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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*.

# 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)*

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THE ARCHITECT:

*(Name, legal status and address)*

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

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

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

#### **§ 1.1.2 The Contract**

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

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

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

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

## § 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

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

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

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

in the Contract Sum or Contract Time, according to the Drawings and/or Specifications. The Contractor shall not be entitled to an increase in the Contract Sum or Time arising out of an error or conflict where the Contractor failed adequately to review the Contract Documents and timely report the error or conflict to the Owner. If a conflict, inconsistency, discrepancy or ambiguity nonetheless remains, the Contractor shall provide written notice thereof to the Architect and the Owner. Thereafter, unless otherwise ordered in writing by the Architect, the Contractor shall provide the better quality of, and the greater quantity of, the Work. The provisions of this Section 1.2.5 shall apply only to conflicts, inconsistencies, discrepancies or ambiguities in express requirements of the Drawings and Specifications and not to interpretations thereof by the Owner or the Architect.

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

### **§ 1.3 Capitalization**

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

### **§ 1.4 Interpretation**

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

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

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

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

### **§ 1.6 Notice**

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

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

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

If the parties intend to transmit Drawings or Specifications or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

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

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

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. Changes to the Contract involving modifications to the Contract Time or Contract Sum must be signed by an authorized representative of the Owner. The term "the Owner" means the Owner or the Owner's authorized representative.

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

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

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

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

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

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

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

**§ 2.3.4.1** The Contractor shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Contractor shall

coordinate with utility and other involved third-party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

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

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

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

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

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

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

#### **§ 2.6 Controls**

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

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

preserve such records for a period of at least three years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract.

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

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

### § 2.7 Nonwaiver of Rights By the Owner

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

## ARTICLE 3 CONTRACTOR

### § 3.1 General

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

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

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

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

§ 3.1.4 The Contractor shall be and operate as an independent contractor under this Contract and in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. In no event shall the Contractor be authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner. The Contractor accepts the relationship of trust and confidence between Contractor and the Owner and agrees to furnish its best professional skill, judgment and efforts to accomplish the Work in an expeditious manner consistent with the best interests of the Owner. Contractor acknowledges that it has a relationship of special trust with the Owner, and that the Owner is relying on Contractor's expertise in entering into this Contract. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Contractor as an agent for or joint venturer with the Owner. The Contractor shall (a) record the progress of the Work; (b) submit to the Owner a written progress report every month; (c) submit to the Owner such reports and notifications as the Owner may reasonably request from time to time; and (d) keep a daily log of information reasonably relevant to the Work.

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

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

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

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

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

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

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

**§ 3.2.5** Notwithstanding any other provision of the Contract, the Contractor hereby specifically acknowledges that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein in order to enter into the Contract, and that the Drawings, the Specifications and all Addenda and other Contract Documents are sufficient to enable the Contractor to perform the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations and otherwise to fulfill all of its obligations hereunder. The



Owner disclaims any warranty, express or implied, as to the adequacy of the Contract Documents. The Contractor further acknowledges that (a) it has visited and made a thorough examination of the jobsite and existing documentation, (b) it has examined all conditions affecting the Work, (c) it has reviewed necessary tests, surveys, studies and reports and all other conditions which might reasonably affect the progress of the Work as the Contractor deems advisable, and that it has satisfied itself by such review, (d) having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized, (e) the Contract Sum includes payment for all Work that may be necessary to overcome unanticipated conditions that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized, and (f) except as otherwise expressly provided for herein, no Claim for unforeseen or unforeseeable conditions or limitations that exist or may arise affecting the Work or difficulties in performing the Work will be accepted, nor shall it give rise to a Claim, nor shall it constitute an excuse or basis for any failure or omission by the Contractor or for extra compensation, or as a basis for an extension of time in which to complete performance of the Contract. By executing this Contract, the Contractor represents and acknowledges that the Contract Sum is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that it has carefully examined the contract documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor to acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the Contract Sum. The Contractor acknowledges that having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized.

### § 3.3 Supervision and Construction Procedures

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

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

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

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

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

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

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

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

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

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

#### § 3.4 Labor and Materials

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

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

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

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

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

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order and civil and appropriate conduct among the Contractor's and Subcontractors' employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall not permit at the site of the Work the use of alcohol, tobacco, or vaping, illegal use of drugs or other controlled substances, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, or their respective contractors. The Contractor agrees to take prompt and effective corrective action in the event of violations of these standards of conduct.

§ 3.4.4 The Owner may require in writing the Contractor to immediately remove from the Work any employee or other person carrying out the Contract that the Owner considers objectionable. To the fullest extent permitted by Law, the Contractor shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by the Owner, nor shall such removal relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

§ 3.4.5 The Contractor shall coordinate, supervise and otherwise administer the Work so as to maintain labor harmony between and among the trades performing the Work and so as to avoid lockouts, strikes and other labor-related events or circumstances which delay or otherwise impact the Work; provided that the Contractor's obligations under this Section 3.4.5 shall be limited to events and circumstances which occur substantially where the Work is performed or which result substantially from the actions of persons or entities performing the Work.

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

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

§ 3.4.8 **No Unsupervised Contact with Students.** "Unsupervised contact with students" means contact with students that provides the person opportunity and probability for personal communication or touch when not under direct supervision by the Owner. The Contractor will ensure that the Contractor, subcontractors and suppliers at any tier, and their officers, agents, and employees will have no direct unsupervised contact with students while on the Owner's property. The Contractor will work with the Owner to ensure compliance with this requirement. If the Contractor is unable to ensure through a security plan that none of its and its subcontractors and suppliers officers, agents, or employees will have direct, unsupervised contact with students in a particular circumstance or circumstances ("Unavoidably Unsupervised Workers"), