.** An Open Issues Log (OIL) will be opened at the beginning of design and maintained throughout the design phase. Open Issues include key decisions that must be made in a timely manner in order for the design to proceed effectively and also include key data or information (such as existing site information)

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which must be known by parties to perform the design. Each Open Issue is reviewed weekly and jointly driven to closure on the specified need date.

- The Construction Manager shall timely review OIs and provide feedback that adds value to the project goals.
  - **Event Process.** An Event Log (EL) will be opened at the beginning of design and maintained throughout the design phase. Events include any development affecting the project with the significant possibility of changing the schedule and/or budget. Each Event is reviewed weekly and jointly managed with the goal of eliminating it or mitigating its potential impact on the project. Any Events that cannot be mitigated and are accepted by the District will be used to modify the project budget and/or schedule appropriately.
  - The Construction Manager shall timely track, review and make formal recommendations to mitigate each event.
- b. **Design Review Process.** Design reviews will be conducted in a formalized manner with all reviewers receiving their respective review documents on the same date and with the same review completion deadline. All A/E review documents will be collected by the A/E, including those of their sub-consultants, and all District review documents will be collected by the District. A Design Review Mitigation Meeting (DRMM) will be set to occur at a pre-arranged District site conference room or remote meeting and all review documents will be brought to that meeting in advance of the DRMM. All reviewers will assemble in the meeting and the District Project Manager will moderate the DRMM, leading each reviewer through his/her review document and briefly discussing each review comment before determining a disposition for the comment; (1) reject, (2) accept, or (3) accept in modified form. The disposition of each reviewer's comment will be recorded on a Review Comment Disposition Form (RCDF). After the DRMM, this same form will then be used by the A/E as a Review Correction Checklist from which to manage the completion of review actions in the time allowed for review action item implementation. DRMM will occur at end of DD and 50% CD level documents.
- The Construction Manager shall comprehensively review all design review documents, attend all DRMMs and provide specific feedback in regard to constructability, cost, logistics and alignment with District design standards.
- c. **Closeout Process.** Successful project closeout means that the list of project closeout tasks are completed by all parties. Among these tasks is the submittal of Closeout Deliverables which is facilitated through the e-Builder Close Out Process (CLOP). Prior to substantial completion, an OAC meeting will be arranged by the PM to discuss closeout deliverables, after which the e-Builder CLOP will begin. The Contractor will be responsible to upload electronic deliverables in PDF format including, but not limited to, the AHJ-stamped Permit drawings, redlines/as-builts, O&Ms, warranties, shop drawings, etc. Through CLOP, the contractor will submit the completed deliverables for review by the A/E and BSD. If revisions are requested, the CLOP Review will be returned to the Contractor for corrections and resubmission. Upon approval, the Contractor will provide hard copies of the deliverables in the quantity and format required. In the next step of the CLOP, the A/E is responsible to upload the final and complete set of Record Drawings and Specifications, and to submit them for review by BSD. Corrections may be requested. Upon approval, the A/E will print and deliver the Record Sets to BSD.
- The General Contractor shall submit all closeout documents for formal review within 30 days of substantial completion.
- d. **Lessons Learned Process.** Throughout the course of the project, learnings of note will be listed on a Lessons Learned List. The initial draft of this list will be provided by the District staff in the design launch meeting and will constitute previous learnings.

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### 6. DESCRIPTION OF SERVICES:

The CM/GC firm will coordinate and manage the design and construction process as a member of the team with the Owner, Architect, and other project consultants. The CM/GC firm should be skilled in developing schedules, preparing construction estimates, performing value engineering, analyzing/commenting on alternative designs, studying labor conditions as they relate to this project, understanding/implementing effective construction methods and techniques, and coordinating and communicating the activities of the Team throughout the design and construction phases to all members of the construction team. In addition, the CM/GC must be familiar with the local labor and subcontracting market and be capable of working with subcontractors to generate viable pricing alternatives and maintaining the project schedule.

- a. **Phase 1.** The CM/GC shall serve as a special consultant to the Project Team and will analyze/comment on the design and proposed modifications with the goal of providing the Owner, in the time frame required by the Owner, the highest quality work and within the District's budget.
  - i. Design related CM/GC activities will include detailed cost estimating, value engineering, constructability review, coordination review, and analysis of alternative materials and systems for the Project in addition to construction-related schedule refinement.
  - ii. The CM/GC will serve as general contractor for the project and will have the schedule and budget risk.
  - iii. The CM/GC shall provide the following cost estimates: DD, 80% CD, and GMP.
  - iv. The CM/GC will investigate and confirm existing conditions assumptions and conclusions as prepared by the architect and included in the attached design narrative.
  - v. The CM/GC will develop the Guaranteed Maximum Price Proposal (GMP), with detailed backup, for District consideration at the completion of the Design Development phase for the actual construction work. The GMP shall be defined as the Cost of Work plus the CM/GC's fee. The GMP shall be within the District's construction project budget of approximately \$850,000. By executing a GMP amendment to the contract, the CM/GC guarantees that the Cost of Work shall not exceed the GMP. However, should the Cost of the Work be less than the GMP, any such positive difference shall be realized as "savings" to the District at the end of the project. Although it is the intention of the District to save money on the project, if at all possible, the District reserves the right to work with the CM/GC to use the anticipated savings to build additional necessary components of the project which may have been omitted from the original GMP scope and carried as alternates.
  - vi. If the CM/GC is unable to set a GMP within the budget and in the appropriate time, the District reserves the right, at the sole discretion of the District, to cancel the contract with the CM/GC and proceed immediately to negotiate a contract with the firm that was next ranked in this selection process. Should the contract with the initial CM/GC be so terminated, the firm will be compensated for actual time and expenses incurred in Phase 1.
  - vii. The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction as it is imperative to have all aspects of construction completed by August 13<sup>th</sup>, 2021. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.
- b. **Phase 2.** The CM/GC shall provide and pay for all materials, tools, equipment, labor, professional and non-professional services, and shall perform all other acts and supply all other items necessary to fully and properly perform and complete the Work, as required by the Contract Documents. It is expected that whenever possible, the bid packages will contain separate trade contracts with the CM/GC acting as general contractor to these separate subcontractors. The CM/GC shall:
  - i. Maintain in a current condition all Project Records, including permits, construction documents, as-built records, meeting records, submittals, inspection reports, invoices, delivery receipts, daily activity logs, RFI's, ASI's, CO's, BIM through use of digital repository.
  - ii. Prepare all bid packages, according to the contractual requirements and District procedures. Recommend to the District any modifications to existing procedures or implementation of new procedures where appropriate. Ensure that all bid packages, including those for early procurement, are within budget. It is the



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responsibility of the CM/GC to provide the Design Team with sufficient viable options, in a timely fashion, such that the bid packages will be within budget.

### 7. SPECIAL REQUIREMENTS:

In order to implement the Guaranteed Maximum Price (GMP) method of procurement, the District will impose some special requirements to ensure a fair level of competition. Proposers should note the following requirements concerning management of this GMP project:

- a. A detailed description of items that make up the GMP is required from the Contractor. A complete copy of the GMP estimate, including all details, must be provided to the District, the District's Project Manager, and the Architect by the CM/GC.
- b. The process used to award contracts by the CM/GC are to be monitored by the District's Project Manager and reported on a regular basis. The following minimum requirements apply:
  - i. The CM/GC shall solicit competitive bids from the subcontractors, with the final selection approved by the District in writing. The CM/GC shall prepare a bid reconciliation form and updates as required during and after subcontractor contract approval and submit to the District representative.
  - ii. When there are single fabricators of materials, special packaging requirements for subcontractor work, or work performed by the CM/GC, advance approval by the District representative is required.
  - iii. The CM/GC must obtain at least three competitive bids for each particular work sub-component to be complete, including work components which the CM/GC may be interested in self-performing.
  - iv. CM/GC will contact a minimum of three (3) certified MWESB subcontractors.
    - A. CM/GC will make the first contact with each MWESB subcontractor no less than seven (7) calendar days before Bid Opening.
    - B. CM/GC will contact MWESB subcontractors by email, fax, or telephone to advise them of potential subcontracting opportunities and to solicit bids.
    - C. CM/GC will ensure that MWESB subcontractors have an equal opportunity to compete for work by providing all subcontractors the same information and informing all subcontractors of the date and time that sub-bids are due.
    - D. Bidders will enter MWESB contact information into the MWESB Contact Log. All columns shall be completed, where applicable.
      - \* If fewer than three (3) certified MWESB subcontractors are available for a given Work Description, please write "NA" in the first column of the applicable row. For example, if there is only one (1) certified MWESB subcontractor for a given Work Description, provide contact information for that subcontractor and write or type "NA" in rows 2 and 3.
  - v. 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.
    - B. If less than three (3) bids are submitted for any work component, approval by the District representative is required to accept the bid.
  - vi. 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 the minority, women, and emerging small business audiences.
- c. For this contract, the prevailing wage rates and all other standard terms and conditions of State of Oregon Public Works Contracts apply.
- d. The District may allow the CM/GC to perform some of the trade work if the CM/GC competes competitively with trade subcontractors for that work. In such cases, bids will need to be submitted directly to the District representative or an independent third party.
- e. It is important to provide employment and apprenticeship opportunities in the construction trades and employment for people of color and women. For this public improvement contract, an aggregate goal of 10% of labor hours has been established to be performed by state-registered apprentices in apprenticeable trades. The Contractor shall participate in outreach and other efforts to create an apprenticeship program that reflects the diversity of the Portland/Beaverton metropolitan area.

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- f. It is also important to the District to include career-learning opportunities arising from this contract work for students in relevant career paths including but not limited to architecture, engineering, building trades, construction work, and other related services. Other areas might include web-design, communications, and accounting. Career learning opportunities may include internships, job shadows, guest speakers, informational interviews, and career and workforce days and fairs. The Contractor and Sub-Tier Contractors shall participate in career-learning opportunities that supports this District goal.

### 8. SPECIFIC SERVICES DESCRIPTION:

#### a. Phase 1 Services:

- i. Participate in weekly design meetings with the District and the Design Team.
- ii. Consult with the District and the Design Team to determine design criteria. Such consultation will include evaluation of alternatives from functional, performance, time, and cost perspectives.
- iii. Consult with the District in refining the project construction budget and establishing and maintaining a detailed cost model for the work as the design evolves.
- iv. Assist in life cycle value analysis from drawings, specifications, other design criteria, and alternative designs as may be requested by the District.
- v. Cost management and control services shall be provided to assist in keeping development costs within the project budget. These services shall include the following:
  - A. The analysis, review, and recommendation for all project contracts;
  - B. Preparation of a detailed estimate for probable construction cost at the completion of 80% Construction Documents.
- vi. With the District and the Design Team, develop a strategy for obtaining building permits in a timely fashion. Meet with building and other regulatory officials as appropriate. Attend all meetings pertaining to permitting, as required. It is anticipated that these functions will continue throughout all phases of the project.
- vii. Prepare a detailed milestone schedule identifying the work to be performed by the Design Team, the District, and the CM/GC during this phase. The CM/GC shall report progress bi-weekly against this schedule.
- viii. Review the plans and specifications on a continuous basis and advise the Design Team and the District whenever the estimated construction costs are tending to exceed line items from the model budget. In a timely fashion, provide the Design Team with alternatives that will bring the project cost within budget, without compromising the scope agreed to in the outline specification. Continually update the project cost.
- ix. Review all plans as they are developed and make value engineering and constructability recommendations. Review all design and specification documents for completeness, proper details, compliance with program and master plan requirements and adherence to codes or applicable agency requirements, reporting deficiencies, conflicts, and/or clarification questions identified to the Project Team.
- x. Prepare site and building logistics plans to encompass all proposed activities and impacts to the site, adjacent properties, and neighboring streets

#### b. Phase 2 Services:

- i. Continue all reporting as described above.
- ii. Implement an accounting system for effective fiscal control, including a bi-weekly detailed cost estimate and a monthly status report with budget recommendations. The monthly status report will include full schedule reporting as well as a summary of all major outstanding items with proposed solutions. The cost of preparing the monthly reports is to be included with the CM/GC's fee.
- iii. Prepare and put out to bid, early bid packages as determined appropriate by the Team
- iv. Prepare all bid packages, according to the contractual requirements and district procedures. Recommend to the District any modifications to existing procedures or implementation of new procedures where appropriate. Ensure that all bid packages, including those for early procurement, are within budget. It is the responsibility of the CM/GC to provide the Design Team with sufficient viable options, in a timely fashion, such that the bid packages will be within budget.
- v. It is contemplated that the CM/GC will issue at least two bid packages with multiple trade contracts within each bid package.

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- vi. Fully coordinate the work of all subcontractors and vendors. Provide regular and on-going quality inspection and assistance to the Design Team in ensuring that the work meets all specifications and applicable codes.
- vii. Review and expedite all change order requests, both included within the GMP and involving a change to the GMP.
- viii. Monitor compliance with payment of prevailing wages on all contracts and subcontracts, per ORS 279.
- ix. Maintain in a current condition all Project Records, including permits, construction documents, as-built records, meeting records, submittals, inspection reports, invoices, delivery receipts, daily activity logs, RFI's, ASI's, CO's, etc.
- x. Transmit copies of all project correspondence through the e-Builder system including, but not limited to: Meeting Minutes; Requests for Information (RFI); RFI logs; Submittals; Submittal Logs; Inspection Reports; Change Order Proposals (COP); COP Logs; Change Orders (CO); CO Logs; Construction Change Directives (CCD); CCD Logs; Architect's Supplemental Instructions (ASI); ASI Logs; Permits; Project Allowance(s) Reconciliation; Project Contingency status reports; and Project Schedule updates.
- xi. Transmit copies of MWESB Contact Logs, Career Learning Reports and Apprenticeship program Logs monthly via e-Builder.

#### 9. DESIGN SCHEDULE:

The design milestones are set forth below. The dates are approximate but will be followed to the extent reasonably possible. The purpose of this schedule is for information only.

<b><u>Design Phases/Milestones</u></b>	<b><u>Dates</u></b>
SD Completion	12/16/ 2020
DD Completion	02/12/2021
80% CD Completion	03/26/2021
Design Completion	04/16/2021
Building Permit Application Submittal	04/08/2021

<b><u>Construction Schedule Milestones</u></b>	<b><u>Dates</u></b>
Begin Pre-GMP Service	01/28/2021
GMP Submittal	04/08/2021
GMP Approval	04/26/2021
2021 Construction Substantial Completion	08/13/2021
Final Completion	09/07/2021

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**1. SELECTION PROCEDURE:**

This Solicitation is a formal Request for Proposals and is pursuant to OAR 137-049-0690.

**2. ELIGIBILITY TO PROPOSE.**

- a. **Construction Contracts.** The District shall not consider a Person's Proposal to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractors Board at the time the Offer is made (Proposal submitted).
- b. **Non complying Entities.** The District shall deem a Proposal received from a Person that fails to comply with this rule nonresponsive and shall reject the Proposal as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.
- c. **Asbestos Abatement Work.** The Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 for work regarding asbestos abatement projects.

**3. PRE-PROPOSAL CONFERENCE.**

- a. **Purpose.** The District may hold pre-Proposal conferences with prospective Proposers prior to Closing, to explain the procurement requirements, obtain information, and/or to conduct site inspections.
- b. **Required Attendance.** The District requires attendance at the initial pre-Proposal conference as a condition for submission of a Proposal for this project. A mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present, and has completed the sign-in sheet and the COVID-19 waiver.
- c. **Notice.** The Summary page of this solicitation indicates the pre-Proposal conference scheduled date and time, and that the pre- Proposal conference is mandatory.
- d. **Statements Not Binding.** Statements made by the District's representatives at the pre-Proposal conference do not change the Solicitation unless the District confirms such statements by written Addenda.

**4. ADDENDA.**

- a. **Issuance; Receipt.** The District may change this Solicitation only by written Addenda. A Proposer shall provide written acknowledgement of receipt of all issued Addenda with their Proposal on the Proposer Certification.
- b. **Notice and Distribution.** The District will publish notice of any and all Addenda on the ORPIN (Oregon Procurement Information Network) website. Addenda may be downloaded from the ORPIN website. It is the Proposers' responsibility to inquire about Addenda. Proposers should frequently check the ORPIN website until Closing about any Addenda issued, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing.
- c. **Timelines; Extensions.** The District shall issue Addenda within a reasonable time to allow prospective Proposers to consider the Addenda in preparing their Proposal. The District may extend the Closing if the District determines prospective Proposers need additional time to review and respond to Addenda. Except to the extent required by public interest, the District shall not issue Addenda less

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than 72 hours before the Closing unless the Addendum also extends the Closing.

- d. **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, a Proposer may submit a written request for change or protest to the Addendum, as provided in OAR 137- 049-0260, by the close of the District's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 137-049-0260, whichever date is later. The District shall consider only a Proposer's request for change or protest to the Addendum; the District shall not consider a request for change or protest to matters not added or modified by the Addendum, unless the Proposer submits the request for change or protest before the deadline for the District's receipt of request for change or protests as set forth in OAR 137-049- 0260(2) and (3).

**5. REQUEST FOR CLARIFICATION OR CHANGE; SOLICITATION PROTESTS.**

- a. **Clarification.** Prior to the deadline for submitting a written request for change or protest ("Deadline"), a Proposer may request that the District clarify any provision of the Solicitation. The District's clarification to a Proposer, whether orally or in writing, does not change the Solicitation and is not binding on the District unless the District amends the Solicitation by Addendum.
- b. **Request for Change.**
  - i. **Delivery.** A Proposer may request in writing a change to the Specifications or Contract terms and conditions. A Proposer must deliver to the District only by email, any written requests for change prior to the Deadline and only to the email address listed on the Summary page of this Solicitation. (Proposer is responsible for ensuring receipt by the District.)
  - ii. **Content of Request for Written Change:**
    - A. A Proposer's written request for change shall include a statement of the requested change(s) to the contract terms and conditions, including any Specifications, together with the reason for the requested change.
    - B. A Proposer shall mark its emailed request for change as follows:
      - I. "Contract Provision Request for Change"; and
      - II. The Solicitation number 20-0014.
- c. **Protest.**
  - i. **Delivery.** A Proposer may protest Specifications or Contract terms and conditions. A Proposer must deliver to the District any such Protests in writing, prior to the Deadline, and only to the email address listed on the Summary page of this Solicitation. (Proposer is responsible for ensuring receipt by the District.)
  - ii. **Content of Protest.**
    - A. A Proposer's written protest shall include:
      - I. A detailed statement of the legal and factual grounds for the protest;
      - II. A description of the resulting prejudice to the Proposer; and
      - III. A statement of the desired changes to the contract terms and conditions, including any Specifications.
    - B. A Proposer shall mark its emailed protest as follows:
      - I. "Contract Provision Protest"; and
      - II. The Solicitation number 20-0014.
  - iii. **District Response.** The District is not required to consider a Proposer's request for change or protest after the deadline established for submitting such request or protest. The District shall provide notice to the applicable Person if it entirely rejects a protest. If the District agrees with the Person's request or protest, in whole or in part, the District shall either issue an Addendum reflecting its determination under OAR 137-49-0260 or cancel the Solicitation under OAR 137-49-0270.

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- d. **Extension of Closing.** If the District receives a written request for change or protest from a Proposer in accordance with this Rule, the District may extend Closing if the District determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation.

**6. CANCELLATION OF SOLICITATION.**

**Cancellation in the Public Interest.** The District may cancel a Solicitation for good cause if the District finds that cancellation is in the public interest. The District's reasons for cancellation shall be made part of the Solicitation file.

**7. PROPOSAL SUBMISSIONS.**

- a. **Offer and Acceptance.** The submitted Proposal is the Proposer's Offer to enter into a Contract.
  - i. The Offer is always a "Firm Offer," i.e., the Proposal shall be held open by the Proposer for the District's acceptance for sixty (60) days. The District may elect to accept the Proposal at any time during the specified period, and the District's Award of the Contract to a Proposer constitutes acceptance of the Offer and binds the Proposer to the Contract.
  - ii. Notwithstanding the fact that a competitive Proposal is a "Firm Offer" for the period specified above, the District may elect to discuss or negotiate certain contractual provisions with the Proposer. Where negotiation is requested by the District, Proposers are obligated to negotiate in good faith and only on those terms that the rules or the Solicitation Document has reserved for negotiation.
- b. **Responsive Proposal.** The District may award a Contract only to a Responsible Proposer with a Responsive Proposal.
- c. **Contingent Proposals.** A Proposer shall not make a Proposal contingent upon the District's acceptance of any terms or conditions (including Specifications) other than those contained in this Solicitation.
- d. **Proposer's Acknowledgement.** By signing and submitting a Proposal, the Proposer acknowledges they have read and understand the terms and conditions contained in the Solicitation and that they accept and agree to be bound by the terms and conditions of the Solicitation.
- e. **Instructions.** A Proposer shall submit and sign their Proposal in accordance with Section V.
- f. **Forms.** Proposers shall submit the form(s) required under Section V.
- g. **Documents.** Proposers shall provide the District with all documents and descriptive literature requested.
- h. **Facsimile Submissions.** The District will not accept facsimile Proposals.
- i. **Identification of Proposals.**
  - i. To ensure proper identification and handling, Proposals shall be submitted by email with attachments in PDF format.
  - ii. The District is not responsible for Proposals submitted in any manner, format or to any delivery point other than as required in the Solicitation.
- j. **Receipt of Proposals.**
  - i. Proposers are responsible for ensuring that the District receives their Proposal at the required delivery point prior to the closing due date and time, regardless of the method used to submit the Proposal. Proposals shall only be submitted by email to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us) as indicated on the Summary Page of this Solicitation. Proposers are solely responsible for ensuring that the District has received and is able to open/properly read email attachments prior to

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Closing.

- k. Failure to submit Proposals in accordance with the provisions of this Section shall be grounds to declare the Proposal as nonresponsive.
- l. **Certification.** Proposers shall (on the Proposer Certification form enclosed):
  - i. Identify whether the Proposer is or is not a "resident Proposer," as defined in ORS 279A.120(1);
  - ii. Indicate that the Proposer will comply with Prevailing Wage Laws ORS 279C.800 through ORS 279C.870 or 40 U.S.C. 3141 et seq;
  - iii. Provide certification of nondiscrimination in obtaining any required subcontractors in accordance with ORS 279A.110(4); and
  - iv. Provide written acknowledgment of receipt of all Addenda.

#### 8. PRE-CLOSING MODIFICATION OR WITHDRAWAL.

- a. **Modifications.** A Proposer may modify their Proposal in writing prior to the Closing. A Proposer shall prepare and submit any modification to its Proposal to the District in accordance with OAR 137-49-0280. Any modification must include the Proposer's statement that the modification amends and supersedes the prior Proposal. The Proposer shall email its modification to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us) and include the following in the email subject line, body text, etc.:
  - i. "Proposal Modification"; and
  - ii. The Solicitation Number 20-0014.
- b. **Withdrawals.**
  - i. A Proposer may withdraw its Proposal by written notice submitted on the Proposer's letterhead, signed by an authorized representative of the Proposer, emailed to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us) and received by the District prior to the Closing;
  - ii. The District may release an unopened withdrawn Proposal to the Proposer or its authorized representative by email;
  - iii. The Proposer shall include the following in the email subject line, body text, etc.:
    - A. Proposal Withdrawal; and
    - B. Solicitation Number.
- c. **Documentation.** The District shall include all documents relating to the modification or withdrawal of Proposals in the Solicitation file.

#### 9. RECEIPT, OPENING, AND RECORDING OF PROPOSALS; CONFIDENTIALITY OF PROPOSALS.

- a. **Receipt.** The Proposer is responsible for ensuring that the District receives its Proposal at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Proposal. The District's email system shall electronically time-stamp each Proposal and any modification upon receipt.
- b. **Opening and Recording.** Timely received Proposals will be opened, recorded and prepared for evaluation pursuant to SECTION V. The District will not read Proposals aloud.

#### 10. LATE PROPOSALS, WITHDRAWALS AND MODIFICATIONS. Pursuant to OAR 137-049-0340:

Any Proposal received after the Closing date and time is late. A Proposer's request for withdrawal or modification of a Proposal received after Closing is late. The District shall not consider late Proposals, withdrawals or modifications except as permitted in OAR 137-049-0350 or OAR 137-049-0390.

#### 11. MISTAKES:

- a. **Generally.** To protect the integrity of the competitive Procurement process and to assure fair

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treatment of Applicants, the District will carefully consider whether to permit waiver, correction or withdrawal of Proposals for certain mistakes.

- b. **District Treatment of Mistakes.** The District shall not allow an Applicant to correct or withdraw a Proposal for an error in judgment. If the District discovers certain mistakes in a Proposal after Opening, but before Award of the Contract, the District may take the following action(s):
- i. The District may waive, or permit a Proposer to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Proposal, or an insignificant mistake that can be waived or corrected without prejudice to other Proposers. Examples of minor informalities include a Proposer's failure to:
    - A. Return the correct number of signed Proposals or the correct number of other documents required by the Solicitation Document;
    - B. Sign the Proposal in the designated block, provided a Signature appears elsewhere in the Proposal, evidencing an intent to be bound; and
    - C. Acknowledge receipt of an Addendum to the Solicitation Document, provided that it is clear on the face of the Proposal that the Proposer received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.
  - ii. The District may correct a clerical error if the error is evident on the face of the Proposal or other documents submitted with the Proposal, and the Proposer confirms the District's correction in writing. A clerical error is a Proposer's error in transcribing a portion of its Proposal. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Proposal). In the event of a discrepancy, unit prices shall prevail over extended prices.
  - iii. The District may permit a Proposer to withdraw a Proposal based on one or more clerical errors in the Proposal only if the Proposer shows with objective proof and by clear and convincing evidence:
    - A. The nature of the error;
    - B. That the error is not a minor informality or an error in judgment;
    - C. That the error cannot be corrected or waived under Item 11.b.ii above;
    - D. That the Proposer acted in good faith in submitting a Proposal that contained the claimed error and in claiming that the alleged error in the Proposal exists;
    - E. That the Proposer acted without gross negligence in submitting a Proposal that contained a claimed error;
    - F. That the Proposer will suffer substantial detriment if the District does not grant the Proposer permission to withdraw the Proposal;



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- G. That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and
- H. That the Proposer promptly gave notice of the claimed error to the District.
- iv. The criteria in Item 11.b.iii above shall determine whether the District will permit a Proposer to withdraw its Proposal after Closing. These criteria also shall apply to the question of whether the District will permit a Proposer to withdraw its Proposal without forfeiture of its Proposal Security (or other Bid or Proposal bond/security) if any, or without liability to the District based on the difference between the amount of the Proposer's Proposal and the amount of the Contract actually awarded by the District, whether by Award to the next best Responsive and Responsible Proposer, or by resort to a new solicitation.
- c. **Rejection for Mistakes.** The District shall reject any Proposal in which a mistake is evident on the face of the Proposal and the intended correct Proposal is not evident or cannot be substantiated from documents submitted with the Proposal.
- d. **Identification of Mistakes After Award.** The procedures and criteria set forth above are the Proposer's only opportunity to correct mistakes or withdraw Proposals because of a mistake. Following Award, a Proposer is bound by its Proposal, and may withdraw its Proposal or rescind a Contract entered into pursuant to OAR 137 Division 49 only to the extent permitted by applicable law.

#### 12. PROPOSAL EVALUATION CRITERIA. Pursuant to OAR 137-049-0380:

- a. **General.** A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Proposer submitting the best Responsive Proposal.
- b. **Proposal Evaluation Criteria.** The evaluation criteria is set forth in Section V – RESPONSE AND EVALUATION.

#### 13. PROPOSAL EVALUATION AND AWARD; DETERMINATION OF RESPONSIBILITY.

Pursuant to OAR 137-049-0390:

- a. **General.** If Awarded, the District shall Award the Contract to the Responsible Proposer submitting the best, Responsive Proposal provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375 (3)(a). The District may award by item, groups of items or the entire Proposal provided such Award is consistent with the Solicitation and in the public interest.
- b. **Determination of Responsibility.** Proposers are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the District must have information that indicates that the Proposer meets the standards of responsibility set forth in ORS 279.375(3)(b). To be a Responsible Proposer, the District shall determine that the Proposer:
  - i. Has available the appropriate financial, material, equipment, facility and Personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
  - ii. Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Proposer's control, the Proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize a Proposer's record of contract performance if the Proposer is or recently has been materially deficient in contract performance. In reviewing the Proposer's performance, the District should determine whether the Proposer's

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deficient performance was expressly excused under the terms of Contract, or whether the Proposer took appropriate corrective action. The District may review the Proposer's performance on both private and Public Contracts in determining the Proposer's record of contract performance.

- iii. Has a satisfactory record of integrity. A Proposer may lack integrity if the District determines the Proposer demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the District. The District may find a Proposer not Responsible based on the lack of integrity of any Person having influence or control over the Proposer (such as a key employee of the Proposer that has the authority to significantly influence the Proposer's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-49-0370 may be used to determine Proposer's integrity. The District may find a Proposer non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Proposer's performance of a contract or subcontract;
  - iv. Is qualified legally to contract with the District; and
  - v. Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Proposer fails to promptly supply information requested by the District concerning responsibility, the District shall base the determination of responsibility on any available information, or may find the Proposer not Responsible.
- c. **District Evaluation.** The District shall evaluate a Proposal only as set forth in the Solicitation and in accordance with applicable law. The District shall not evaluate a Proposal using any other requirement or criterion.
- d. **Proposer Submissions.**
- i. The District may require a Proposer to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to award:
    - A. Demonstration, inspection or testing of a product prior to award for characteristics such as compatibility, quality or workmanship;
    - B. Examination of such elements as appearance or finish; or
    - C. Other examinations to determine whether the product conforms to Specifications.
  - ii. The District shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation to determine that a product is acceptable. The District shall reject a Proposal providing any product that does not meet the Solicitation requirements. The District's rejection of a Proposal because it offers non-conforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.
- e. **Evaluation of Proposals.** See OAR 137-049-0650 regarding rules applicable to Requests for Proposals. The District shall evaluate Proposals only in accordance with criteria set forth in the Solicitation and applicable law. The District shall evaluate Proposals to determine the Responsible Proposer submitting the best Responsive Proposal.

#### 14. NOTICE OF INTENT TO AWARD: Pursuant to 137-049-0395:

- a. **Notice.** At least seven (7) days before the Award of a Public Improvement Contract, the District shall issue a Notice of the District's Intent to Award the Contract.
- b. **Form and Manner of Posting.** The form and manner of posting notice shall conform to customary practices within the District's procurement system and may be made electronically.

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- c. **Finalizing Award.** The District's Award shall not be final until the later of the following:
  - i. Seven (7) Days after the date of the notice, unless the Solicitation provided a different period for protest; or
  - ii. The District provides a written response to all timely-filed protests that denies the protest and affirms the Award.
- d. **Prior Notice Impractical.** Posting of notice of intent to award shall not be required when the District determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

**15. DOCUMENTATION OF AWARD; AVAILABILITY OF AWARD DECISIONS.** Pursuant to OAR 137-049-0400:

- a. **Basis of Award.** After Award, the District shall make a record showing the basis for determining the successful Proposer part of the District's Solicitation file.
- b. **Contract Document.** The District shall deliver a fully executed copy of the final Contract to the successful Proposer.
- c. **Bid Tabulations and Award Summaries.** Upon request of any Person the District shall provide evaluation summaries of Proposals.
- d. **Availability of Solicitation Files.** The District shall make completed Solicitation files available for public review at the District.

**16. NEGOTIATIONS.** Pursuant to OAR 137-049-0420:

The District may conduct discussions or negotiations with Proposers only in accordance with the requirements of OAR 137-049-0640 and OAR 137-049-0650.

**17. REJECTION OF PROPOSALS.** Pursuant to OAR 137-049-0440:

- a. **Rejection of a Proposal.**
  - i. The District may reject any Proposal upon finding that to accept the Proposal may impair the integrity of the Procurement process or that rejecting the Proposal is in the public interest.
  - ii. The District shall reject a Proposal upon the District's finding that the Proposal:
    - A. Is contingent upon the District's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;
    - B. Takes exception to terms and conditions (including Specifications);
    - C. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation or in contravention of applicable law;
    - D. Offers Work that fails to meet the Specifications of the Solicitation;
    - E. Is late;
    - F. Is not in substantial compliance with the Solicitation;
    - G. Is not in substantial compliance with all prescribed public Solicitation procedures.
  - iii. The District shall reject a Proposal upon the District's finding that the Proposer:
    - A. Has not been prequalified under ORS 279C.430 and the District required mandatory prequalification;
    - B. Has been Disqualified;
    - C. Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
    - D. Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

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- E. Has not met the requirements of ORS 279A.105 if required by the Solicitation;
  - F. Has not submitted properly executed Proposal security if required by the Solicitation;
  - G. Has failed to provide the Certification of Non-Discrimination required under OAR 137-049-0440(3);
  - H. Is not Responsible. See OAR 137-049-0390(2) regarding District determination that the Proposer has met statutory standards of responsibility.
- b. **Form of Business.** The District may investigate any Person submitting a Proposal. The investigation may include that Person's officers, Directors, Owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 137-049- 0370.
- c. **Certification of Non-Discrimination.** The Proposer shall certify and deliver to the District as part of their Proposal, written certification (see attached Proposer Certification) that the Proposer has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns, in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.
- d. **Rejection of all Proposals.** The District may reject all Proposals for good cause upon the District's written finding it is in the public interest to do so. The District shall notify all Proposers of the rejection of all Proposals, along with the good cause justification and finding.
- e. **Criteria for Rejection of All Proposals.** The District may reject all Proposals upon a written finding that:
- i. The content of or an error in the Solicitation, or the Solicitation process unnecessarily restricted competition for the Contract;
  - ii. The price, quality or performance presented by the Proposers is too costly or of insufficient quality to justify acceptance of the Proposals;
  - iii. Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;
  - iv. Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation;
  - v. The District cancels the Solicitation in accordance with OAR 137-049-0270; or
  - vi. Any other circumstance indicating that awarding the Contract would not be in the public interest.

#### 18. PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD.

- a. **Purpose.** An adversely affected or aggrieved Proposer shall exhaust all avenues of administrative review and relief before seeking judicial review of the District's Contractor selection or Contract Award decision.
- b. **Notice of Intent to Award.** Unless otherwise provided in the Solicitation, the District shall provide written notice to all Proposers of the District's intent to award the Contract. The District's Award shall not be final until the later of the following:
- i. Seven (7) days after the date of the notice, unless the Solicitation provided a different period for protest; or
  - ii. The District provides a written response to all timely-filed protests that denies the protest and affirms the Award.

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**c. Right to Protest Award.**

- i. An adversely affected or aggrieved Proposer must email to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us) a written protest of the District's intent to award within seven (7) days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation.
- ii. The Proposer's protest shall be in writing and shall specify the grounds upon which the protest is based.
- iii. A Proposer is adversely affected or aggrieved only if the Proposer is eligible for Award of the Contract as the Responsible Proposer submitting the best Responsive Proposal and is next in line for Award, i.e., the protesting Proposer must claim and state specific reasons why all higher scored Proposers are ineligible for Award:
  - A. Because their Proposals were non-responsive; or
  - B. The District committed a substantial violation of a provision in the Solicitation or of an applicable procurement statute or administrative rule, and the protester was unfairly evaluated and would have, but for such substantial violation, been the Responsible Proposer with the highest scoring Proposal and the most Responsive Proposal.
- iv. The District shall not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation. A Proposer may not protest the District's decision not to increase the size of the Competitive Range.

**d. Authority to Resolve Protests.** The District's Purchasing Manager shall settle or resolve a written protest submitted in accordance with the requirements of this Rule.

**e. Decision.** If a protest is not settled or resolved by the Purchasing Manager, the Superintendent or designee, shall promptly issue a written decision on the Protest. Judicial review of this decision will be available if provided by statute.

**f. Award.** The successful Proposer shall promptly execute the Contract after the Award is final. The District shall execute the Contract only after it has obtained all applicable required documents and approvals.

**19. PROPOSAL COSTS:** The District is not liable for any costs incurred by the Proposer in its Proposal preparation.

**20. OPPORTUNITY TO DEBRIEF:** Upon written request, the District will meet with proposers not selected within 30 days of the execution of the contract. Written requests must be submitted within 15 days following the issuance of the Notice of Intent to Award.

## SECTION IV – PUBLIC WORKS REQUIREMENTS

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### 1. PUBLIC WORKS REQUIREMENTS:

This solicitation will result in a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq., if applicable). No Proposal will be received or considered by the District unless the Proposal contains a statement by the Proposer, as a part of its Proposal, that the provisions of ORS 279C.800 to 279C.870 (prevailing wage rates paid to employees) or the Davis Bacon Act (40 U.S.C. 3141 et seq if applicable) are to be complied with (see Proposer Certification).

### 2. REGISTRATION REQUIREMENTS:

Proposers shall be currently registered with the Construction Contractors Board as required by ORS 701.021, or licensed by the State Landscape Contractors Board, as required by ORS 671.530, or licensed by the Department of Environmental Quality, as required by ORS 468A.710 (Air Quality), if required, holding the proper registration for the work contemplated herein, at the time of Proposal submittal. All Subcontractors participating in the project shall be similarly registered with the Construction Contractors Board, State Landscape Contractors Board or Department of Environmental Quality, as required, at the time they propose to engage in subcontract work. The CCB registration requirements apply to all public works contracts unless superseded by federal law.

### 3. BOLI/PWR REQUIREMENTS. Pursuant to ORS 279C.800 to 279C.870:

All contractors and subcontractors will abide by the latest determination of the minimum wage rates as scheduled and published for this region by the U.S. Department of Labor and the Oregon Department of Labor and will abide by all amendments, decisions, and related regulations of these agencies. Specifically:

- a. The Contractor is required to pay workers prevailing wage rates for Region #2.
- b. If the Contractor fails to pay for labor and services, the District can pay and shall withhold these amounts from payments to the Contractor. OAR 839-025-0020(2)(a).
- c. The Contractor is required to pay weekly, holiday (including weekends) and daily overtime as required. OAR 839- 025-0020(2)(b).
- d. 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, 2020 and PWR Amendment effective October 1, 2020. The rates may be found at the following web site: [http://www.oregon.gov/boli/WHDPWR/Pages/pwr\\_state.aspx](http://www.oregon.gov/boli/WHDPWR/Pages/pwr_state.aspx), and are incorporated herein by this reference.

### 4. BONDS: PERFORMANCE, PAYMENT AND PUBLIC WORKS.

#### a. Performance and Payment Bonds.

- i. Pursuant to ORS 279C.380, the Contractor shall furnish performance and payment bonds upon execution of an amendment establishing the guaranteed maximum price. The Contractor shall also provide bonds equal to the value of construction services authorized by any early work amendment in advance of the guaranteed maximum price amendment. Such bonds must be provided before construction starts.
- ii. Bonds shall be effective from the Contract date through the Final Completion of the Contract.
- iii. Bonds must be furnished by a surety company authorized to do business in Oregon and in an amount equal to the full Contract Price. The bonding company shall be listed on the most current US Government Treasury list, Department Circular 570 or as approved by the District. The cost of the Bonds shall be included in the Contract Sum. The form of the Performance and Payment Bonds shall be the AIA A312 or as approved by the District.

## SECTION IV – PUBLIC WORKS REQUIREMENTS

Solicitation No: RFP 20-0014

### **b. Public Works Bond.**

- i. Contractors who work on public works projects, subject to the PWR law, are required to file a \$30,000 Public Works Bond to be used exclusively for unpaid wages determined to be due by BOLI. Proof of this bond in effect must be provided to the District prior to Contract signing, after the award of this solicitation.
- ii. General Contractors are required to verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.
- iii. ORS 279C.836 provides exemptions from the bond requirements for certified disadvantaged, minority, women, service-disabled veteran owned or emerging small business enterprises. It is the Contractor's responsibility to notify the District if an exemption applies to the Contractor.
- iv. The Public Works Bond must be furnished by a surety company authorized to do business in Oregon.

### **c. Bid Bond.** No bid bond is required for this solicitation.

### **d. Time for Submission.** The apparent successful Proposer must promptly furnish the required performance security upon the District's request. If the Proposer fails to furnish the security as requested, the District may reject the Proposal and award the Contract to the Responsible Proposer with the next highest-scoring Responsive Proposal.

- 5. SUBSTITUTE CONTRACTOR.** If the Contractor provided a performance bond, the District may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor must perform all remaining contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and shall not be subject to the competitive procurement provisions of ORS Chapter 279C.
- 6. FOREIGN CONTRACTOR.** If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor shall promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report must be forwarded to the District. The District shall satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

### **7. CERTIFIED PAYROLL WITHHOLDING:**

- a. If a prime contractor does not file certified payroll as required (at least once per month), the District shall withhold 25% of amounts due to the prime contractor, in addition to any other required Retainage.
- b. If a first-tier subcontractor does not file certified payroll reports as required, the prime contractor must withhold 25% of amounts due the first-tier subcontractor.
- c. Once certified payroll reports are submitted, the District or prime contractor are to pay amounts withheld within 14 days.
- d. Neither the District nor the prime contractor is required to verify the accuracy of the contents of the certified payroll reports.

## SECTION IV – PUBLIC WORKS REQUIREMENTS

Solicitation No: RFP 20-0014

### 8. DRUG TESTING REQUIREMENTS:

ORS 279C.505(2) requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. Proposers are therefore required to certify that they have an employee drug-testing program in place that applies to all employees, and will maintain a drug-testing program at all times during the performance of the awarded Contract. Failure to maintain a program shall constitute a material breach of contract. The use of drugs, alcohol, or any tobacco products is prohibited on all District property.

### 9. OTHER TERMS AND CONDITIONS:

The Contractor must understand and agree to comply with the following:

- a. Provide prompt payment to all Persons supplying labor or material for the performance of the work; Pay all contributions or amounts due the Industrial Accident Fund; Not permit any lien or claim to be filed or prosecuted against the District; and Pay to the Department of Revenue all sums withheld from employees (ORS 279C.505(1));
- b. Demonstrate that an employee drug testing program is in place and maintained (ORS 279C.505(2));
- c. If the Contract calls for demolition Work described in ORS 279C.510(1), the Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective;
- d. If the Contract calls for lawn or landscape maintenance, the Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- e. If the Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services provided to the Contractor or a subcontractor, the District may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor, as set forth in ORS 279C.515(1);
- f. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the District or a contractor, the Contractor or first-tier subcontractor owes the person the amount due plus interest charges. (ORS 279C.515(2));
- g. If the Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. (ORS 279C.515(3));
- h. Abide by maximum hours of labor and overtime as set forth in ORS 279C.520(1);
- i. Provide employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2);
- j. Abide by environmental and natural resources regulations (279C.525);
- k. Make required payments for medical care and certain services related to sickness and injury to employees (ORS 279C.530(1));
- l. Understand all employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon must comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must ensure that each of its subcontractors complies with these requirements. (ORS 279C.530(2));
- m. Abide by maximum hours, holidays and overtime (ORS 279C.540);



#### SECTION IV – PUBLIC WORKS REQUIREMENTS

Solicitation No: RFP 20-0014

- n. Abide by time limitation on claims for overtime (ORS 279C.545);
- o. Pay prevailing wage rates, including subcontractors (ORS 279C.800 to 279C.870);
- p. File required BOLI Public Works bond(s), including subcontractors (ORS 279C.830(2))
- q. Follow Retainage rules (ORS 279C.550 to 279C.570);
- r. Abide by prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- s. Maintain relations with subcontractors (ORS 279C.580);
- t. Make notice of claim (ORS 279C.605);
- u. Provide Affidavit of Compliance with the Oregon tax laws in accordance with ORS 305.385;
- v. Certify that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board, licensed by the State Landscape Contractors Board in accordance with ORS 701.021 to 701.050, or licensed under ORS 468A.720 (Air Quality), if required, before the subcontractors commence Work under the Contract.
- w. Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the District's prior written consent. Unless otherwise agreed by the District in writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the District consents in writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to the District for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the District otherwise agrees in writing.

SECTION V – RESPONSE AND EVALUATION  
Solicitation No: RFP 20-0014

**1. GENERAL INFORMATION:**

This section prescribes the mandatory submission format for the presentation of a Proposal in response to this Solicitation. The purpose of the submission format is to ensure uniformity of the information from each Proposer and to aid in clear understanding and evaluation of each Offer. Failure to submit Proposals in accordance with the provisions of this Section may be grounds to declare the Proposal non-responsive. Failure to provide any information requested in this solicitation may result in rejection of the Proposal.

**2. PROPOSAL SUBMISSION:**

To ensure proper identification and handling, Proposals shall be submitted by email, with the Proposer's name, the solicitation number, and/or other clearly identifying information in the email subject line. Proposals shall only be emailed to [contracts@beaverton.k12.or.us](mailto:contracts@beaverton.k12.or.us) as indicated on the Summary page of this Solicitation. The District is not responsible for Proposals submitted in any manner, format, or to any delivery point other than as required. Proposers are solely responsible for ensuring that the District receives their Proposal at the required delivery point prior to closing. Also, Proposers are solely responsible for ensuring that the District is able to open and properly read any attached files prior to closing.

**3. PROPOSAL FORMAT:**

- a. Proposers must submit:
  - a. A Complete Proposal per the requirements of this Solicitation in PDF format.
- b. Brochures or other promotional presentations beyond that sufficient to present a complete and effective Proposal are not desired. Elaborate artwork, expensive paper, and expensive visuals are not necessary.
- c. Concise and direct answers are encouraged. There is no page limit for proposals, but the District encourages brevity.
- d. Failure to submit Proposals in accordance with the provisions of the Solicitation shall be grounds to declare the Proposal nonresponsive. Failure to provide any information requested in the Solicitation may result in rejection of the Proposal.

**4. REQUIRED AFFIDAVIT, CERTIFICATIONS AND FORMS:** See Attached Proposal Submission Checklist

**5. DETAILED PROPOSAL CONTENT REQUIREMENTS:**

Proposers must provide a reply to each of the following items. The Proposer Certification Form (see Attachments) shall be completed and submitted as the cover of the Proposer's response. Proposers are cautioned to provide in their proposals as much detail as possible pertaining to their capabilities and experience in providing the services requested in this Solicitation. Do not assume the District has any prior knowledge of the Proposer. Provide a brief but concise response to each of the following criteria areas.

SECTION V – RESPONSE AND EVALUATION  
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Proposers shall present a proposal containing the specific information requested, in the order listed below, and submit all attachments as required:

**i. Firm's construction experience and qualifications (0 - 10 Points)**

- Provide a brief description of your firm's history and its capabilities. Include annual volume figures for the past five years and current bonding capacity.
- Provide a general description of your firm's safety and drug and alcohol programs, as well as your most recent Worker's Compensation Insurance experience modifier.
- Provide a listing of recent experience with CM/GC GMP projects for the public sector. (If the Proposer's public CM/GC GMP experience is limited, experience with pure CM, or CM/GC GMP for the private sector may be discussed). Information on these projects should also include the following:
  - Name of the Owner, contact person, and current phone number.
  - The architect, contact person, and current phone number.
  - Location of the project and completion date.
  - A brief description of the job.
  - Both the GMP, and the final Cost of the Work for each project.
  - Total project claims going to litigation/arbitration.

**ii. Personnel construction experience, qualifications and project commitment (0 - 15 Points)**

- Provide a project organization chart showing your proposed staff for this job, including all professional staff in the following areas: project management, corporate oversight and administration, engineering and estimating, and onsite construction supervision.
- Include resumes for all individuals listed in the chart. Indicate the proposed percentage that each person will work on this project during Phase 1 and Phase 2 of the project. The resumes must include each individual's education, work history, length of tenure with the firm, and prior experience with similar projects and any experience working with public or private sector CM/GC GMP jobs.
- By listing individuals in the proposal, the firm guarantees that these individuals will be available to work on the project at the approximate percentages shown. Beaverton School District reserves the right to approve or reject any changes to the proposed personnel. Beaverton School District further reserves the right to request a substitution of personnel if deemed to be in the best interest of the District.

**iii. K-12 School Experience (0 - 15 Points)**

- Provide a listing, in chronological order and in chart format, of your firm's three most recent K-12 renovation projects. Preferably those projects will be similar to the BASE CTE program upgrades project - highlighting tenant improvements, education and shop space work. Information about the project should follow the format and include the same information required in 5.i. above.

**iv. CM/GC and Value Engineering experience and plan (0 - 15 Points)**

- Describe your firm's methodology and experience with Value Engineering including particularly successful experience and/or unique services in this area. Identify the project for each experience described. Outline a plan for performing this service with the Project Team.
- Describe your firm's job costing procedure and how you will keep the District apprised of project costs.
- Describe your firm's process for managing change orders and claims, including efforts to minimize both.
- Describe how your firm intends to ensure that the GMP established for this project is within the project budget of \$850,000.00.

## SECTION V – RESPONSE AND EVALUATION

Solicitation No: RFP 20-0014

### **v. Proposed Approach (0 - 40 Points)**

- Describe how your firm will approach the construction management aspect of this project. Describe your management information controls, forms, and/or procedures proposed for this project.
- Describe your firm's knowledge and experience with the labor market and building conditions in the Portland/Beaverton metropolitan area.
- Describe your firm's overall plan to complete the project within the schedule. Please include a proposed schedule and phasing plan.
- How do you intend to partner with the project team to ensure the project is completed on time and within the budget?
- Describe your experience working in occupied facilities and how you would minimize the impacts of unforeseen conditions?
- Discuss what aspects of the project could potentially be completed during occupied periods and how that would be completed safely.
- Equity/MWESB Utilization/Apprenticeships
  - Describe your approach to promoting participation in the project on the part of minority, women, and emerging small business enterprises.
  - Describe your firm's approach to outreach and other efforts to create an apprenticeship program that reflects the diversity of the Portland/Beaverton metropolitan area.
  - Describe your firm's approach to promoting apprenticeship programs in the building trades and how those will support District Goals.

### **vi. References (Pass / Fail)**

- Provide three (3) professional references from at least two (2) similar projects (CM/GC projects should be identified), including the project name, the name of the design team members for who this reference is relevant, a contact name and phone number.
- List all projects completed for the Beaverton School District in the last 5 years. (this information should not take the place of other references unless BSD work comprises the only applicable information.)

### **vii. Fees and Compensation (0 - 30 Points)**

- Provide a lump-sum cost for Phase 1 services. Should the District enter into a contract for Phase 2 with your firm, will this cost for Phase 1 services become a part of your fee quoted in the following section? Refer to the sample contract for guidelines on items permitted within the Phase 1 fee.
- Based on a construction cost of \$850,000, provide an estimated cost of total General Conditions. All proposals are to use EXHIBIT A as the basis for determining General Conditions for this project.
- Provide your fee, as a percentage of the Guaranteed Maximum Price, for which your firm would contract to perform this project. Based on the staffing described above, provide a detailed estimate of the cost of your firm's staffing, not included in the GMP, for managing and performing the construction. Please refine this by defining personnel time included as cost-of-work and/or included within the fee. For clarification of what is included in the fees, refer to the Sample Contract for definition of items included within the fee.

SECTION V – RESPONSE AND EVALUATION  
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**6. EVALUATION CRITERIA:**

Responsive Proposals will be measured according to the following:

<b>PROPOSAL CONTENT REQUIREMENT</b>	<b>Maximum Points Possible</b>
Firm's construction experience and qualifications	10
Personnel construction experience, qualifications and project commitment	15
K-12 School Experience	15
CM/GC and Value Engineering experience and plan	15
Proposed approach	40
References	Pass / Fail
Fees and Compensation	30
<b>PROPOSAL CONTENT SUB-TOTAL</b>	<b>125</b>
<b>INTERVIEW – (If Required)</b>	
Interview	50
<b>INTERVIEW SUB-TOTAL</b>	<b>50</b>
<b>COMBINED TOTAL</b>	<b>175</b>

\*Fees and Compensation scores will be determined by mathematical calculation performed by the District. The lowest price determined by that calculation will be awarded the maximum available points. Other proposals will be awarded points based on a mathematical comparison.

**7. PROPOSAL EVALUATION:**

The Proposals will be evaluated by the Evaluation Committee consisting of not less than three (3) individuals (Evaluators) representing the District, and/or the general public, to review, evaluate and score Proposals according to the evaluation criteria set forth in this Solicitation. The District may assign certain Evaluators to evaluate specific Proposal categories in keeping with the Evaluators' area of expertise. Working as a Committee or independently (at the discretion of the District) with copies of the written proposals, the Evaluators will independently assign scores to each Proposal received in accordance with the evaluation criteria defined herein. Evaluators will utilize the criterion to assess the merit of each Proposal received in accordance with the stated evaluation criteria to determine which Proposals(s) will provide the District with the most advantageous and best overall value. The District, at its sole discretion, will select the firm which, in its judgment, best meets the interests of the District. The recommendations of this committee will be final.

SECTION V – RESPONSE AND EVALUATION  
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**8. INTERVIEW(S):** (If Conducted)

- a. The evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. The top ranked firm(s), at the discretion of the District, will be invited to interview. The interview process will be used to supplement and clarify the information contained in the proposal.
- b. If Interviews are conducted, the Interview scores will be added to the sum of the other scores to create a final ranking of Proposers.
- c. Interview format, questions, and particular details about the interviews will be provided to the firms selected for an interview.
- d. Such interviews/presentations will be at the Proposer's expense.

**9. SELECTION AND NEGOTIATION:**

If the District does not cancel the Solicitation after it receives the results of the scoring and ranking for each Proposer, the District will begin negotiating a Contract with the highest-ranked Proposer following the evaluation and interview (if conducted) process. The District shall direct negotiations toward obtaining written agreement on any or all of the following points:

- a. The Proposer's performance obligations and performance schedule;
- b. Payment methodology and a maximum amount payable to the Proposer; and
- c. Any other provisions the District believes to be in the District's best interest to negotiate.

The District shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the District and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The District may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the District may end the particular formal solicitation. Nothing in this rule precludes the District from proceeding with a new formal solicitation for the same Services described in this Solicitation that failed to result in a Contract.

## PROPOSAL SUBMISSION CHECKLIST

**ALL AFFIDAVITS, CERTIFICATIONS, FORMS AND PROPOSAL CONTENT REQUIREMENTS AS SPECIFIED IN SECTION V MUST BE INCLUDED AS PART OF THE PROPOSAL.**

### \_\_\_\_ REQUIRED AFFIDAVIT, CERTIFICATIONS AND FORMS

The following affidavit, certifications and forms must be completed and signed by the person authorized to represent the Proposer regarding all matters related to the Proposal and authorized to bind the Proposer to the agreement. Failure to submit any of the required, completed and signed affidavits/certifications/forms shall result in disqualification of the proposing firm.

- \_\_\_\_ PROPOSER CERTIFICATION. (Attachment A) This serves as the cover sheet for your Proposal.
- \_\_\_\_ AFFADAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS. (Attachment B)
- \_\_\_\_ NON-CONFLICT OF INTEREST CERTIFICATION. (Attachment C)
- \_\_\_\_ PROPOSER RESPONSIBILITY FORM – All Pages. (Attachment D)
- \_\_\_\_ PROPOSER REFERENCE FORM – Include the # specified on the form. (Attachment E)
- \_\_\_\_ PROPOSER FEES AND COMPENSATION FORM (Attachment F)
- \_\_\_\_ DETAILED PROPOSAL CONTENT REQUIREMENTS as outlined in SECTION V

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The following Attachment(s) are **NOT** to be returned with the Proposal. Proposers must review the content of these attachment(s) and Exhibit(s). The terms and conditions are incorporated in this Solicitation and will apply to the Contract to be executed for the work.

ATTACHMENT G      Sample Contracts

ATTACHMENT H      Costs for General Conditions Matrix

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This checklist is provided for the Proposer's convenience in assembling their Proposal and is NOT required to be returned with the Proposal.

**PROPOSER CERTIFICATION**

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(Proposer)

---

(physical address)

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(city, state, zip)

1. The Proposer certifies that they have read and understand the Terms and Conditions, Specifications, Addenda (if any), Contract and all other documents pertaining to this Project. That the Contract is, in their opinion, adequate, feasible and complete for performing the Work and constructing the Work in a sound and suitable manner for the use specified and intended by the Contract. That they have, or have available, the equipment, personnel, materials, facilities and technical and financial ability necessary to complete the Work in accordance with the Contract documents and within the time specified therein. That they have made allowances for normal inclement weather indigenous to the Project site.
2. The Proposer, having become completely familiar with the local conditions and legal requirements affecting the cost of Work at the place where Work is to be executed, and having carefully examined the site conditions as they currently exist, agrees to provide all labor, materials, plant, equipment, transportation and other facilities and services as necessary and/or required to execute all of the Work described by the aforesaid documents will be provided.
3. The Proposer acknowledges that the Project Milestones in Section II - STATEMENT OF WORK contains certain specific dates. These dates shall be adhered to and are the last acceptable dates unless modified by mutual agreement between Contractor and the Owner. All dates indicate close of business at 5:00 PM Pacific Time.

The Proposer agrees to complete the work within the number of calendar days as stipulated in the Owner-Contractor Agreement and to meet the Milestones and Specific Dates set forth above and acknowledges that their failure to achieve substantial and/or Final Completion by these stipulated dates, or by any owner authorized extension thereto, subjects the Contractor to liquidated damages for failure to perform, as further defined in the Contract.

4. The Proposer agrees to execute the formal Contract within five (5) days from date of the Award Notice, and in the case the undersigned fails or neglects to execute the Contract and the undersigned is considered having abandoned the Contract by the Owner, the proposal security, if any, will be forfeited.
5. The Proposer acknowledges that the person who signs this Certification is fully authorized to sign on behalf of the firm listed and to fully bind the firm listed to all conditions and provisions thereof.
6. The Proposer certifies that Proposer has complied or will comply with all requirements of local, state, and national laws, and that no legal requirement has been or will be violated in making or accepting this Proposal.
7. The Proposer \_\_\_\_\_ is / \_\_\_\_\_ is not an Oregon licensed design professional.

The Proposer holds a certificate from the Oregon State Board of Architect Examiners, the Oregon State Landscape Architect Board, or the Oregon State Board of Examiners for Engineering and Land Surveying as applicable:

Registration #: \_\_\_\_\_.

If the Proposer is not a licensed design professional, \_\_\_\_\_ (name of licensed design professional) will provide the design services.

Registration #: \_\_\_\_\_.



8. The Proposer is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board. License Number\_\_\_\_\_. (The District will not receive or consider a Proposal for a Public Improvement unless the Proposer is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board).
9. The Proposer, pursuant to ORS 279A.120(1), (check one) is \_\_\_\_\_/is not \_\_\_\_\_a resident Proposer. If not, indicate State of residency\_\_\_\_\_.
10. The Proposer certifies that the required Statutory Public Works Bond has been filed with the Construction Contractor's Board.
11. The Proposer agrees to be bound by and will comply with the provisions of Prevailing Wage Laws ORS 279C.800 through ORS 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq., if applicable).
12. The Proposer certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns in obtaining any required subcontract.
13. The Proposer agrees to comply with Oregon tax laws in accordance with ORS 305.385.
14. Any Proposal of a contractor or subcontractor listed on BOLI's List of Ineligibles will be rejected.
15. The Proposer acknowledges receipt of the following addenda: (List by number and date appearing on

addenda.)	Addendum Number	Date	Addendum Number	Date
	_____	_____	_____	_____
	_____	_____	_____	_____
	_____	_____	_____	_____

Respectfully submitted this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ (print/type) Phone: \_\_\_\_\_

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

Email Address: \_\_\_\_\_

This solicitation will result in a Contract for a Public Work subject to ORS 279C.800 to 279C.870.

**AFFIDAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS**

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(Proposer)

I state that:

- (1) The correct taxpayer identification numbers are:  
A. Federal Employer ID Number (EIN): \_\_\_\_\_ B. Employer's Oregon ID Number: \_\_\_\_\_
- (2) Proposer is not subject to backup withholding because (i) Proposer is exempt from backup withholding, (ii) Proposer has not been notified by the IRS that Proposer is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Proposer that Proposer is no longer subject to backup withholding;
- (3) The price(s) and amount of this Proposal shall be arrived at independently and without consultation, communication or agreement with any other Supplier, Proposer or potential Proposer, except as disclosed on the attached appendix.
- (4) That neither the price(s) nor the amount of this Proposal, and neither the approximate price(s) nor approximate amount of this Proposal, shall be disclosed to any other firm or person who is a Proposer or potential Proposer, and they will not be disclosed before Contract award.
- (5) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this Solicitation, or to submit any noncompetitive Proposal or other complementary Proposal.
- (6) The Proposal of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Proposal.
- (7) \_\_\_\_\_ (name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described in the attached appendix.

I state that \_\_\_\_\_ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by the Beaverton School District in awarding the contract(s) for which this Proposal is submitted. I understand and my firm understands that any misstatement in this affidavit is and shall be treated as fraudulent concealment from the Beaverton School District of the true facts relating to the submission of Proposals for this contract. I am authorized to act on behalf of Proposer, and have authority and knowledge regarding Proposer's payment of taxes, and to the best of my knowledge, Proposer is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

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(Affiant's Signature)

STATE OF OREGON

County of \_\_\_\_\_

Signed and sworn to before me on \_\_\_\_\_ by \_\_\_\_\_  
(date) (Affiant's name)

Notary: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**NON-CONFLICT OF INTEREST CERTIFICATION****Issuing Agency:** Beaverton School District

I, \_\_\_\_\_ hereby certify I have read the statement defining conflict of interest as quoted below; that I understand the statement; that no conflict of interest exists as therein defined, which precludes an impartial Bid/Proposal to be submitted by myself or the entity/company for which the Bid/Proposal is submitted, and that if such a conflict should arise, I will immediately notify the Beaverton School District and disqualify my Bid/Proposal.

**"NO OFFICER, EMPLOYEE, OR AGENT OF THE BIDDER/PROPOSER HAS ANY PERSONAL FINANCIAL INTEREST, DIRECT OR INDIRECT, IN THE OPERATION OF THE BEAVERTON SCHOOL DISTRICT OR WITH ANY PARTY CONNECTED WITH THE OREGON SCHOOL AND DISTRICT IMPROVEMENT NETWORK, DIRECTLY OR INDIRECTLY."**

\_\_\_\_\_  
Proposer Name (signature)\_\_\_\_\_  
Proposer Name (printed)\_\_\_\_\_  
Proposer Title (printed)\_\_\_\_\_  
Entity/Company Name (printed)\_\_\_\_\_  
Date

**PROPOSER RESPONSIBILITY FORM**  
**(CONTRACTOR’S QUALIFICATIONS AND FINANCIAL INFORMATION)**

**DECLARATION AND SIGNATURES**

The undersigned hereby declares that the he or she is duly authorized to complete and submit this Proposer Responsibility Form and that the statements contained herein are true and correct as of the date set forth below. Incomplete, incorrect or misleading information will be reason for a determination by the District of Proposer non-responsibility.

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of authorized official)Name: \_\_\_\_\_  
(Please type or print)Title: \_\_\_\_\_  
(Please type or print)For: \_\_\_\_\_  
(Firm’s name) (Please type or print)

CCB#: \_\_\_\_\_

**Instructions**

- 1. The information provided in this form is part of the District’s inquiry concerning Proposer responsibility. Please print clearly or type.**
- 2. If you need more space, use plain paper. Submit completed form with Proposal response.**
- 3. Answer all questions. Submission of a form with unanswered questions, incomplete or illegible answers may result in a finding that the Proposal is not a responsible Proposal.**

**CURRENT CONTRACTS IN FORCE**

ITEM	CONTRACT 1		CONTRACT 2	
A. Work Location				
B. Scope of Work;				
Check box:	New Construction	Re-Construction	New Construction	Re-Construction
C. Contract Amount	\$		\$	
D. Change Order Amount	\$		\$	
E. % Completed	%		%	
F. Est. Completion Date				
G. Owner's Name				
H. Owner Contact				
I. Telephone	( )		( )	
J. E-Mail Address				
ITEM	CONTRACT 3		CONTRACT 4	
A. Work Location				
B. Scope of Work;				
Check box:	New Construction	Re-Construction	New Construction	Re-Construction
C. Contract Amount	\$		\$	
D. Change Order Amount	\$		\$	
E. % Completed	%		%	
F. Est. Completion Date				
G. Owner's Name				
H. Owner Contact				
I. Telephone	( )		( )	
J. E-Mail Address				

**LARGEST SIMILAR D-B JOBS YOU HAVE COMPLETED IN THE LAST TEN YEARS**

ITEM	CONTRACT 1		CONTRACT 2	
A. Work Location				
B. Scope of Work;				
Check box:	New Construction	Re-Construction	New Construction	Re-Construction
C. Contract Amount	\$		\$	
D. Change Order Amount	\$		\$	
E. % Completed				
F. Completion Date				
G. Owner's Name				
H. Owner Contact				
I. Telephone	( )		( )	
J. Owner's E-Mail Address				
K. Architect Name				
L. Architect Contact				
M. Architect Telephone	( )		( )	
ITEM	CONTRACT 3		CONTRACT 4	
A. Work Location				
B. Scope of Work;				
Check box:	New Construction	Re-Construction	New Construction	Re-Construction
C. Contract Amount	\$		\$	
D. Change Order Amount	\$		\$	
E. % Completed				
F. Completion Date				
G. Owner's Name				
H. Owner Contact				
I. Telephone	( )		( )	
J. Owner's E-Mail Address				
K. Architect Name				
L. Architect Contact				
M. Architect Telephone	( )		( )	

**LIST COMPANIES FROM WHOM YOU OBTAIN SURETY BONDS**

ITEM	SURETY COMPANY 1	SURETY COMPANY 2
A. Company Name		
B. Contact's Name		
C. Telephone	(     )	(     )
D. Fax	(     )	(     )
E. E-Mail Address		
PRESENT AMOUNT OF BONDING COVERAGE (\$):	HAS YOUR APPLICATION FOR SURETY BOND EVER BEEN DECLINED <i>(If Yes, please provide            detailed information in Remarks)</i>  <div style="text-align: center;">YES                  NO</div>	DURING THE PAST 2 YEARS, HAVE YOU BEEN CHARGED WITH A FAILURE TO MEET THE CLAIMS OF YOUR SUBCONTRACTORS OR SUPPLIERS <i>(If Yes, please provide            detailed information in Remarks)</i>  <div style="text-align: center;">YES                  NO</div>

**RELIABILITY**

Has your company ever been declared in breach of any contract for unperformed or defective work? ☐ Yes. ☐ No.

If “yes”, explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has any employee or agent of your company ever been convicted of a criminal offense arising out of obtaining, attempting to obtain, or performing a public or private contract or subcontract? ☐ Yes. ☐ No.

If “yes,” explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has any employee or agent of your company been convicted under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty? ☐ Yes. ☐ No.

If “yes,” explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has your company or any employee or agent of your company been convicted under state or federal antitrust laws?

☐ Yes. ☐ No.

If “yes,” explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has any Officer or Partner of your organization ever been an Officer or Partner of another Organization that failed to complete a construction contract? ☐ Yes. ☐ No.

If “yes,” explain. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



**FINANCIAL RESOURCES**

Indicate the Contractors total bonding capacity amount: \$\_\_\_\_\_.

What portion of this amount remains available at time of completion of this form? \$\_\_\_\_\_  
\_\_\_\_\_.

Has your firm ever been at any time in the last ten years the debtor in a bankruptcy case? ☐ Yes. ☐ No.

If “yes,” explain.

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Does your firm have any outstanding judgments pending against it? ☐ Yes. ☐ No.

If “yes,” explain.

---

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In the past ten years, has your firm been a party to litigation, arbitration or mediation where the amount in dispute exceeded \$10,000? ☐ Yes. ☐ No.

If “yes,” explain.

(Include court, case number and party names.) \_\_\_\_\_

---

In the past ten years, has your firm been a party to litigation, arbitration or mediation on a matter related to payment to subcontractors or work performance on a contract? Check “yes” even if the matter proceeded to arbitration or mediation without court litigation. ☐ Yes. ☐ No.

If “yes,” explain. (Include court, case number and party names.)

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Have you or any of your affiliates discontinued business operation with outstanding debts? ☐ Yes.

☐ No.

If “yes,” explain.

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SECTION VI – ATTACHMENTS  
ATTACHMENT D  
Solicitation No: RFP 20-0014

**KEY PERSONNEL**

List the principal individuals of your company, their current job title, the total years of experience they have in the construction industry and their current primary responsibility for your company. Corporations list current officers and those who own 5% or more of the corporation's stock. Limited liability companies list members who own 5% or more of company. Partnerships list all partners. Joint ventures list each firm that is a member of the joint venture and the percentage of ownership the firm has in the joint venture.

ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	

Person who will be in direct charge of work if your company is awarded this Contract:

ITEM	PERSON IN DIRECT CHARGE
A. Name	
B. Position	
C. Years in Position	
D. Largest Project Supervised - \$	
E. Largest number of employees ever supervised	

## PROPOSER REFERENCE FORM

PROPOSER REFERENCE FORM FOR \_\_\_\_\_  
(Insert Name of Proposer)

***Proposer shall provide six (6) references and shall use a separate copy of this form for each reference.***

Date(s) Work Performed: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name(s) of Project(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Value of Project(s): \$ \_\_\_\_\_

Name of Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Contact Name: \_\_\_\_\_

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

Email: \_\_\_\_\_

Method: Subjective Evaluation

Each reference may be checked for, but not limited to, adherence to contract terms and conditions, timelines, quality standards, overall customer service, project being of similar size, scope and complexity. References may alternatively be considered solely for relevance and responsiveness.

**PROPOSER FEES AND COMPENSATION FORM**

Please fill out completely with your proposed fees and compensation for the following items:

**Lump Sum Cost for Phase 1 Services:** \$ \_\_\_\_\_

**Fee for Phase 2 Services\*:** \_\_\_\_\_ %

\*This percentage will be multiplied by \$850,000.00 for proposal evaluation purposes

Should the District enter into a contract for Phase 2 services with your firm, specify the cost for Phase 1 services that will become a part of your fee quoted for Phase 2 services?

\$ \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name (print): \_\_\_\_\_

Title (print): \_\_\_\_\_

The remainder of this page is intentionally left blank.  
The Sample Contracts documents begin on the following page.

# DRAFT AIA® Document A133™ – 2009

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

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

**BETWEEN** the Owner:

Beaverton School District #48J  
16550 SW Merlo Road  
Beaverton, OR 97006

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

« »  
« »  
« »  
« »

for the following Project:  
(Name and address or location)

«To Be Completed»  
« »

The Architect:  
(Name, legal status and address)

«To Be Completed »  
« »  
« »  
« »

The Owner's Designated Representative:  
(Name, address and other information)

«To Be Completed »  
« »  
« »  
« »  
« »  
« »

The Construction Manager's Designated Representative:  
(Name, address and other information)

«To Be Completed »  
« »  
« »  
« »  
« »

## ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

« »

The Architect's Designated Representative:  
(Name, address and other information)

«To Be Completed »

« »

« »

« »

« »

« »

The Owner and Construction Manager agree as follows.

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## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General Conditions-AIA Document A201-2007(as modified), Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications and Exhibits issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment (Exhibit "A") and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. In addition, the State of Oregon Model Rules related to Public Contracts for Construction Services (OAR 137-049) apply to this Contract, and if anything in the Contract Documents is inconsistent with the Model Rules, the Model Rules shall govern.

#### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.



## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

#### General Description of Preconstruction and Construction Phase Services

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

1. Preconstruction Phase services generally:
  - (A) Include Construction Manager's:
    - (i) Functioning as a member of the project team that includes Owner, the Architect and other Owner contractors, and other consultants; and
    - (ii) Reviewing and analyzing the design for the Project in order to:
      - (I) Suggest changes in the design that minimize potential errors, delays, unexpected costs and other problems during construction;
      - (II) Recommend means by which the Owner may achieve the functions of the Project and all components of the Project safely, reliably, efficiently and at the lowest overall cost;
      - (III) Improve the value and quality of the Project; and
      - (IV) Reduce the time necessary to complete the Project; and
  - (B) Include, depending on whether Owner decides to proceed with construction, Construction Manager's:
    - (i) Devising a schedule for constructing the Work;
    - (ii) Estimating construction, materials, labor and other costs for the Work;
    - (iii) Establishing a Guaranteed Maximum Price and the components thereof;
2. Construction Phase services generally include Construction Manager's:
  - (A) Constructing portions of the Work with its own forces to the extent permitted by the Contract Documents, and subcontracting other portions to Subcontractors and permitted consultants;
  - (B) Coordinating and overseeing the construction process; and
  - (C) Performing other services related to constructing the Work in accordance with the terms of the Contract Documents.

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

#### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise

the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect 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. Construction Manager shall assist Owner and Architect to identify all items required for the Project, including technical infrastructure and equipment. Construction Manager shall perform constructability reviews of drawings, specifications, and other materials prepared or submitted by Architect and/or any Consultants relating to the Project, including the schematic design documents, design development documents, and construction documents. Construction Manager shall advise and facilitate on all matters relating to or required for the Project, including the efficiency, cost and availability of labor, trade union issues, Utilities, materials, equipment, construction means and methods, sequencing, governmental review process, and/or other relevant matters relating to or required for the Project, including those which are reflected on, or required for, the drawings, specifications, and other materials for the Project prepared or submitted by Architect and/or any Consultants. To this end, Construction Manager shall review progressively the schematic design documents, design development documents, and construction drawings and specifications prepared by Architect, shall identify constructability issues, and shall advise upon selection of materials, building systems and equipment, and methods of delivery. Beginning upon completion of the schematic design documents, Construction Manager shall also provide a detailed, complete and accurate logistics plan, updated monthly, identifying the sequencing of all elements of the Work during construction of the Project.

### **§ 2.1.3 Project Schedule**

**§ 2.1.3.1** Promptly after execution of this Agreement, Construction Manager shall review the Initial Project Schedule (attached as Exhibit “\_” hereto). When Project requirements in Section 2.1.2 have been identified to the Owner’s and Architect’s satisfaction, the Construction Manager, in cooperation with the Owner and Architect, shall update the Project Schedule for the Architect’s review and the Owner’s acceptance. The Construction Manager shall include in the updated Project Schedule proposing milestones for the Project. The Project schedule shall coordinate and integrate the Construction Manager’s services, the Architect’s services, other Owner consultants’ services, and the Owner’s responsibilities and identify items that could affect the Project’s timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner. Thereafter, Construction Manager shall revise and update the Project Schedule every other week to show the progress of design and construction of the Project. Construction Manager shall also make formal submissions of the Project Schedule with each Application for Payment delivered to Owner. The Project Schedule shall not exceed the required dates for Access Completion, Substantial Completion and Final Completion.

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

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

**§ 2.1.3.3** Prior to the commencement of the Construction Phase and during final preparation, each update of the Project Schedule shall also include the status of cost estimates, document preparation and regulatory agency approvals. During the bidding stage, the monthly update shall include the status of bidding activity. During the Construction Phase, each updated Project Schedule shall contain detailed progress schedules of the Work by trade.

If Construction Manager becomes aware of any delay or problem arising in connection with the progress of the Work, Construction Manager shall promptly notify Owner thereof.

#### **§ 2.1.3.4**

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

#### **§ 2.1.4 Phased Construction**

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

#### **§ 2.1.5 Cost Estimates**

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

**§ 2.1.5.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for review by Architect and Owner's cost consultants, and for the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. At each stage of design, Construction Manager shall provide value engineering services towards keeping the cost of Architect's design within the parameters of the Project Budget. Toward this end, Construction Manager shall periodically identify alternatives to the Project design and make timely recommendations for cost saving options, and respond promptly to Architect's and Owner's recommendations regarding cost saving options.

**§ 2.1.5.3** Exhibit “\_” sets forth Owner's Initial Project Budget. Promptly after the date of this Agreement, Construction Manager shall provide detailed comments on that Project Budget, covering all categories of construction cost, cost evaluations of alternate construction methods and systems (including the phasing and sequencing of the Work), consideration of alternative components, communications and data requirements and (if applicable) salvage or re-use of Owner's existing equipment. Each version of the Project Budget shall be in form (and shall include documentation) satisfactory to Owner.

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

**§ 2.1.5.5** Construction Manager shall identify discrepancies between actual and estimated costs and advise Owner whenever costs exceed budgets or estimates.

**§ 2.1.5.6** Construction Manager on request shall prepare, deliver, and update to Owner and Owner's representative a cash flow projection and an anticipated cost report for the Project, in a format approved by the Owner and keyed to the Project Budget, showing estimated monthly cash payments to each Trade, and breaking out major expenditure categories, costs of permits, and other likely causes of material cash outlay. Also, Construction Manager shall

submit updates of the cash flow projection with each update of the Project Budget, showing changes in requirements and amounts previously paid.

#### **§ 2.1.6 Subcontractors and Suppliers**

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

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

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise the ordinary care and reasonable prudence of a general commercial contractor working on a project of this scope in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is entitled to reasonably rely upon and shall not be required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

#### **§ 2.1.9 Notices and Compliance with Laws**

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

#### **§ 2.1.10 Procurement Requirements**

The provisions of this Section 2.1.10 collectively are referred to as the "Procurement Requirements." The requirements of ORS 279C.337(3) and OAR 137-049-0690 also are incorporated herein by reference. In the event of any conflict between the Basic Requirements and the Additional Requirements below, the Basic Requirements shall prevail.

##### **Basic Requirements:**

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

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

(B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:

(i) The Construction Manager must prepare and submit a written justification to the Owner, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the Construction Manager's need to utilize a key

Subcontractor member of the Construction Manager's project team consistent with the Construction Manager's project Proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;

(ii) For a "sole source" selection of a subcontractor to proceed, the Owner must evaluate the written justification provided by the Construction Manager and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;

(iii) The Construction Manager must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Owner;

(iv) The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and

(v) The Owner must approve the Construction Manager's use of the non-competitive Subcontractor selection process prior to the Construction Manager's pursuit of the non-competitive process.

(C) If approved in advance by Owner, a competitive selection process may be preceded by a publicly advertised subcontractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process;

(D) As used herein, "Affiliate" means a subsidiary of or a person or entity that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Construction Manager or an Affiliate of Construction Manager. If the Construction Manager or an Affiliate will be included in the subcontractor selection process to perform particular construction Work on the project, the Construction Manager must disclose that fact in the selection process documents and announcements. The Construction Manager must establish to Owner and follow an objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party acceptable to Owner.

(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 Construction Manager's roles and responsibilities in this process and whether the Construction Manager's subcontracting records are considered to be public records. The Owner retains the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.

(m) Construction Manager Self-Performance or Performance by Construction Manager Affiliates Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), these Basic Requirements and the Additional Requirements establish the conditions under which the Construction Manager or an Affiliate of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager's RFP Proposal to perform Construction Manager Services for the project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate of the Construction Manager. If required by the Owner, the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

(n) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular



element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule:

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

(B) The Construction Manager shall set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request. The Construction Manager shall maintain written minutes of such meeting and shall deliver a copy of such minutes to Owner within 10 days after each such meeting.

#### **Additional Requirements:**

1. The Construction Manager shall review the Contract Documents and verify, prior to bidding, that they are ready for subcontract and supplier bidding. The Construction Manager shall perform constructability review of each Bid Package prior to bidding.

2. If the documents are not ready for bidding, prior to bidding the Construction Manager shall notify the Owner and Architect, specifying the perceived deficiency, and thereafter shall work with the Architect to complete the documents.

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

4. The Construction Manager shall prepare a template form of Request for Proposal for Work Component procurement. The Construction Manager shall deliver a copy of such template to the Owner's Representative for review and comment before use. The Request for Proposals shall identify the scope of Component Services with reasonable specificity, the minimum qualifications of prospective bidders, and the deadline for bid submissions. The Construction Manager shall deliver a copy of each Request for Proposal to the Owner's Representative concurrent with publication.

5. The procurement by the Construction Manager of all labor and materials costing more than \$100,000 per contract, but excluding those items covered in the general conditions, will normally be publicly advertised. However, should circumstances arise where public advertisement is not practical or appropriate, and with the Owner's prior written approval, the Construction Manager may forego public advertisement, provided however, that it must attempt to obtain at least three written bids/quotes (with public opening) for the particular work to be done. At least three competitive quotes must be attempted to be solicited for all contracts between \$10,000 and \$100,000. With the Owner's concurrence, the Construction Manager/General Contractor must accept the quote that is most advantageous to the Owner. This normally would be the lowest quote from a responsible firm. Competitive quotes are encouraged but are not required for contracts less than \$10,000. Except as otherwise allowed under this Contract, The Construction Manager shall obtain at least three competitive bids for each particular Work component to be complete, including work components which the Construction Manager may be interested in self-performing, unless the Owner approves in writing the obtaining of fewer bids for the Work Component. The solicitation of Subcontractors will be made pursuant to the following procedures:

- a. All bids are required to be sealed, written, and submitted to a specific location at a specific time, each as approved in writing by the Owner's Representative.
- b. If less than three (3) bids are submitted for any work component, authorization by the Owner's Representative is required to accept the bid. When there are single fabricators of materials or special packaging requirements for subcontractor work, or work is otherwise proposed to be sole-sourced,

- Construction Manager shall be responsible for explaining in writing to Owner the grounds for such procurement, and advance approval by the Owner's representative is required.
- c. Solicitations will be advertised at least ten (10) days in advance in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach minority, women, and emerging small business audiences.
  - d. The prevailing wage rates and all other standard terms and conditions of State of Oregon Public Works contracts shall apply to subcontracts at all tiers.

6. Except for "general conditions" type work, the compensation for which is included in the Construction Manager's Fee and General Conditions Charge, the Construction Manager shall identify to the Owner as required in the Basic Requirements and in advance of bidding, in writing, any work that the Construction Manager proposes be performed by the Construction Manager or any Affiliate, including, without limitation, Work Components, or procurement or rental of services, equipment or materials. Such writing shall include a detailed statement of the proposed work, and a statement of qualifications. The Owner may allow a Construction Manager or a related party to perform such work if such party competes competitively with subcontractors or other suppliers for that work and enters into a subcontract for the work in accordance with the procedures of this Section. Neither Construction Manager nor any related party shall perform work or provide services except in accordance with such procedures, unless waived in writing by Owner's Representative. In all cases where Construction Manager or a related party is proposed for provision of work or services, the unopened bids for that work (including that of the Construction Manager Party) will be submitted directly to the Owner's District office in advance of bid opening, for opening by Owner's staff or an independent third party approved by the Owner..

7. The Construction Manager shall establish the bidding schedule, conduct a pre-bid conference to familiarize bidders with bid documents and management techniques, maintain a log of firms attending the pre-bid conference and a log of the bidders, successful or not.

8. The Construction Manager shall respond to question from potential bidders and clarifications or interpretations of the Bidding Documents. The Owner's Representative and Architect shall assist as they determine appropriate.

9. All addendums, if any, shall be provided to the Construction Manager by the Owner. The Construction Manager shall, in turn, verify that all known potential bidders have received all addendums to incorporate in their bids.

10. The Construction Manager shall open all Subcontractor bids and proposals for self-performed work at [NAME OFFICE] in accordance with the Owner's public opening requirements, found at [web link]. The Owner's Representative shall be given advance notice of and the opportunity to observe all bid openings. The Owner's Representative is not obligated, however, to attend a bid opening nor to ensure the Construction Manager's compliance with the required bidding procedures. All bid openings shall be by Owner's staff or an independent third party approved by the Owner.

11. With respect to any subcontractor to whom Construction Manager proposes to subcontract a portion of the Work, Construction Manager shall submit the following information to Owner in sufficient time to prevent delays in the Project Schedule:

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

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

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

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

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

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

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

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

19. Bidding is proceeding under special rules applicable to public Construction Manager/General Construction Manager contracts, and statutory formal bidding procedures for public contracts are not applicable to subcontractor and supplier bids. While Owner's approval is required for all bid awards, the Construction Manager'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 Construction Manager re-bidding of any Work Component, at Owner's discretion.

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



21. Firms responding to the Construction Managers bid documents may submit a request for change of particular solicitation provisions, specifications and conditions (including comments on any requirement that a firm believes limits competition) to the Construction Manager, with a copy to the Owner's Representative, no later than noon 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.

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

## **§§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

As used herein, "Guaranteed Maximum Price" means the total price at which the Construction Manager agrees to provide all Work and other services to Owner in accordance with the terms and conditions of the Contract Documents and the scope of work for the Project and within which are:

- (a) All costs Owner agrees to reimburse and all fees the Owner agrees to pay for completing the Work; and
- (b) Any contingent costs, fees or other charges specifically identified in the Contract Documents.

**§ 2.2.1** Within 30 days after written request by Owner, given at any time that Owner has determined that design has progressed through the Design Development stage, and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance, in the form of Exhibit A. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;

- .4 The dates of Access Completion, Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based; if such dates are not stated in this A133 Contract;
- .5 A schedule of values breaking down the Guaranteed Maximum Price Proposal by task and trade, and including a copy of any bids or subcontractor estimates, in accordance with the Procurement Requirements; and
- .6 A date by which the Owner must accept the Guaranteed Maximum Price.

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

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

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

**§ 2.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

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

**§ 2.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

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

**§ 2.2.11** Prior to execution of the Guaranteed Maximum Price Amendment, Construction Manager shall not commence demolition or construction of any aspect of the Work unless Owner directs in writing to proceed on a

time-and-materials basis, or unless Owner and Construction Manager have agreed upon a not-to-exceed price for such aspect of the Work.

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

**§ 2.2.13** Any Construction Manager or subcontractor proposals referenced as part of the Contract Documents (whether herein, in the Guaranteed Maximum Price Amendment, or any other amendment or change order) are incorporated solely for: (i) any statement of fees and schedule that is otherwise consistent with the terms of this Agreement and (ii) any statement of services and scope of Work that is consistent with the remainder of this Agreement, or that provides additional Work without adjustment to the Contract Sum or Contract Time. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the other terms of this Agreement, such proposed conflicting terms are void and are expressly and wholly subject to the terms of this Agreement. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

**§ 2.2.14** Alternates.

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

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

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

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

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

## **§ 2.3 Construction Phase**

### **§ 2.3.1 General**

**§ 2.3.1.1** For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

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

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

### **§ 2.3.2 Administration**

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

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

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

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

**§ 2.3.2.5** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work, not less than weekly. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work (consistent with the required



Access Completion, Substantial Completion, and Final Completion Dates with appropriate time contingencies) and submittal schedule in accordance with Section 3.10 of A201–2007.

**§ 2.3.2.7** The Construction Manager prepare and maintain ordinary and customarily accepted records of the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

**§ 2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

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

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

**§ 2.3.3** Construction Manager shall comply with the District Standards (see Section/Exhibit\_\_\_\_) in all aspects of performance of the Work.

## **§ 2.4 Professional Services**

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

## **§ 2.5 Hazardous Materials**

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

# **ARTICLE 3 OWNER'S RESPONSIBILITIES**

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

**§ 3.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 3.1.2** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (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 notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 3.1.3 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other

site information in Owner's possession and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information. The Construction Manager shall be entitled to reasonably rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

### **§ 3.2 Owner's Designated Representative**

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

### **§ 3.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document [HERE CITE THE FORM OF ARCHITECT AGREEMENT USED:], Standard Form of Agreement Between Owner and Architect, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement. Owner may elect to have any duty or right of the Architect under the Contract Documents (other than those required by law to be performed by a licensed design professional) instead to be performed by Owner's Representative.

### **§ 3.4 Key Persons**

Construction Manager shall appoint the personnel named in [DISCUSS: Exhibit \_\_/the Guaranteed Maximum Price Amendment] to work on the Project in the respective positions designated therein ("Key Persons"). Construction Manager shall not change any of the Key Persons without Owner's prior written approval. In the case any such person is no longer employed by Construction Manager, Owner's approval of such change shall not unreasonably withheld. If Owner requests a change to any of the Key Persons, Construction Manager shall work with Owner to replace such Key Person with a member of Construction Manager's staff reasonably acceptable to Owner.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2 (only services performed after \_\_\_\_\_, 2014 are compensable):

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

«Documented Direct Personnel Expense of the Preconstruction Phase Services, not exceeding \$ \_\_\_\_\_, Construction Manager's compensation for services to the date of signature of this Agreement is \$ \_\_\_\_\_ and are included in the above not to exceed limit.»

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « TO BE COMPLETED » ( « » ) months of the date of this Agreement, through no fault of the Construction Manager, and Owner does not terminate this Agreement, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

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

### § 4.2 Payments

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

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

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee, not exceeding the Guaranteed Maximum Price.

§ 5.1.1 The Construction Manager's Fee:

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

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

The Fee does not include any fee paid to the Construction Manager for performing pre-construction services during the pre-construction phase.

No Fee shall be applied to the following items: [Insurance, bond charges, \_\_\_\_\_]

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

« TO BE COMPLETED »

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

«TO BE COMPLETED »

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

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
TO BE COMPLETED		

## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

*(Insert specific provisions if the Construction Manager 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 Contract Documents and the actual Cost of the Work and Fee, including all costs for which Owner reimburses Construction Manager and Construction Manager’s fees or profits the Construction Manager earns. »

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

## § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. An increase to the scope of the Work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the Owner and other changes to the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 Subject to Article 15 of AIA Document A201-2007, if no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.



## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager 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.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager 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.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

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

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, 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.)*

§ 6.2.3 Wages and salaries of the Construction Manager'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.

§ 6.2.4 Costs paid or incurred by the Construction Manager 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 Sections 6.2.1 through 6.2.3.

§ 6.2.5 Fully-loaded hourly rates of certain personnel, as may be identified in the Contract Documents [DISCUSS WHETHER TO INCLUDE HERE OR IN THE GMP AMENDMENT] shall be applied in making calculations under this Section 6.2.

### § 6.3 Subcontract Costs

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

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 6.5.1 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 Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation,

installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. All rental rates shall be subject to the Owner's prior written approval.

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

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

**§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and Construction Manager bonds required by the Contract Documents that can be directly attributed to this Contract. [REVISE THE ABOVE IF BONDS ARE INTENDED TO BE INCLUDED IN FEE OR EXCLUDED FROM REIMBURSEMENT, OR IN CASE OF AN OWNER CONTROLLED INSURANCE PROGRAM. CONSIDER STATING THE INSURANCE FEE AS A STATED PERCENTAGE OF THE COST OF THE WORK]

**§ 6.6.2** Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable.

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

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

**§ 6.6.7** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager or its subcontractors or suppliers, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 6.7 Other Costs and Emergencies**

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

**§ 6.7.2** Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007, that do not arise from the negligence of Construction Manager, its subcontractors or suppliers.

**§ 6.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors 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 Construction Manager, or its subcontractors or suppliers and only to the extent that the cost of repair or correction is not recovered or recoverable by the Construction Manager from insurance, sureties, subcontractors, suppliers, or others. Costs of repairing damaged or nonconforming Work after Final Completion are not recoverable.

**§ 6.7.4** The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

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

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.
- .9 Data processing or software costs related to the Work.
- .10 Any cost incurred by Construction Manager, including bond costs in response to any lien, stop notice, bonded stop notices or other such claims, unless the cost incurred by Construction Manager is solely the result of Owner's failure to make a payment to Construction Manager when due and payable with respect to the Work in question.
- .11 Costs to correct nonconforming work or to perform warranty work following Final Completion.
- .12 Travel, lodging, food, or relocation expenses.
- .13 Bonuses, profit sharing, incentive compensation, or other discretionary payments.

## **§ 6.9 Discounts, Rebates and Refunds**

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

**§ 6.9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **§ 6.10 Related Party Transactions**

**§ 6.10.1** For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager 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 Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

**§ 6.10.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred, in accordance with the Procurement Requirements. 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 Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

## **§ 6.11 Accounting Records**

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

**§ 6.11.2** The Construction Manager’s system of cost control for the Work shall be in accordance with industry standards for projects of this scope, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals, using Construction Manager’s job-cost tracking system.

**§ 6.11.3** The Construction Manager’s records shall include but not be limited to accounting records, written policies and procedures, subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), and any other supporting evidence necessary to substantiate charges related to the Contract shall be open to inspection and subject to audit and/or reproduction. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract, and records relating to the performance of the Work.

## **ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES**

### **§ 7.1 Progress Payments**

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

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

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

**§ 7.1.4** With each Application for Payment, the Construction Manager 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 or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager’s Fee, plus payrolls for the period covered by the present Application for Payment.

**§ 7.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among 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.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager 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.

**§ 7.1.7** Subject to other provisions of the Contract 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 7.3.9 of AIA Document A201-2007;
- .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 Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager'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 Construction Manager in the documentation required by Section 7.1.4 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 Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

**§ 7.1.8** In accordance with ORS 279C.570, the Owner and Construction Manager shall endeavor to agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

**§ 7.1.10** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager unless the Architect discovers or has reason to know that inaccurate or incomplete information has been provided. Examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 7.2 Final Payment**

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



- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.
- .4 All other conditions to Final Payment in the Contract Documents have been fulfilled.

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

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201–2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount pursuant to the modified A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

## ARTICLE 8 INSURANCE

**§ 8.1** For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance and bonds as set forth in Article 11 of AIA Document A201–2007 and as described in Exhibit “\_\_\_.”

### Type of Insurance

See Exhibit “\_\_\_”

### Limit of Liability

See Exhibit “\_\_\_”

**§ 8.2 Performance and Payment Bonds.** Provided no construction Work is included with the pre-construction services to be performed under the initial Contract, no performance bond or payment bond is required to be provided by the Construction Manager at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the Owner to be performed by the Construction Manager, however, the Construction Manager must provide a performance bond and payment bond each in the full amount of any Early Work to be performed by the Construction Manager, or the full amount of the GMP, as applicable. Furthermore, in the event additional Early Work is added to the Contract after the initial Early Work or in the event an amendment to the Contract is made so that the GMP must be increased, the performance bond and the payment bond must each be increased in an amount equal to the additional Early Work or the increased GMP.

**§ 8.3** If an owner-controlled or contractor-controlled insurance program for the Project is permitted under ORS

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

## ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201–2007. No decision by any Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be Arbitration pursuant to Section 15.4 of AIA Document A201–2007.

### § 9.3 Initial Decision Maker

There is no “Initial Decision Maker” under this Contract.

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

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## ARTICLE 10 TERMINATION OR SUSPENSION

### § 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days’ written notice to the Construction Manager for the Owner’s convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than thirty days’ written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1 for reasons other than Construction Manager’s default, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager’s compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager’s Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services and any Owner damages for Construction Manager’s default.

Except in the event of Construction Manager default, the Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the

Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated proportionate to the Cost of the Work for Work actually completed.

### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term “profit” shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007.

### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### **§ 11.3 Governing Law**

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an affiliate, or to a lender providing financing for the Project, in which case Construction Manager shall execute such instruments as the lender may request to effect such assignment. Except as provided in Section 13.2.2 of A201–2007, 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.



## § 11.5 Other provisions:

[CONSIDER INSERTING THE FOLLOWING—IF SO, DELETE SUBSTANTIAL COMPLETION DATE FROM EXHIBIT A]

«§ 11.5.1 **Completion.** The Construction Manager shall achieve (i) sufficient completion of the Work so that Owner has full access to the Premises for the purpose of Owner's installation of furniture, fixtures and equipment that are not included in the Work, by not later than \_\_\_\_\_ ("Access Completion Date"); (ii) Substantial Completion of the Work by no later than \_\_\_\_\_, and (iii) Final Completion of the Work within \_\_\_\_ days of Substantial Completion, subject to adjustment of time as provided in the Contract Documents.

«§ 11.5.2 **Liquidated Damages.** The Construction Manager acknowledges that the Owner will incur significant losses if Access Completion or Substantial Completion is not achieved by the required dates, including without limitation losses in the form of loss of use, interest costs, cancellation costs, loss of reputation, interruption costs, relocation costs, substitution costs, potential loss of revenue, and associated standby costs, delay costs, and costs of extended services of the Owner's staff, separate contractors, suppliers and consultants and others performing services related to the project, as well as other financial obligations owed by the Owner. The Construction Manager acknowledges and agrees that time is particularly of the essence in the Construction Manager's performance of its services in accordance with the agreed date of commencement of performance of the Work, the agreed required Access Completion and Substantial Completion Date of the Work, and the Schedule prepared by the Construction Manager and approved by the Owner. Accordingly, after negotiation, the parties agree that if Access Completion or Substantial Completion of the entire Work does not occur by the dates required above, the Construction Manager shall pay to the Owner, liquidated damages as follows:

Month in which delay day occurs	Rate/Day Access Completion Delay	Rate/Day Substantial Completion Delay
---------------------------------	----------------------------------	---------------------------------------

January

February

March

April

May

June

July

August

September

October

November

December

Example of Calculation: \_\_\_\_\_

§ 11.5.2 The parties further agree that (i) the Construction Manager's obligation to pay liquidated damages for the applicable period shall not require Owner's establishment of any actual damages for such delay, (ii) Owner's actual, direct, consequential, special, or other damages for delay may be difficult to calculate and the daily sums in liquidated damages to be paid as set forth above are a reasonable estimate of any damages that may arise relating to this Agreement for such period, and (iii) the payment of such liquidated damages is not a penalty or forfeiture. Owner may withhold or offset such liquidated damages against any sums otherwise owed Construction Manager. The liquidated damages provision herein is 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. »

## ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

<< >>

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following: [WILL THE PROJECT USE BIM?]

<< >>

- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

«Exhibit “A” (AIA Document A133 Exhibit A, as modified by the parties  
«Exhibit “B” General Conditions Items  
[LIST OTHER EXHIBITS]

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

**Beaverton School District**

**Contractor**

**District Representative**

Date

*Signature of Person Authorized to Bind Contractor -  
Date*

**Administrator for Facilities  
Development**

Date

*Printed Name and Title*

**Executive Administrator for Facilities**

Date

Address

City

State

Zip

**Business Services Administrator**

Date

e-Mail Address

Telephone #

Fax#

**Business Services Purchasing**

Date

Federal Tax Identification Number

Oregon Contractor's License Number

**Exhibit [B]**  
**General Conditions Items**  
**[CONFORM TO RFP]**

**GENERAL CONDITIONS**

**Construction Management Fee (to include all elements below at a minimum)**

Operations Manager	Estimating and Cost Engineering
Constructability Review	Scheduling
Project Manager	Purchasing and Contracts
Drafting and Detailing	Accounting and Bookkeeping
Scheduling Engineer	Administrative Support
Time Keeper/Checker	Computer/Data Processing
Secretarial	Vacation Time/Main Office Staff
Bonuses/Job Site Staff	Bonuses/Main Office Staff
Project Manager's Automobile/Fuel/Maintenance	Main Office Expenses
Legal (General Services)	Corporate Executives
Legal (Pertaining to Project)	Principal in Charge
Fringe Benefits & Burden/Main Office Staff	Profit

**Staffing**

Superintendent  
Project Engineering  
Clerical/Secretarial

**Other**

Labor Foreman	General Foreman
Field Engineering	Other Foreman
Field Supervision	Field Coordination
Quality Control	Field Layout
Trade Coordination	Safety
Temporary Office	Project Coordination
Office Supplies	Clerical/Secretarial - Staffing
Office Security	Office Equipment
Postage/Delivery	Office Furniture
Temporary Toilets	Office Clean-up
Phones/Radios/Pagers	Printing/Reproduction
Fuel/Maintenance	Drinking Water
Substance Abuse Testing	Vehicles
First Aid Supplies	BOLI Fees
Material Handling	Incidental small tools and
Clean Up	repairs/storage/maintenance of
Barricades and Temporary Partitions,	
Fencing and Construction Signage	

# DRAFT AIA® Document A133™ – 2009

## Exhibit A

### ***Guaranteed Maximum Price Amendment***

for the following PROJECT:

*(Name and address or location)*

« »  
« »

**THE OWNER:**

*(Name, legal status and address)*

« »« »  
« »

**THE CONSTRUCTION MANAGER:**

*(Name, legal status and address)*

« »« »  
« »

#### **ARTICLE A.1**

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

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

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

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

« »

**§ A.1.1.3** The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

« »

**§ A.1.1.4** Allowances included in the Guaranteed Maximum Price, if any:  
*(Identify allowance and state exclusions, if any, from the allowance price.)*

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

Item	Price (\$0.00)

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

<< >>

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

<< >>

Section	Title	Date	Pages

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

<< >>

Number	Title	Date

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

<< >>

## ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

<< >>

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

<< >><< >>

(Printed name and title)

<< >><< >>

(Printed name and title)

# DRAFT AIA® Document A101™ – 2017

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

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

**BETWEEN** the Owner:

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

and the Contractor:

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<< >>  
CCB # \_\_\_\_\_

for the following Project:

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The Architect:

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[All references to and responsibilities of Architect are to be completed by Owner or Owner's contracted Engineering Firm.]

1159322\v7

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

**ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this document.

## TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS

### ARTICLE 1 THE CONTRACT DOCUMENTS

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

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

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

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

### ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date fixed in a notice to proceed issued by the Owner.

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

§ 3.3 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_ and Final Completion of the entire Work not later than \_\_\_\_\_ (collectively, the "Contract Time"). In addition to achieving Substantial Completion and Final Completion by the dates required herein, the Contractor shall achieve sufficient completion of



the Work so that Owner has full access to the Premises for the purpose of Owner's installation of furniture, fixtures, cabling and equipment that are not included in the Work not later than \_\_\_\_ days prior to the earlier of the required or actual Substantial Completion date ("Access Completion"). [ADJUST FOR PHASED DELIVERIES]

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

#### § 3.4 ACCELERATION OF THE WORK

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

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

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

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

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

#### ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

« »

§ 4.3 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)

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



§ 4.4 Allowances included in the Contract Sum, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price

#### § 4.5 Liquidated Damages

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

#### § 4.5.2 Loss of Use Liquidated Damages

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

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

### § 4.5.2.3 Withholding of Liquidated Damages

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

## ARTICLE 5 PAYMENTS

### § 5.1 PROGRESS PAYMENTS

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

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

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

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

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

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

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

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

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

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

### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due: five percent (5%) of each progress payment (unless otherwise required by law).

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

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

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

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

## § 5.2 FINAL PAYMENT

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

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

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

§ 5.3 Interest payments due and unpaid under the Contract shall bear interest at the rate required under Oregon law.

## ARTICLE 6 DISPUTE RESOLUTION

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

## ARTICLE 7 TERMINATION OR SUSPENSION

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

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

## ARTICLE 8 MISCELLANEOUS PROVISIONS

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

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

«Larry Pelatt»  
«Purchasing Manager»  
«Beaverton School District #48J »  
«16550 SW Merlo Road»  
«Beaverton, OR 97003»  
«Telephone: (503) 356-4379»

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

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

**§ 8.5** Contractor's Project Manager shall be: \_\_\_\_\_

**§ 8.6** Contractor's Project Superintendent shall be: \_\_\_\_\_

**§ 8.5 Insurance and Bonds**

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

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

**§ 8.6 The Owner's Project Manager.**

(Name, address and other information)

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<< >>  
<< >>  
<< >>  
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**§ 8.6.1** The Owner's Representative and the Contractor's Representative shall have authority to bind the Owner and Contractor, respectively, regarding all matters related to the Contract. The Owner's Project Manager shall represent the Owner's interest throughout the Project. The Owner's Project Manager shall not have the authority to bind the Owner regarding any matter relating to the Contract.

**§ 8.7 Other Provisions:**

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

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

- 4 that the Contractor's execution of this Agreement and its performance of the Contract is within its duly authorized powers.

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

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

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

§ 8.7.5 This Contract is subject to the State of Oregon Bureau of Labor and Industries Prevailing Wage Rates, and Contractor shall pay or cause to be paid all workers accordingly. For this contract, the 'prevailing rate of wage' as published by the Oregon Bureau of Labor and Industries are the Prevailing Wage Rates for Public Works Contracts in Oregon effective July 1, 2019. Such rates may be found at the Bureau's web site [www.boli.state.or.us](http://www.boli.state.or.us) as in effect on the Publication Date.

## ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

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

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

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

§ 9.1.3 The Specifications will be set out in Exhibit A, Construction Documents List.

§ 9.1.4 The Drawings will be set out in Exhibit A, Construction Documents List.

§ 9.1.5 The Addenda, if any, are set out in Exhibit A, Construction Documents List.

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

Exhibit A:	Construction Documents List
Exhibit B:	Forms of Claim Waivers and Releases

Exhibit C: Contract Provisions from ORS Chapters 279A and 279C, the Attorney General Model Public Contracting Rules and Other Laws  
Exhibit D: Statement of Work-Owner's Solicitation ITB [ ] including issued Addenda  
Exhibit E: Insurance Requirements  
Exhibit F: Contractor's Bid dated [ ]

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

**Beaverton School District**

**Contractor**

\_\_\_\_\_  
**District Representative** Date

\_\_\_\_\_  
Signature of Person Authorized to Bind Contractor 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

Not a valid contract until all signatures are complete.



# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« »  
« »

THE OWNER:

(Name, legal status and address)

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

THE ARCHITECT:

(Name, legal status and address)

« »« »  
« »

[All references to and responsibilities of Architect are to be completed by Owner or Owner's contracted Engineering Firm.] – Include if there is no Architect on the project.

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**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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



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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

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

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction (the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior or contemporaneous negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

#### **§ 1.1.7 Instruments of Service**

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



## § 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

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

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

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

thereof to the Architect and the Owner. Thereafter, unless otherwise ordered in writing by the Architect, the Contractor shall provide the better quality of, and the greater quantity of, the Work. The provisions of this Section 1.2.5 shall apply only to conflicts, inconsistencies, discrepancies or ambiguities in express requirements of the Drawings and Specifications and not to interpretations thereof by the Owner or the Architect.

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

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

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

### **§ 1.6 Notice**

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

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

### **§ 1.7 Transmission of Data in Digital Form**

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

## **§ 1.8 Execution of Contract Documents**

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

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

### **§ 2.2 Information Provided by the Owner**

**§ 2.2.1** The Owner has furnished the information describing physical characteristics, legal limitations and utility locations for the site of the Project to the extent indicated in the Invitation to Bid. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

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

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

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

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

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

## **§ 2.4 The Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, the Owner's other rights under this Agreement and at law, and its exercise shall not excuse the Contractor from damages caused by breach of this Agreement or its responsibility for full performance of this Agreement.

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

If the Contractor defaults or neglects to protect or carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Pursuant to Section 9.5.1, a Certificate for Payment may be withheld or nullified in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies or protecting the Work, including but not limited to the Owner's attorneys' fees and related costs, disbursements and the Owner's expenses and compensation for the Architect's or the Owner's consultants additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to protect the Work or correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, nor excuse any default by Contractor. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

## **§ 2.6 Owner's Audit Rights**

**§ 2.6.1** The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract, and the accounting and control systems shall be satisfactory to the Owner. The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify

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

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

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

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

### **§ 2.7 Nonwaiver of Rights By the Owner**

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

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

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

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

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

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



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

## § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, except for design build Work or lawful orders of public authorities, but the Contractor shall promptly report in writing to the Architect and the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and the Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or the Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, except for unreported observed deficiencies or those items related to design-build or design-assist Work unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission, nonconformity or difference and failed to report it to the Architect and the Owner. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents without such notice to the Architect and the Owner, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

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

§ 3.2.4.2 Any investigations of hidden or subsurface conditions have been made for design purposes. The results of these investigations may be bound into or referenced in the Contract Documents for the convenience of the Contractor

and Sub-contractors and are a part of the Contract Documents. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments not inferable from such investigations may not occur.

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

**§ 3.2.5** Notwithstanding any other provision of the Contract, the Contractor hereby specifically acknowledges that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein in order to enter into the Contract, and that the Drawings, the Specifications and all Addenda and other Contract Documents are sufficient to enable the Contractor to perform the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations and otherwise to fulfill all of its obligations hereunder. The Contractor further acknowledges that (a) it has visited and made a thorough examination of the jobsite and existing documentation, (b) it has examined all conditions affecting the Work, (c) it has reviewed necessary tests, surveys, studies and reports and all other conditions which might reasonably affect the progress of the Work as the Contractor deems advisable, and that it has satisfied itself by such review, (d) having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized, (e) the Contract Sum includes payment for all Work that may be necessary to overcome unanticipated conditions that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized, and (f) except as otherwise expressly provided for herein, no Claim for unforeseen or unforeseeable conditions or limitations that exist or may arise affecting the Work or difficulties in performing the Work will be accepted, nor shall it give rise to a Claim, nor shall it constitute an excuse or basis for any failure or omission by the Contractor or for extra compensation, or as a basis for an extension of time in which to complete performance of the Contract.

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

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. The Contractor shall review any such specific instructions and any construction or installation procedure specified in the Contract Documents, shall advise the Architect if following the instruction or procedure will affect any warranties. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and the Architect, and shall propose alternative means, methods, techniques, sequences, or procedures.

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

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

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

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

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

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

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



material that would normally be used to produce finished Work shall be considered a part of the Contract requirements.

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

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

#### **§ 3.4 Labor and Materials**

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

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

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

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

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

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

Owner request substitution with a material or system of lesser quality and/or cost, if approved by the Owner, the Contractor shall compensate the Owner for the difference in cost through a deductive Change Order or Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order and civil and appropriate conduct among the Contractor's and Subcontractors' employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit at the site of the Work the use of alcohol, tobacco or cannabis, vaping, illegal use of drugs or other controlled substances, firearms or other weapons, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, or their respective contractors. The Contractor agrees to take prompt and effective corrective action in the event of violations of these standards of conduct. The Owner may require in writing the Contractor to immediately remove from the Work any employee or other person carrying out the Contract that the Owner considers objectionable. To the fullest extent permitted by Law, the Contractor shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by the Owner.

**§ 3.4.4** The Contractor shall coordinate, supervise and otherwise administer the Work so as to maintain labor harmony between and among the trades performing the Work and so as to avoid lockouts, strikes and other labor-related events or circumstances which delay or otherwise impact the Work; provided that the Contractor's obligations under this Section 3.4.4 shall be limited to events and circumstances which occur substantially where the Work is performed or which result substantially from the actions of persons or entities performing the Work.

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

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

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

## **§ 3.5 Warranty**

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

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

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

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

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

### **§ 3.6 Taxes**

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

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

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

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

**§ 3.7.3** If the Contractor performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, or fails to perform any permit requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction and such other costs and damages to the Owner as would have been avoided if the Contractor had performed its obligations.

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

#### **§ 3.7.5 Concealed or Unknown Conditions**

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

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

#### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum and (if applicable) Guaranteed Maximum Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

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

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

Whenever given costs, as agreed to in writing by the Owner, are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between such actual agreed costs and the allowances under 3.8. The Contractor shall not perform any Work covered by an allowance before the execution by the Owner of a Change Order or Construction Change Directive incorporating the



Drawings and Specifications related to the allowance item and any adjustment to the Contract Sum. In the event that the Contractor performs Work covered by an allowance before the execution by the Owner of a Change Order or Construction Change Directive, any costs incurred in excess of the allowance amount will be at Contractor's expense and without reimbursement from the Owner. Periodically, during the course of construction, representatives of the Contractor shall advise the Owner of the cost status of each allowance. The Contractor shall provide this information in a timely manner, but always prior to the termination of the allowance Work. The intent of this subparagraph is to identify possible cost overrun exposure and bring same to the attention of the Owner as soon as possible.

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

### **§ 3.9 Project Manager / Superintendent**

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

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

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

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

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

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly but in any event within twenty (20) days after being awarded the Contract, shall submit for the Owner's and the Architect's information a Contractor's construction schedule for the Work. Contractor shall prepare the schedule using the critical path method (CPM). The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The Contractor shall load his labor resource requirements and constructed value to each task on the schedule unless the Owner elects to waive this requirement in writing. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The construction schedule shall be updated by Contractor to reflect actual conditions on a period described elsewhere herein. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to adjust the schedule to correct the delay, including overtime and/or additional labor, if necessary. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule shall be related to

the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

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

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

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

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

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

§ 3.10.6 **Progress Meetings** The Contractor shall participate in progress meetings held at least once every week or at more or less frequent intervals as may be described in the Contract Documents, with the Architect, the Owner, subcontractors at all tiers and other appropriate consultants. The Contractor shall fully brief the Architect and the Owner on the progress of the Work.

#### § 3.10.7 Reports

- .1 Progress Reports: Contractor shall prepare and deliver to the Owner at least monthly a progress report in a form and in sufficient detail as is reasonably acceptable to the Owner approved by the Owner. The progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefore and the new proposed schedule, as well as the

number of days worked for each category of labor and the projected Work to be completed in the next succeeding month. The report shall include a listing and the status of all Change Orders, Modifications, bulletins, and other relevant documents, and shall detail any issues challenging completion of the Work on schedule and Contractor's solutions to same.

- .2 Additional Reports: Contractor shall prepare and deliver such additional reports as the Owner may reasonably request.
- .3 Logs: Contractor shall prepare and keep current, for the Architect's and the Owner's approval, logs or schedules reflecting the date the items were submitted, when a response is reasonably due and when receipt occurred of Requests for Information (RFI's), Change Order Requests (COR's), Change Orders (CO's) and submittals which shall be coordinated by Contractor with Contractor's construction schedule and which allows the Architect and the Owner reasonable time to review submittals or other such documents. Contractor shall post all logs to eBuilder or if eBuilder is not used, give the Owner access to such logs and schedules at all times. Logs shall be kept on Excel spread sheets unless other format is approved by the Owner Representative.

### **§ 3.11 Documents and Samples at the Site**

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

**§ 3.11.1** The marked record Drawings and Specifications referenced shall be marked to show field decisions and selections affecting the Work, including but not limited to information regarding (1) approved or directed deviations from the Drawings and Specifications made during construction, (2) details of Work not previously shown or indicated, (3) changes to existing conditions or existing conditions found to differ from those shown on the Drawings or Specifications and (4) other information that the Architect or the Owner reasonably requests. The final set of marked Drawings shall be on drawings in PDF format and in reproducible hardcopy, with each hardcopy sheet stamped "As-Built" and signed by the Contractor. The final act of marked Specifications shall be in PDF format on disk and in reproducible hardcopy, with each hardcopy page stamped "As-Built" and signed by the Contractor.

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

**§ 3.11.3** Contractor shall submit to the Architect with each Application for Payment an accurate and updated set of field drawings, in such format as the Architect may reasonably request, marked currently to record field changes and selections. Upon final completion of the Work the Contractor shall certify that the record documents reflect complete and accurate "as-built" conditions and shall deliver the documents as well as the approved permit set of plans in good condition to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Contractor shall indicate on the face of each as-built drawing its concurrence that the as-built drawings are accurate. Satisfactory maintenance and submission of up-to-date record drawings will be a requirement and condition for approval of progress payments. Notwithstanding the completion of the as-built drawings and any review and correction of such drawings by Contractor, neither the Architect nor Contractor shall be relieved of any responsibility each has under its contract with District for the execution and completion of Work in compliance with the Contract Documents.

### **§ 3.12 Shop Drawings, Product Data and Samples**

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

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

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

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

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

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or



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

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

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

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, permits, rules and regulations, and lawful orders of public authorities, and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. Portions of the site may be occupied and in use during construction. Contractor shall maintain access and services to minimize disturbance to occupants and to allow the Owner to utilize the occupied portion of the site throughout the construction period. Without limitation, the Contractor shall at all times and at its expense fully comply with the requirements of all applicable laws pertaining to storm water discharges and mitigation requirements.

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

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

### § 3.14 Cutting and Patching

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

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

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

### § 3.15 Cleaning Up

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

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

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, protect, defend and hold harmless, and reimburse the Owner, the Architect, the Architect’s consultants, and the members, partners, officers, directors, agents, employees and successors of any of them from, for and against suits, actions, awards, penalties, liabilities, claims, damages, losses, costs, and expenses, direct and indirect, or consequential, whether directly incurred or from third parties, including but not limited to attorneys’ fees, costs, design professional fees, consultant and expert witness fees and other costs incurred on such claims, and in proving the right to indemnification arising out of or resulting from performance of the Work, including but not limited to any such suit, action, award, penalty, liability, claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible

property in any event to the extent caused, in whole or in part, by (1) the negligent or other wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable or (2) the failure of such person or entities to perform in accordance with the Contract. The Contractor's obligation under this Article 3.18 shall include damage to the Owner's own property and the Project itself, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor's duty of defense shall arise immediately upon assertion of any claim actually or allegedly covered by this indemnification provision, and, to the fullest extent allowed by law, shall be independent of any limitations upon Contractor's duty of indemnification.

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

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

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

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

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner. Notwithstanding any provision of the Contract to the contrary, the Contractor agrees that any matter which is subject to the review, interpretation, approval, consent or direction of the Architect shall also be subject to the review, interpretation, approval, consent or direction of the Owner, whose opinions(s) shall govern and bind the Contractor in the event of any disagreement between the Owner (on the one hand) and the Architect (on the other hand).

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

### **§ 4.2 Administration of the Contract**

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

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

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

for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

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

#### **§ 4.2.4 Communications**

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

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

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

**§ 4.2.6** The Owner and the Architect, after consultation with the Owner, will have authority to reject Work that is defective or does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, and after obtaining the Owner's permission in each instance, the Architect will have authority to require inspection or testing of the Work in accordance with Section 13.4, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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



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

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

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

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

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or the Architect makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being prosecuted in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. Such removal shall not relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

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

## **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each first-tier Subcontractor, to the extent of the Work to be performed by the first-tier Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the first-tier Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and the Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and the Architect under the Contract Documents with respect to the Work to be performed by the first-tier Subcontractor so that subcontracting

thereof will not prejudice such rights, and shall allow to the first-tier Subcontractor, unless specifically provided otherwise in the subcontract, purchase order, and similar agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each first-tier Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed first-tier Subcontractor, prior to the execution of the subcontract, purchase order, or similar agreement, copies of the Contract Documents to which the first-tier Subcontractor will be bound, and, upon written request of the first-tier Subcontractor, identify to the first-tier Subcontractor terms and conditions of the proposed subcontract, purchase order, or similar agreement that may be at variance with the Contract Documents. First-tier Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any subcontractor on request.

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

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

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

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

#### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

When the Owner accepts the assignment of a subcontract, purchase order, or similar agreement, the Owner assumes the Contractor's rights and obligations under the subcontract, purchase order, or similar agreement.

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

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the

Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

## **§ 5.5 Subcontractors as Assignees and Third-Party Beneficiaries**

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

## **§ 5.6 SUBCONTRACTOR CLAIMS**

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

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner (as to the Owner's own forces) or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

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

### **§ 6.2 Mutual Responsibility**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect and the Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's



Work. Failure of the Contractor to so notify the Architect and the Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not actually or readily apparent unless reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work. Before effectuating a change the Contractor shall propose the amount of change in the Contract Sum, if any, and the amount of change in the Contract Time, if any, arising from a proposed change in the work in the form of a Change Order Proposal. The Contractor shall submit its responsible proposal within no longer than seven (7) days after request from Owner or Architect, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. If the Contractor fails to respond within this time or an agreed to extension thereof, the Contractor shall be liable for any delays or costs to other Work associated with accepting or denying the change. The Owner may accept the proposal in writing, in which case the Owner and Contractor are bound to the terms of the proposal, it will be deemed a Change Order, and the Contractor shall commence the change in the Work immediately in accordance with the proposal. The Owner shall include the accepted proposal in the next available formal Change Order. The Owner may reject the proposal, in which case the Owner may either not effectuate the change or may order the change through a Construction Change Directive or an order for a minor change in the Work.

### § 7.2 Change Orders

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

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

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

**§ 7.2.3** If the Change Order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

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

**§ 7.2.4** Agreement on any 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.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Owner or at the Owner's election, the Architect, and signed by the Owner and at the Owner's election, the Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4 and 7.5.

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

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

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;

- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

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

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

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

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

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

#### **§ 7.4 Minor Changes in the Work**

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

#### **§ 7.5 PRICING COMPONENTS**

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

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

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

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

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

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

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

**§ 7.5.5** Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined as the lesser of the manner stated in their Subcontract, or in the manner as prescribed in this Section 7.5 (and, if this is a CM/GC contract, as further limited pursuant to Sections 4 and 5 of the A133 Agreement). Payments to subcontractors or suppliers that are affiliates of Contractor for change work shall not exceed market rates for the services provided.

**§ 7.5.6** Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineers, project foreman, estimator, superintendent and their vehicles), taxes (except for sales tax), warranty, safety costs, quality control/assurance, purchasing, small or hand tool or expendable charges, preparation of as-built drawings, impact on unchanged Work, Claim preparation, and delay and impact costs of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. The total aggregate amount of Fee allowed on Work performed by Contractor's own forces shall be limited to Contractor's original Fee percentage of the allowed costs of the change in the Work, but not more than 10% of the allowed costs of the change in the Work. The Contractor also shall receive the Fee identified in clause (2) below (or if less, Contractor's original fee percentage not exceeding 5%) on the amount owed directly to a Subcontractor or Supplier for materials supplied or work properly performed by that Subcontractor or Supplier.

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

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

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

## **§ 7.6 CHANGE PROPOSALS**

Within the time limits set out in this Section 7.6, after receipt of a Request For Change Order Proposal or a Construction Change Directive, the Contractor shall submit to the Owner and the Architect a written Change Order Proposal setting out any proposed adjustment in the Contract Sum or Contract Time, or both, to which the Contractor believes it (1) would be entitled as a result of the change in the Work proposed in the Request For Change Order Proposal or (2) is entitled as a result of the change in the Work directed by the Construction Change Directive. Such Change Order Proposal may be in the form of a lump sum proposal (with adequate cost substantiation as required by the Owner and calculations showing the amount of markups on costs), or a unit price proposal, or a combination thereof, for a proposed increase in the Contract Sum, and in similar form for a proposed extension of the Contract



Time, and otherwise shall be in such form and in such detail as the Owner or the Architect may require. Such Change Order Proposal shall be submitted as soon as practicable after the Contractor's receipt of the Request For Change Order Proposal or the Construction Change Directive, but in no event later than thirty (30) days after the Contractor's receipt of the Request For Change Order Proposal or the Construction Change Directive.

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

## ARTICLE 8 TIME

### § 8.1 Definitions

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

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

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

§ 8.1.4 The date of Final Completion is the date satisfying the requirements of the Architect in Section 9.10.

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

### § 8.2 Progress and Completion

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

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

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

### § 8.3 Delays and Extensions of Time

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

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

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

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

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

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

§ 9.3.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application. At least the number of days before the date established for each progress payment established in this Agreement, The Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, as required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or the Architect require, such as copies of requisitions, and releases and waivers from Contractor, Subcontractors and suppliers in the form of Exhibit B, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** Draft Application: On or about the 25th of each month, the Contractor shall submit to the Architect and the Owner, a report on the current progress of the Work as compared to the Contractor's Construction Schedule, and a draft, itemized Application for Payment for work performed during the prior calendar month. This draft shall not constitute a payment request or formal Application for Payment. The Contractor, the Owner, and the Architect shall confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Owner or the Architect may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions from Subcontractors, and reflecting retainage as provided elsewhere in the Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished. THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, unless otherwise noted on the application.

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

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

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

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

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

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

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than upon physical incorporation into the construction at the site or the time of payment, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for payment or Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or



encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

## **§ 9.4 Certificates for Payment**

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

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

## **§ 9.5 Decisions to Withhold Certification**

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

- .1 defective or nonconforming Work not remedied; 150% of the estimated value of such defective Work may be withheld;
- .2 third party claims, including but not limited to construction lien claims and bond claims, filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, services, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or third party;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8 delay by the Contractor and/or its Subcontractor(s), or failure to comply with the Contractor's Construction Schedule requirements;
- .9 failure of the Contractor to submit updates of the Contractor's construction schedule as required by Section 3.10.1.1;
- .10 failure to submit affidavits pertaining to wages paid as required by statute;

- .11 failure of the Contractor to provide satisfactions of claims of mechanics', material suppliers', design professionals', construction or similar liens;
- .12 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .13 failure of the Contractor to provide waivers and releases from the Contractor and Subcontractors;
- .14 liquidated damages; or
- .15 any other grounds for withholding under this Contract or at law.

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

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

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

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

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

## § 9.6 Progress Payments

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

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

§ 9.6.2.1 Should the Contractor withhold payment from a first-tier Subcontractor due to a bona fide dispute, the Contractor shall notify the Owner. The Owner may then withhold such funds from the Contractor until the dispute is resolved; provided that this Section 9.6.2.1 shall not be construed or applied to prevent the Contractor from receiving payment from the Owner for Work performed by the Contractor or by another Subcontractor when such Work is the subject of a back-charge by the Contractor against the Subcontractor involved in the bona fide dispute. In accordance with ORS Chapter 279C, unless payment is subject to a good-faith dispute as defined in ORS Chapter 279C, if Contractor or any first-tier Subcontractor fails, neglects, or refuses to make payment to person or entity furnishing labor or materials for this Project within thirty (30) days after receipt of payment from the Owner, the Contractor or first-tier Subcontractor shall owe the person or entity the amount due plus interest charges commencing at end of ten (10) day period that payment is due, unless payment is subject to good faith dispute as defined in ORS Chapter 279C. The rate of interest charged shall be equal to three (3) times the discount rate on ninety (90) day commercial paper in effect at Federal Reserve Bank on the date thirty (30) days after date payment was received from the Owner, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived. Additionally, if Contractor or any Subcontractor fails, neglects, or refuses to pay person or entity furnishing labor or material for the Project, the person or entity may file a complaint with the Construction Contractors Board, unless payment is subject to a

good-faith dispute as defined in ORS Chapter 279C. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

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

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

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

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

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

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

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

## **§ 9.7 Failure of Payment**

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

## § 9.8 Substantial Completion

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

§ 9.8.1.1 For Substantial Completion of the Work or designated portion thereof to be achieved, the Owner also must have received a temporary or final certificate of occupancy (if necessary for occupancy) and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose.

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

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

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



- .1 HVAC system;
- .2 Electrical system;
- .3 Data communication system(s);
- .4 Intercom system, the life safety system(s);
- .5 Security system.

When the Contractor considers that the Critical Systems are up and running and ready for normal operation as specified for each phase, the Contractor shall so notify the Architect and Owner in writing a minimum of 14 days prior to the Date of Substantial Completion for that portion or phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection of these systems to determine whether the Critical Systems are complete and ready for normal operation. If the Architect's or Owner's inspection discloses that the Critical Systems are not Substantially Complete or that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Critical Systems and pay the costs associated with the re-inspections, including fees of the Architect and its consultants. When the Critical Systems are ready for operation, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Warranties on the Critical Systems required by the Contract Documents shall commence on the later of the Date of Commissioning or Date of Substantial Completion, unless otherwise provided in the Contract Documents. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

### **§ 9.9 Partial Occupancy or Use**

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

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

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

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, Contractor and the Architect will jointly and promptly make such inspection. When the Owner and the Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. In the event the Architect is required to make more than two (2) observations to determine Final Completion, the contractor shall reimburse the Owner for compensation for the Architect's services and expenses incurred in conducting the third (3<sup>rd</sup>) and subsequent such observations. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all fees and expenses incurred by the Owner for services

performed after the required Final Completion date of all the Work due to the delay of the Contractor, whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

**§ 9.10.1.1** The term “Final Completion” as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved and the punch list work completed, (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work for its intended purpose and (3) the Contractor has performed all of its obligations under the Contract except for those obligations that, by their nature, extend beyond Final Completion.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by the Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days’ prior written notice has been given to the Owner; (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; (6) all warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, as-built drawings and other documents or items required by the Contract Documents; (7) originals of all permits, licenses and certificates, together with a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health departments and utility owners, provided to Owner with a copy of all closed or signed off permits; (8) proof satisfactory to Owner that the Contractor has fully complied with the requirements of ORS 279C.845(7); (9) if the Contractor is not domiciled in or registered to do business in the State of Oregon, confirmation the Contractor has complied with the requirements of ORS 279A.120.2; (10) as-built Drawings in CAD format acceptable to the Owner to the extent required by the Specifications or this Agreement; and (11) all other documents and items required by the Contract Documents to be provided as a condition of achieving Final Completion. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Owner may (1) retain funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys’ fees, the total of which shall be no less than 150% of the claimed amount; or (2) accept from the Contractor, a bond or other security satisfactory to the Owner, in its sole discretion, to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including but not limited to all costs, disbursements, expenses and reasonable attorneys’ fees.

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

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

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

**§ 9.10.4** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of

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

#### **§ 9.11 Records**

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

### **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

#### **§ 10.1 Safety Precautions and Programs**

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

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

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

#### **§ 10.2 Safety of Persons and Property**

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

- .1 employees and others performing labor or services or furnishing materials or equipment on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property and structures at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner’s own forces or their separate design professionals, consultants or contractors.

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

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

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2, 10.2.1.3, and 10.2.1.4



caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2, 10.2.1.3, and 10.2.1.4. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the negligent or other wrongful acts or omissions of the Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

**§ 10.2.8** The Contractor shall immediately report to the Owner and the Architect all accidents arising out of or in connection with the Work which cause death, serious personal injury or substantial or significant property damage. The Contractor shall promptly thereafter submit a written report of such accident, giving full details and statements of any witnesses. 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.

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

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

**§ 10.2.11 Injury or Damage to Person or Property**

If the Contractor suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding seventy-two (72) hours after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

**§ 10.2.12** Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents.

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

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

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

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

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

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

hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances, or by the failure of Contractor to perform as required by this Section 10.3.

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

**§ 10.3.5** If, without negligence on the part of the Contractor, Subcontractor, or anyone for whose acts or omissions any of them are responsible, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 Emergencies**

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

#### **§ 10.5 SPILL RESPONSIBILITY**

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

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

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

**§ 10.5.3** The Contractor shall be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Contractor's (i) fault or (ii) failure to perform in accordance with the Contract Documents. Nothing in this Section 10.5 shall limit the Contractor's liability or responsibility under any other provision of the Contract Documents.

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

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

- .7 Personnel injuries, if any, resulting from, or aggravated by, the release.

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

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

### **§ 11.2 THE OWNER'S LIABILITY INSURANCE**

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

### **§ 11.3 PERFORMANCE BOND AND PAYMENT BOND**

§ 11.3.1 The Contractor shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The bonding company must be listed on the most current US Government Treasury list, Department Circular 570 or approved PRIOR TO BID SUBMISSION by Owner. The cost of the bonds shall be included in the Contract Sum. The bonds shall be submitted on the AIA A312 or other form acceptable to Owner and shall name Owner as beneficiary. Failure to adhere to these requirements may be grounds for rejection of the bid or cancellation by Owner of this Agreement.

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

§ 11.3.3 The Contractor shall deliver the required bonds to the Owner prior to or with the signed (by the Contractor) Agreement to the Owner Representative at the address of the first page of this Agreement. The Contract shall not be executed by the Owner until the bonds have been received and validated.

### **§ 11.3.4 POWER OF ATTORNEY**

The Contractor shall require the Attorney-in-fact that executes the required bonds on behalf of the surety to affix thereto a certified and current copy of their power of attorney. The surety on any required bond shall be bound by the arbitration or litigation of any disputes between and among the Owner, Contractor, Subcontractors, Subcontractors' sureties, the Architect, the Architect's consultants, the Owner's separate contractors and consultants, and other third parties in the same way and to the same extent that the Contractor shall be bound. The surety shall be bound by the decisions and award of the arbitrator(s) or court in the same way and to the same extent that the Contractor shall be bound.

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

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

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

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

§ 12.1.2 If a portion of the Work has been covered that the Owner or the Architect has not specifically requested to examine prior to its being covered, the Architect or the Owner may request to see such Work and it shall be uncovered

by the Contractor subject to approval of the Owner. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Amendment, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense without reimbursement from the Owner.

## **§ 12.2 Correction of Work**

### **§ 12.2.1 Before Substantial Completion**

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

### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, (i) within one year after the date of Substantial Completion of the entire Work; (ii) within two years after the date of Substantial Completion of the Work, as to those components of the Work that include, alter or affect any portion of the building envelope and penetration components; or (iii) within the period established by the terms of an applicable special warranty required by the Contract Documents or by law; or (iv) after the date for commencement of warranties established under Section 9.9.1, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall correct it at the Contractor's expense without reimbursement from the Owner promptly after receipt of written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor on grounds of breach of warranty. The obligations of Contractor under this Section 12.2 shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages. If the Contractor fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or the Architect, the Owner may correct it in accordance with Section 2.5. If payment of the Contract Sum has already been made by the Owner then upon demand the Contractor shall reimburse the Owner pursuant to Section 2.5. Without voiding specified warranties or relieving the Contractor of its responsibilities under this Section 12.2.2, the Owner reserves the right to make repairs as necessary to maintain the structure and its contents and operability. In addition:

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

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



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

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is defective or not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The Owner shall never be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases the Owner shall be entitled to full removal and correction of defective or non-conforming Work.

### § 12.4 EFFECT OF OBSERVATIONS AND APPROVALS OF THE WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available



by law. The Contractor's sole remedy for claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to the Contract Documents or breach thereof, except claims which have been waived, is the dispute resolution procedure of Article 15.

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

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

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

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall schedule and make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded, unless the test, inspection or approval arises from the fault of the Contractor or a Subcontractor or supplier, except as provided in Section 13.4.3. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

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

### **§ 13.5 Interest**

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

### **§ 13.6 TIME ACCRUAL OF CLAIMS**

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

**§ 13.7 EXCULPATORY PROVISION** No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against any affiliate, partner, member, officer, director, trustee or beneficiary of the Owner on account of any agreement contained in the Agreement or any other Contract Documents, whether expressed or implied. Liability with respect to the entry and performance of this Agreement and all other Contract Documents, however it may arise, with respect to the Owner shall be asserted and enforced only against the Owner, and Contractor shall have no recourse to any assets of any affiliate, partner, member, director, officer, employee, trustee, beneficiary or other representative of the Owner. Any and all personal liability, if any, beyond that which may be asserted against the Owner is expressly waived and released by Contractor and by all persons or entities claiming by, through and under Contractor.

### **§ 13.8 INTERPRETATION**

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

### **§ 13.9 SURVIVAL**

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

### **§ 13.10 WAIVER, AMENDMENT AND EXTENSION; RIGHTS**

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

### § 13.11 EXTENT OF CONTRACT

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

### § 13.12 SEVERABILITY

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

### § 13.13 COUNTERPARTS

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

### § 13.14 AUTHORITY

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

### § 13.15 REPRESENTATIONS

Contractor represents that (1) it has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) it has reviewed, analyzed, and has current knowledge of the site; and (3) it has reviewed, analyzed, and has found sufficient for completion of the Work the Contract Documents. Contractor acknowledges and warrants that any exceptions to this representation have been specifically identified in the Contract Documents.

### § 13.16 OPERATION AND MAINTENANCE MANUALS

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

### § 13.17 Training

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

§ 13.18 Compliance with All Governmental Laws and Regulations. The Contractor shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work and this Agreement. ORS Chapters 279A and 279C and the Attorney General's Model Public Contracting Rules (as such rules may have been modified by the Owner) ("Rules") contain certain requirements for public contracts, including but not limited to certain required contract provisions. Required contract provisions are attached as Exhibit C and are incorporated herein by this reference. Furthermore, Contractor and the Owner agree to comply with all requirements of ORS Chapter 297A and 279C, the Rules and all other applicable laws and regulations (collectively "Laws"), whether or not such applicable provisions are included in Exhibit C and whether or not such provisions are excised in Exhibit C. In the event of a

conflict between any applicable Law and the provisions of this Contract, including Exhibit C, the Law shall prevail and control.

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

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

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

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of [thirty (30) consecutive days (*adjust if there's a prospect for delay between signature and construction*)] through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

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

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of entire days scheduled for the Work completion, or [120 days (*adjust if there's a prospect for delay between signature and construction*)] in any 365-day period, whichever is less.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner, and if the Owner fails to cure such reason during the seven (7) day period, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work executed, and costs incurred by reason of such termination. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.

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

### **§ 14.2 Termination by the Owner for Cause**

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials or equipment;

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

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

- .1 Exclude the Contractor from the site and take possession of all or a portion of materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of some or all subcontracts pursuant to Section 5.4; and
- .3 Finish the Work or a portion thereof by whatever reasonable means and method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

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

### **§ 14.3 Suspension by the Owner for Convenience**

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

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

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

### **§ 14.4 Termination by the Owner for Convenience**

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

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

- .1 cease operations as directed by the Owner in the notice;



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

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

**§ 14.4.4** If the Owner terminates for cause, the Owner at any time may, by notice to Contractor, convert the termination to a termination for convenience. In the event the Owner terminates for cause and it is determined that the Owner did not have sufficient cause for termination, such termination shall be deemed at the Owner's convenience under this Section. Termination for convenience shall not impair the Owner's other rights, including its rights and remedies for any breach of this Contract. In no event shall Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Contract by the Owner, with or without cause.

#### **§ 14.5 TERMINATION AND SUSPENSION BY THE OWNER**

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

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



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

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

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

§ 14.5.4 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a claim for equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim by the Contractor for an equitable adjustment under this section must be asserted within thirty days from the effective date of the partial termination or it shall be deemed barred.

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Claims

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

#### § 15.1.3 Notice of Claims

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

«Purchasing Manager»  
«Beaverton School District #48J »  
«16550 SW Merlo Road»  
«Beaverton, OR 97003»  
«Telephone: (503) 356-4324»

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

#### **§ 15.1.4 Continuing Contract Performance**

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

#### **§ 15.1.5 Claims for Additional Cost**

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

#### **§ 15.1.6 Claims for Additional Time**

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

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

#### **§ 15.2 Initial Decision**

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

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

### § 15.3 Mediation

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

§ 15.3.2 At the Owner's election, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending attempted mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

### § 15.4 Arbitration

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

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

§ 15.4.1.2 Any arbitration or other legal proceeding must be initiated by Contractor within the earlier of (a) one hundred twenty (120) days after Substantial Completion as designated in writing by the Owner or (b) sixty (60) days after Final Acceptance, or the Claim will be considered waived and time-barred. This requirement cannot be waived

except by an explicit written waiver signed by the Owner. The pendency of mediation shall toll these deadlines unless and until the Owner terminates mediation.

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

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

**§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, Owner (and with the Owner's prior written consent, the Contractor) may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s). In addition, at the Owner's election, the Contractor agrees to joinder in any arbitration or litigation proceeding in which the Owner is a party with third parties in which the Owner or such third party alleges indemnification or contribution from the Contractor, any of its Subcontractors, any one directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its Subcontractors will, in the subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such Subcontractor(s).

**§ 15.4.4.2** Subject to the rules of the American Arbitration Association or other applicable arbitration rules, the Owner (and with Owner's prior written consent, the Contractor) may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

**§ 15.4.4.3** The Owner and the Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and the Contractor under this Agreement.

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

**§ 15.4.4.5** If another involved party will not consent to arbitration or cannot be joined, the Owner, in its sole discretion, has the option to elect consolidated litigation in court to resolve the dispute. The venue for such litigation shall be in the place where the Project is located, and the outcome shall be decided by the judge only (bench trial). Both parties expressly waive their right to a jury trial. If another involved party will not consent to a bench trial, the Owner, in its sole discretion, has the option to elect a consolidated jury trial. The agreements contained in this Section 15.4 shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Any award rendered by an arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The arbitrator is specifically empowered to award attorneys' fees and costs to the extent allowed by contract or law. It is understood that the purpose of this Section 15.4.4.5 is to allow the Owner to determine the best means of achieving a single consolidated proceeding that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (1) a consolidated arbitration of all significant parties, if possible; or (2) alternatively, a consolidated bench trial of all significant parties, if possible; or (3) alternatively, and as a last resort, a consolidated jury trial of all significant parties.

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

proceeding under this Agreement shall be stayed pending resolution of the Defect Claim proceeding to the extent allowed by law.

## **§ 15.5 DISPUTE EXPENSES**

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

Exhibit A: List of Contract Documents



**Business Services**  
**Procurement and Contracting**  
16550 SW Merlo Road  
Beaverton, OR 97003  
(503) 356-4324



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**XX-XXXX Contract Documents in Order of Precedence**

1. AIA A101-2017 (modified) Contract
2. AIA A201-2017 (modified) General Conditions
3. [ITB or RFP XX-XXXX] including any Addenda incorporated by reference.
4. Specifications incorporated by reference.
5. Drawings incorporated by reference.
6. [Contractor] Bid.

**District Goal:** WE empower all students to achieve post-high school success.

The Beaverton School District recognizes the diversity and worth of all individuals and groups. It is the policy of the Beaverton School District that there will be no discrimination or harassment of individuals or groups based on race, color, religion, gender, sexual orientation, gender identity, gender expression, national origin, marital status, age, veterans' status, genetic information or disability in any educational programs, activities or employment.



**EXHIBIT B**

**FORMS OF WAIVERS AND RELEASES**

CONDITIONAL RELEASE ON PROGRESS PAYMENT	UNCONDITIONAL RELEASE ON PROGRESS PAYMENT
<p>The undersigned does hereby acknowledge that upon receipt by the undersigned of a check from _____ in the sum of \$_____ for labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims through _____ (Date) only and does not cover unpaid retention or items furnished after that date.</p> <p>Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.</p> <p>I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.</p> <p>SIGNATURE: _____</p> <p>(Authorized Corporate Officer/Partner/Owner)</p> <p>(Title) _____</p> <p>Company Name: _____</p> <p>Dated this ____ day of _____, 20__</p> <p>Project Name: _____</p> <p>Project Address: _____</p>	<p>The undersigned does hereby acknowledge that the undersigned has been paid and has received a progress payment in the sum of \$_____ for labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and does hereby release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims through _____ (Date) only and does not cover unpaid retention or items furnished after that date.</p> <p>NOTICE: THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.</p> <p>I CERTIFY UNDER PENALTY OF PERJURY UNDER LAWS OF THE STATE OF OREGON THAT THE ABOVE IS A TRUE AND CORRECT STATEMENT.</p> <p>SIGNATURE: _____</p> <p>(Authorized Corporate Officer/Partner/Owner)</p> <p>(Title) _____</p> <p>Company Name: _____</p> <p>Dated this ____ day of _____, 20__</p> <p>Project Name: _____</p> <p>Project Address: _____</p>

CONDITIONAL RELEASE ON FINAL PAYMENT	UNCONDITIONAL RELEASE ON FINAL PAYMENT
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The undersigned does hereby acknowledge that upon receipt by the undersigned of a final payment check from \_\_\_\_\_ in the sum of \$\_\_\_\_\_ (representing the agreed full and final payment) for all labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and when the check has been properly endorsed and has been paid by the bank upon which it was drawn, this document shall become effective to release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full and final payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims, including but not limited to all retention, through Final Completion of the Work and for the entire project.

Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

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

SIGNATURE:

\_\_\_\_\_  
(Authorized Corporate Officer/Partner/Owner)

(Title) \_\_\_\_\_

Company Name: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_

The undersigned does hereby acknowledge that the undersigned has been paid and has received final payment in the sum of \$\_\_\_\_\_ (representing the agreed full and final payment) for all labor, services, equipment and materials, and covering all events, conditions and occurrences, on the above-referenced job, and does hereby release any and all rights of lien and claims of lien, and any and all other claims, including but not limited to, negligence, breach of contract, delay and impact claims, or any other claims, which the undersigned has or may have, whether known or unknown, on the above-referenced job ("Claims"). This release covers full and final payment for all labor, services, equipment, materials, events, conditions, occurrences and Claims, including but not limited to all retention, through Final Completion of the Work and for the entire project.

NOTICE: THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM.

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

SIGNATURE:

\_\_\_\_\_  
(Authorized Corporate Officer/Partner/Owner)

(Title) \_\_\_\_\_

Company Name: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_

Project Name: \_\_\_\_\_

Project Address: \_\_\_\_\_  
\_\_\_\_\_

## **EXHIBIT C**

### **PROVISIONS FROM THE OREGON PUBLIC CONTRACTING CODE AND PUBLIC CONTRACTING RULES**

#### **1. GENERAL**

1.1 **INCORPORATION OF ALL CONTRACT PROVISIONS.** The Contract hereby incorporates all contract provisions that are required to be incorporated into contracts with public entities pursuant to (a) the Public Contracting Code (ORS Chapters 279A, 279B and 279C), (b) the Attorney General Model Public Contracting Rules (which are referred to in this Exhibit as the “Rules”) or (c) other applicable law. The provisions incorporated into the Contract under the preceding sentence include, without limitation, any provisions or amendments to provisions that become required after the Contract is executed.

1.2 **DISCLAIMER REGARDING ANY UNLISTED CONTRACT PROVISIONS.** The provisions listed in this Exhibit are not necessarily an exhaustive list of provisions that are required under the Public Contracting Code, the Rules or other applicable law, and the fact that this Exhibit does not list a provision that is required by the Public Contracting Code, the Rules or other applicable law will not (i) prevent or otherwise diminish the incorporation of that unlisted provision into the Contract or (ii) negate or otherwise diminish Contractor’s obligation to comply with applicable laws.

#### **2. PAYMENT.**

2.1 **PROMPT PAYMENT.** Contractor shall promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, payments (1) to all persons, as due, supplying to Contractor labor, equipment, services or material for the performance of the Work, (2) of all contributions or amounts due the Industrial Accident Fund from Contractor or the Subcontractors incurred in the performance of the Work, and (3) to the Department of Revenue of all sums withheld from employees under ORS 316.167.

2.2 **CONTRACTOR’S OBLIGATIONS TO FIRST-TIER SUBCONTRACTOR.** Contractor shall pay each first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract. Contractor shall provide a first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor. Contractor shall use this same form and regular administrative procedures for processing payments during the entire term of the Subcontract. Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

2.3 **PROMPT PAYMENT POLICY.** It is the policy of the State of Oregon that all payments due on a public improvement contract and owed by a contracting agency shall be paid promptly. No public contracting agency is exempt from the provisions of ORS 279C.570.

2.4 **CONTRACTOR’S FAILURE TO MAKE PROMPT PAYMENT.** If the Contractor has failed, neglected or refused to pay promptly a person’s claim for labor, equipment, services or materials that the person provides to the Contractor or a Subcontractor in connection with the Project as such claim becomes due, the Owner may pay such claim to the person that provides the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the Contractor under the Contract. Owner reserves the right to make payments directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Owner’s request, Contractor

shall furnish to Owner the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons.

2.5 CONTRACTOR'S AND FIRST-TIER SUBCONTRACTOR'S FAILURE TO MAKE PAYMENT AFTER PAYMENT FROM OWNER; INTEREST PENALTY. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor, equipment, services or materials in connection the Contract within thirty (30) days after receiving payment from the Owner or the Contractor, the Contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period that payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived.

2.6 CONSTRUCTION CONTRACTORS BOARD COMPLAINT. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person that provides labor, equipment, services or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

2.7 CONTINUING LIABILITY OF CONTRACTOR AND SURETY. Payment by the Owner of a claim in the manner authorized in this Section 2 does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

2.8 RETAINAGE. Retainage shall be subject to the applicable requirements of ORS 279C.550 through 279C.570C.570. The Owner may elect to make early release of some or any portion of the retainage as allowed therein. The Contractor may withhold payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of the retainage and interest due a Subcontractor.

### 3. PUBLIC WORKS PROJECT.

3.1 PREVAILING RATE OF WAGE. The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Contractor and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract. For CM/GC contracts, the "prevailing rate of wage" shall mean the prevailing wage rate in effect at the time the CM/GC contract "becomes a public works contract" as defined in OAR 839-025-0020(6), which prevailing rates shall be incorporated by attachment or reference in Guaranteed Maximum Price Amendment or, if applicable, the Early Work Amendment to the CM/GC contract. Pursuant to ORS 279C.840, the Contractor shall keep the prevailing wage rate for the Project posted in a conspicuous and accessible place in or about the Project. Copies of these wage rates are available from the Commissioner of the Bureau of Labor and Industries without charge. The Contractor shall also post a description of provided health and welfare and/or pension plans in the same place. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information. The Contractor shall, and shall cause all subcontractors at all tiers to, timely comply with the requirements of ORS 279C.845. Contractor shall indemnify, defend, protect and hold harmless the Owner from any violation of or noncompliance with the prevailing wage laws (ORS 279C.800 et seq) by Contractor or any subcontractor at any tier.

3.2 PUBLIC WORKS BOND. Before starting the Work, Contractor and every Subcontractor shall file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Contractor or Subcontractor has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Before permitting a Subcontractor to start the Work, Contractor shall verify that the Subcontractor has filed a public works bond as required by ORS 279C.836, has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS

279C.836(4) or (9). Contractor shall also ensure that each subcontract entered into by a Subcontractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 3.2, such that all subcontracts at all tiers include a requirement to comply with this Section 3.2.

4. **COMPLIANCE WITH LAWS/TAX LAWS.** Contractor shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, rules, orders and rulings as well as all applicable construction industry standards, including without limitation those governing labor, materials, equipment, construction procedures, safety, health, sanitation and the environment. Contractor agrees to indemnify, hold harmless, reimburse, and defend Owner from and against any penalties or liabilities arising out of violations of such obligations by Contractor or its Subcontractors at any tier. Contractor must also comply with all Oregon tax laws and shall submit a certification of such compliance in accordance with ORS 305.385(6).

5. **CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.**

5.1 **EMPLOYEE DRUG TESTING PROGRAM.** The Contractor shall demonstrate to the Owner, in a manner acceptable to the Owner, that the Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.2 **WORK DAY/WORK WEEK.** No person shall be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday and on any legal holiday specified in ORS 279C.540.

5.3 **NOTICE OF REQUIRED WORK HOURS.** The Contractor and each Subcontractor must give notice to its employees in writing, either at the time of hire or before commencement of Work, or by posting a notice in a location frequented by its employees, of the number of hours per day and days per week that the employees may be required to work.

5.4 **CLAIMS FOR OVERTIME.** Any worker employed by the Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 days from the completion of the Contract, provided the Contractor has: (1) caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section 5.4 to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to any or all workers employed on the Work; and (2) maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

5.5 **WORKERS' COMPENSATION.** All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

5.6 **PROMPT PAYMENT FOR MEDICAL SERVICES.** The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.7 **PROMPT PAYMENT BY SUBCONTRACTORS; INTEREST PENALTY.** Contractor shall include in each subcontract entered into by the Contractor (including contracts with material suppliers) the following:

(a) A payment clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract.

(b) A clause that requires the Contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the Contractor.

(c) A clause that requires the Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. The Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor:

(A) Notifies the subcontractor in writing at least 45 days before the date on which the Contractor makes the change; and

(B) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

(d) An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier subcontractor within 30 days after receiving payment from the Owner, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this Section. The Contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier subcontractor did not make payment when payment was due is that the Contractor or first-tier subcontractor did not receive payment from the Owner or Contractor when payment was due. The interest penalty:

(A) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and

(B) Is computed at the rate specified in ORS 279C.515 (Conditions concerning payment of claims by public officers, payment to persons furnishing labor or materials and complaints).

(e) a clause requiring the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.

**5.8 LICENSING WITH CONSTRUCTION CONTRACTORS BOARD AND LANDSCAPE CONTRACTORS BOARD.** Before commencing the Work, Contractor shall ensure that the Subcontractors are duly registered with the Oregon State Construction Contractors Board (and the State Landscape Contractors Board, if applicable), and that no Subcontractor has been declared ineligible to work on a public contract.

**5.9 FIRST-TIER SUBCONTRACTORS.** the Contractor may only engage and substitute first tier subcontractors as permitted by ORS 279C.370, 279C.585, and 279C.590.

**5.10 NO DISCRIMINATION.** Pursuant to ORS 279A.100 to ORS 279A.110, the Contractor shall not discriminate against minority, women, or emerging small business enterprises in the awarding of subcontracts. The Contractor covenants and agrees not to discriminate against any qualified employee or qualified applicant for employment because of race, creed, color, sex or national origin, and that similar provisions shall also be included by said party in any subcontract. The Contractor shall comply with the prohibition set forth in ORS 652.220 (Prohibition of discriminatory wage rates based on sex). Compliance is a material element of the Contract and a failure to comply is a breach that entitles the Owner to terminate the contract for cause.



5.11 NO PROHIBITION. The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

6. MATERIAL SALVAGE. To the extent the scope of the Work for the Contract requires demolition, Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective.

7. COMPOSTING. To the extent the scope of the Work for the Contract requires lawn and landscape maintenance, the Contractor must compost or mulch yard waste material at an approved site, if feasible and cost-effective.

8. RECYCLED MATERIALS. The Contractor, in performance of the Work, shall give preference to the procurement of goods manufactured from recycled materials.

9. ENVIRONMENTAL AND NATURAL RESOURCES LAWS. Pursuant to ORS 279C.525, the following is a list of Federal, State, and Local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract. The following list may not include all such agencies that have enacted ordinances, rules or regulations relating to the environmental pollution and preservation of natural resources.

Federal Agencies:

Agriculture, Dept. of  
Forest Service  
Natural Resource Conservation Service  
Defense, Dept. of  
Army Corps of Engineers  
Coast Guard  
Environmental Protection Agency  
Interior, Dept. of  
U.S. Fish and Wildlife Service  
Bureau of Land Management  
Bureau of Indian Affairs  
Bureau of Reclamation  
Labor, Dept. of  
Occupational Safety and Health Administration  
Transportation, Dept. of  
Federal Highway Administration

State Agencies:

Agriculture, Dept. of  
Consumer and Business Services Dept.  
Oregon Occupational Safety and Health Division  
Environmental Quality, Dept. of  
Fish and Wildlife, Dept. of  
Forestry, Dept. of  
Geology and Mineral Industries, Dept. of  
Human Services, Dept. of  
Land Conservation and Development, Dept. of  
Natural Resources, Dept. of  
State Fire Marshall  
State Lands, Dept. of  
Water Resources Department

Local Agencies:

City Councils  
Circuit Courts  
County Commissioners, Boards of  
Fire Districts  
Planning Commissions

10. CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1867 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported as required by law.

11. RETAINAGE. The withholding of retainage by the Contractor or Subcontractor shall be in accordance with ORS 279C.550 to ORS 279C.570.

12. LIENS. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

13. NONRESIDENT. If the Contractor is a "nonresident bidder" as defined in ORS 279A.120, the Contractor shall comply with the reporting requirements of that statute.

14. NOTICE OF CLAIM ON BOND. The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Contractor or Subcontractor at any place the Contractor or Subcontractor maintains an office or conducts business or at the residence of the Contractor or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

To (here insert the name of the Contractor or Subcontractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Contractor or Subcontractor).

\_\_\_\_\_(here to be signed)

[15. ADD ANY NECESSARY CONTRACTOR COMPLIANCE/REPORTING PROVISIONS FOR AGENCY'S WMBE GOALS PROGRAM UNDER ORS 200.090]

## EXHIBIT E

### INSURANCE REQUIREMENTS

**1. Insurance Coverages.** The Contractor shall procure and maintain (and, unless the Owner permits otherwise in writing, shall cause all Subcontractors to procure and maintain) at the Contractor's expense during the period of performance and thereafter as required below the following insurance from one or more companies authorized to do business in the State of Oregon with a policyholder's rating of not less than A-IX in the most recent edition of *Best's Rating Guide*. Except as approved otherwise by the Owner in advance, such insurance shall protect against claims which arise out of or relate to all of the Contractor's (and such Subcontractors') services under the Agreement, whether performed by the Contractor or a Subcontractor or consultant or a person or entity for which either of them may be responsible. The insurance coverages required by this Paragraph 1 shall be written on an occurrence basis, except the Professional Liability Insurance.

**1.1 Workers' Compensation Insurance,** if required by law, with statutory limits.

**1.2. Employer's Liability Insurance,** if employees are employed for other than secretarial or bookkeeping services, with a limit of not less than \$500,000.

**1.3. Commercial General Liability Insurance,** applicable to all premises and operations, including Bodily Injury, Property Damage, Personal Injury, Contractual Liability, Independent Contractors, Products and Completed Operations, Broad Form Property Damage (including Completed Operations), Pollution Liability (coverage shall apply to both sudden and gradual pollution conditions), and coverage for explosion, collapse and underground hazards, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate applicable specifically to the Project, \$1,000,000 personal and advertising injury and \$1,000,000 Products and Completed Operations.

**1.4. Business Automobile Liability Insurance,** applicable to owned, non-owned and hired automobiles, with a limit of not less than \$1,000,000 combined single limit each accident; .

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

**1.6 Pollution Liability Insurance,** covering the Contractor's liability for a third-party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the Owner. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self- insured retention / deductible amount shall be submitted to the Owner for review and approval.

**1.7 Asbestos/hazardous materials Abatement** (only applicable to Asbestos/hazardous materials abatement Contractors): General Liability policy shall be written on a form that meets the following criteria, and must be ASBESTOS SPECIFIC as follows:

- (a) A full occurrence form, or
- (b) A limited occurrence form with at least a three (3) year tail, or
- (c) A claims made form with a three (3) year tail.

**1.8 True Umbrella Policy,** which provides excess limits over the primary layer, in an amount not less than \$5,000,000.

**1.9 Subcontractors:** The Contractor shall require all subcontractors to provide and maintain General Liability, Auto Liability, Professional Liability (as applicable), and Workers' Compensation insurance with coverage's equivalent to those required of the General Contractor in this Agreement. The Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.

**1.10 Exceptions or Waivers:** Any exception of waiver of these requirements shall be subject to review and written approval from the Owner.

**2. Deductibles.** The Contractor shall pay all deductibles on all policies required by Paragraph 1.

**3. Waivers of Subrogation Re Liability Insurance.** The Workers' Compensation and Employer's Liability policies shall be subject to a waiver of subrogation in favor of Owner and its members, partners, officers, directors, agents and employees, and the successors in interest of the foregoing.

**4. Cross-Liability Coverages.** The Commercial General Liability and Automobile Liability policies shall provide cross-liability coverages as would be achieved under the standard International Organization for Standardization ("ISO") separations of insureds clause.

**5. Additional Insureds.** The Commercial General Liability and Automobile Liability policies shall name the Owner and its officers, directors, agents and employees, and the successors in interest of the foregoing, as additional insureds, using ISO additional insureds endorsement CG 20 10 11 85 or a substitute providing equivalent coverages. Such coverages provided to the additional insureds shall (a) be primary and noncontributory with respect to any insurance or self-insurance retention of the additional insureds, including but not limited to any Excess Liability coverage maintained by the additional insureds, (b) provide the same types and extents of coverages as the coverages provided to the primary insured, and shall not be limited to the "vicarious liability" of the additional insureds, (c) waive all rights of subrogation against the additional insureds, (d) cover all additional insureds that are a partnership or joint venture, if any, as "Named Insureds" as expressly stated in endorsements and (e) be maintained for the same durations as the coverages provided to the primary insured, including but not limited to the continuation of the Products and Completed Operations coverage until three (3) years after final payment to the Owner's prime contractor on the Project, and shall not be limited to "ongoing operations". Notwithstanding the foregoing, this Paragraph shall not be construed to require the Contractor to provide insurance coverage of the additional insureds in a way or to an extent that results in a violation of ORS § 30.140.

**6. Duration of Coverages.** The insurance coverages required by Paragraph 1 shall be written on an occurrence basis, except the Professional Liability Insurance. The Professional Liability policy shall provide for a retroactive date of placement prior to or coinciding with the date of commencement under the Agreement. All other policies shall be in effect as of the date of commencement of the Contractor's services under the Agreement. All policies shall be maintained and remain in effect until one (1) year after Final Completion and thereafter when the Contractor is assisting or advising the Owner regarding the correction of defective or nonconforming Work; provided that the Products and Completed Operations policy and the Professional Liability policy shall remain in effect until three (3) years after final payment to the Owner's prime contractor on the Project. The Contractor shall notify the Owner of any claims against the Professional Liability policy, in which event the Owner shall have the right to require the Contractor at its expense to obtain additional Professional Liability Insurance in order to restore the required coverage available for the Project.

**7. Builder's Risk Insurance.**

The Contractor shall obtain Builder's Risk Insurance as described below:

**(1)** The Contractor shall purchase and maintain in force during the term of this Contract, at its own expense, Builder's Risk insurance in an amount equal to the Contract Amount, including any subsequent modifications for the entire project at the site on a replacement cost basis, including covering all costs needed to repair the structure or work based on the value figured at the time of rebuilding or repairing, not at the time of loss. Such coverage shall be maintained, unless otherwise provided in the Contract Documents, or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final

payment has been made or until no person or entity other than the Owner has insurable interest in the property to be covered, whichever is earlier. The Builder's Risk insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-tier contractors in the project.

(2) **Special Covered Cause of Loss Form.** The Contractor's Builder's Risk Coverage shall be on a special covered cause of loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings and debris removal including demolition, increased cost of construction, architect's fees and expenses, flood and earthquake coverage, materials and equipment in transit, and all below and above ground structures, water and sewer mains. Other coverage may be required if provided in contract documents. Coverage shall be written for 100% of the completed value (replacement cost basis) of the work being performed.

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

a. **Waiver of Subrogation.** Waiver of subrogation against all parties named as insured, to the extent the loss is covered;

b. **Beneficial Occupancy Clause.** The policy shall specifically permit partial or beneficial occupancy at or before substantial completion or final acceptance of the entire work. The Contractor shall take reasonable steps to obtain any necessary consent of the insurance company or companies and agrees to take no action, other than upon mutual written consent, with respect to occupancy or use of the work that could lead to cancellation, lapse or reduction of insurance;

c. **Equipment Breakdown Coverage.** Equipment breakdown coverage (aka boiler & machinery coverage) shall be provided that specifically covers insured equipment during installation and testing;

d. **Interior Damage.** Any clause that excludes recovery of damage to the interior of building shall be deleted. The Builder's Risk policy shall provide for recovery for damage to the interior of a building if caused by perils insured against in the Builder's Risk Policy;

e. **Design Error.** The Builder's Risk policy shall not exclude coverage of damages caused by design error;

f. **Settlement, Cracking, Etc.** The Builder's Risk policy shall cover settling, cracking, shrinking or expansion (including coverage for loss resulting from settling, cracking, shrinking or expansion) of foundation walls, floors and other parts of the structure; and

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

(4) **Builder's Risk Installation Floater.** If approved in writing by the Owner's Risk Manager, the Contractor may obtain a Builder's Risk Installation Floater in lieu of Builder's Risk Insurance at the Contractor's expense. The Contractor shall keep the Builder's Risk Installation Floater in effect during the term of this Contract for the value of materials and equipment, on a replacement cost basis, including covering all costs needed to repair the structure or Work (including overhead and profit) based on the values figured at the time of rebuilding or repairing, not at the time of loss. Such coverage shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed to in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the Owner has an insurable interest in the property to be covered, whichever is earlier. The Builders' Risk Installation Floater shall include interest of the Owner, The Contractor, Subcontractors and sub-tier Contractors in the project. The Builders' Risk Installation Floater shall be on a Special Covered Cause of Loss Form and shall include theft, vandalism, malicious mischief, faulty workmanship, labor, materials and equipment to be installed. Other coverages may be required if provided in the Contract Documents. The Builders' Risk Installation Floater shall also provide a Waiver of Subrogation against all parties named as insured, but only to the extent the loss is covered. Coverages shall be written for 100% of the completed value (replacement cost basis including labor and materials) of the work being performed or other limit as specified in the Contract Documents. [Coverage shall extend to when project materials are in off-site storage and while in transit.](#)

(5) **Insured Loss.** The owner shall have sole power and authority to adjust and settle a loss with insurers. A loss insured under the Builder's Risk Insurance or Builder's Risk Installation Floater shall be adjusted by the Owner and any payments or settlements shall be made payable to the Owner for the insureds, as their interests may appear. The Owner shall be entitled to full payment of its loss from the insurance proceeds before payment of the remainder to any other beneficiaries of the policy. The Contractor shall pay Subcontractors their just share of remaining insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors make payments to the Sub-subcontractors in similar manner.

(6) **Deductible.** Payment of the deductible on the Builders Risk policy claims is the responsibility of the Contractor and is not subject to reimbursement by the Owner. The Contractor promptly shall pay the deductible (or if the claim is less than the deductible, the amount of the claim) promptly and without offset or deduction. If the Contractor does not do so, the Owner may, in addition to other remedies, deduct and offset the amount of the deductible from the Contract Sum.

8. **Proof of Insurance.** The Contractor shall file with Owner, upon execution of the Agreement, certificates of insurance acceptable to the Owner as well as copies of all insurance policies, with all riders and endorsements, all separate exclusions, conditions and waivers, and all other amendatory documents attached, evidencing the insurance required of the Contractor by this Exhibit E. No progress payment will be due until all such Certificates and policies are furnished. All policies and certificates must be signed copies and shall contain a provision that coverages afforded under the policies cannot be materially altered (i.e., the coverage's reduced, the limits decreased, or the additional insured removed), allowed to expire, or cancelled without first giving 30 days' prior written notice to the Owner. The Contractor shall furnish to the Owner copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits. Furthermore, such policies or certificates shall verify that the policy contains coverage for blanket contractual liability including both oral and written contracts and acknowledge the indemnification provisions and liability coverages called for by this Agreement. If any of the required coverages are to renew during the period when such coverage is to remain in effect, or are required to remain in force after final payment to the Owner's prime contractor on the Project, an additional certificate evidencing continuation of such coverage shall be submitted upon renewal or with the Contractor's final invoice.

9. **Effect of No or Insufficient Insurance.** The Contractor's failure to comply with the requirements of this Exhibit E shall constitute a material breach of the Agreement entitling the Owner to terminate the Agreement for cause. In the alternative, the Owner in its sole discretion may purchase the insurance required of, but not obtained or maintained, by the Contractor pursuant to this Exhibit E and charge such costs thereof to the Contractor or deduct the costs thereof from the Contract Sum. The Owner's rights under this Paragraph shall be in addition to, and without waiver of, its other rights and remedies under the Agreement or applicable law.

10. **Waivers of Subrogation.** The Owner and the Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or the Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, the Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

1. **Limitation of This Exhibit E.** Nothing in this Exhibit E shall negate, abridge or reduce the Contractor's responsibilities or liabilities under the Agreement or applicable law, the meaning and effect of the provisions of this Exhibit E being limited to setting out the Contractor's express obligations with respect to



insurance. By requiring insurance, the Owner does not guarantee that the insurance is sufficient to cover all the risks the Contractor may face. The Contractor's liability is not limited to insurance.

2. The Contractor shall obtain, at its own expense, the minimum insurance coverage described in this Exhibit and maintain that coverage until final acceptance of the entire Project, and through the stated completed operations period as applicable. By requiring such minimum insurance, the Owner does not guarantee that the insurance is sufficient to cover all the risks the Contractor may face. The Contractor's liability is not limited to insurance. The insurance carried by the Contractor shall be the primary coverage and non-contributory, and any insurance maintained by the Owner is excess and in any event solely for damages or losses for which the Owner is responsible.

3. The Owner's specification or approval of the insurance in this Contract or of its amount shall not relieve or decrease the liability of the Contractor under the Contract documents or otherwise. Coverage's are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts.

4. Contract Sum. The Contract Sum includes the cost of any insurance required by the Contract Documents.

The remainder of this page is intentionally left blank.  
The Costs for General Conditions Matrix begins on the following page.

SECTION V - ATTACHMENTS  
 ATTACHMENT H

**COSTS FOR GENERAL CONDITIONS WORK MATRIX**

 Direct Costs/GC Work Costs  
 Matrix

Description			Construction Costs Paid by Owner		Costs Included in CM/GC Fee	Misc. Costs Paid by Owner
	Unit	Unit Price	Direct Cost of the Work	General Conditions Work		
PROJECT STAFFING/LABOR						
1 Principal In Charge	Hr.				X	
2 Project Executive (for project specific time only)					X	
3 Senior Project Manager (for project specific time only)				X		
4 Project Manager				X		
5 General Superintendent					X	
6 Project Superintendent				X		
7 Site/Area Superintendents				X		
8 Project Engineers				X		
9 Field Engineers				X		
10 General Foreman				X		
11 Working Foreman for Direct Cost of the Work			X			
12 Working Foreman for General Conditions Work				X		
13 Project Admin (in support of site personnel)				X		
14 Estimator				X		
15 Scheduler				X		
16 BIM Manager				X		
17 MEP Coordinator				X		
18 LEED Coordinator				X		
19 Safety Coordinator (site based)				X		
20 Detailer for Direct Cost of the Work			X			
21 Detailer for General Conditions Work				X		
22 Wages (including labor burden) for D-B self-performed work associated with Direct Cost of the Work			X			
23 Wages (including labor burden) for D-B self-performed work associated with General Conditions Work				X		
24 Wages (including labor burden) for all other D-B staff not specifically identified within this matrix					X	
25 All Sick Leave					X	
26 All Vacation Time					X	
27 All Disability Leave					X	
28 Subcontracts associated with Direct Cost of the Work			X			
29 Subcontracts associated with General Conditions Work				X		
30 All other subcontracts unless approved otherwise by District					X	
	SUB-TOTAL					

<b>JOBSITE OFFICE &amp; EXPENSES</b>						
31 Office Trailer Rental	Month			X		
32 Jobsite Office material costs and expendables				X		
33 District & A/E Temp Office Rental (Furnished by D-B)				X		
34 Office Furniture/Equipment				X		
35 Computers, Printers, Copiers, Software, and other IT equipment/systems					X	
36 Plans & Specifications for sub bidding				X		
37 Plans & Specifications for day-to-day job operations				X		
38 As-builts				X		
39 Warranties				X		
40 Public Notices				X		
41 Publications/Advertisements				X		
42 Postage/FedEx				X		
43 Project Photos				X		
44 Drinking water, Coffee/Tea, Ice, Cups, Snacks, Pop, etc.				X		
45 Petty Cash				X		
46 Office Supplies				X		
47 Storage Trailer rental				X		
<b>SUB-TOTAL</b>						

SECTION V - ATTACHMENTS  
 ATTACHMENT H

**COSTS FOR GENERAL CONDITIONS WORK MATRIX**

 Direct Costs/GC Work Costs  
 Matrix

Description		Unit	Unit Price	Construction Costs Paid by Owner		Costs Included in CM/GC Fee	Misc. Costs Paid by Owner
				Direct Cost of the Work	General Conditions Work		
INSURANCE & BONDS							
48	Insurance GL (in accordance with District contract only)	Imp		X			
49	Builder's Risk	Imp		X			
50	General Contractor Bond	Imp			X		
51	Subcontractors Bonds	Imp		X			
	SUB-TOTAL						
PERMITS							
52	Demolition/Haz Mat/Haul Permit			X			
53	Noise Permit			X			
54	Grading Permit						X
55	Foundation Permit						X
56	Building Permit						X
57	Tree Permit			X			
	SUB-TOTAL						
TEMPORARY FACILITIES & UTILITY EXPENSES							
58	Mobilization/Demobilization				X		
59	Project Signage				X		
60	Temporary telephone/internet connection				X		
61	Temporary/Haul Roads and Work Pads				X		
62	Temporary Utility bills				X		
63	Temporary Toilets				X		
64	Temporary Water				X		
65	Temporary Fencing				X		
66	Temporary Enclosures (Inc. covered walkways & lights)				X		
67	Temporary Stairs				X		
68	Temporary Power & Equipment				X		
69	Temporary HVAC Service & Equipment				X		
70	Temporary Storage Facilities				X		
71	Temporary Road				X		
72	Weather Protection				X		
	SUB-TOTAL						
PROFESSIONAL & VARIOUS SERVICES							
73	Soil Report						X
74	Testing and Inspections						X
75	Facility Training				X		
76	Value Engineering				X		
77	Legal					X	
78	Photography				X		
79	Computer					X	
80	CPM					X	
81	Layout & Surveying				X		
82	Accounting/Data Processing					X	
83	Engineering					X	
	SUB-TOTAL						

SECTION V - ATTACHMENTS  
 ATTACHMENT H

**COSTS FOR GENERAL CONDITIONS WORK MATRIX**

 Direct Costs/GC Work Costs  
 Matrix

Description		Unit	Unit Price	Construction Costs Paid by Owner		Costs Included in CM/GC Fee	Misc. Costs Paid by Owner
				Direct Cost of the Work	General Conditions Work		
SAFETY & SITE SECURITY							
84	Safety meeting & Stand-downs				X		
85	Safety Treatments & Arrangements				X		
86	Safety equipment for D-B personnel. Subs provide own in COW				X		
87	First Aid Kits & supplies for D-B personnel. Subs provide own in COW.				X		
88	Safety railing and nets				X		
89	Safety Signage				X		
90	Hard Hats, Goggles, Gloves, etc.				X		
91	Security				X		
92	Flagging/Traffic control				X		
93	Opening Protection				X		
94	Barricades & Lights				X		
95	Walkie Talkies				X		
	SUB-TOTAL						
POLLUTION CONTROL							
96	Dust Control				X		
97	Noise Control				X		
98	Erosion Control				X		
99	Pollution Control				X		
	SUB-TOTAL						
TRANSPORTATION, HANDLING, CONVEYANCE & FREIGHT							
100	Project Vehicle Rental	Day			X		
101	Project Vehicle Fuel/Maintenance				X		
102	Parking/Shuttles				X		
103	Personal Vehicle Mileage				X		
104	Man-lift Materials and Rental				X		
105	Man-lift Erect/Dismantle				X		
106	Man-lift Operator				X		
107	Crane Rental				X		
108	Forklifts				X		
109	Freight & Transport Costs (Inc. manpower, Overseas Freight, Inland Trucking, Customer Clearance, Brokerage Fee)				X		
110	Trash Chute				X		
111	Miscellaneous Hauling & Errands				X		
112	Material Handling & Distribution				X		
113	Dump Permits/Fees				X		
114	Trash Removal/Hauling				X		
	SUB-TOTAL						

SECTION V - ATTACHMENTS  
 ATTACHMENT H

**COSTS FOR GENERAL CONDITIONS WORK MATRIX**
**Direct Costs/GC Work Costs Matrix**

Description			Construction Costs Paid by Owner		Costs Included in CM/GC Fee	Misc. Costs Paid by Owner
	Unit	Unit Price	Direct Cost of the Work	General Conditions Work		
EQUIPMENT & RENTALS & MAINTENANCE						
115	Material & Equipment related to Direct Cost of the Work			X		
116	Rental- Contractor Owned Equip (less than \$2000 will be purchased)			X		
117	Flatbed Truck Rental/Operation				X	
118	Flatbed Fuel/Maintenance				X	
119	Mobile Crane				X	
120	Tower Crane				X	
121	Tower Crane Foundation				X	
122	Man hoist				X	
123	Man hoist Foundation				X	
124	Truck				X	
125	Forklift				X	
126	Generators				X	
127	Pumps				X	
128	Fuel				X	
129	Maintenance				X	
130	Water Truck (for general site maintenance)				X	
131	Air Compressor (for general maintenance)				X	
132	Water Pumping Equipment				X	
133	Other Dewatering Equipment				X	
134	Equipment Rental- Third Party			X		
	SUB-TOTAL					
SMALL TOOLS						
135	Small Tools & Maintenance (less than \$2000 will be purchased)				X	
	SUB-TOTAL					
CLEAN UP						
136	Periodic Cleanup				X	
137	Final Cleanup				X	
138	Rubbish Service				X	
	SUB-TOTAL					
MISCELLANEOUS & OTHER						
139	Travel, Hotel, Per Diem and related Costs for District requested travel				X	
140	Travel, Hotel, Per Diem and related Costs for site based staff				X	
141	Bonuses					X
142	Warranty					X
143	Entertainment					X
144	Company Meeting					X
145	Company Sponsored Party					X
146	Corrective Work not due to Contractor Fault					X
147	All Other Corrective/Non-Conforming Work					X
	SUB-TOTAL					
	PROJECT TOTAL					

**NOTE: Anything not specifically delineated herein is considered a part of the General Conditions Work**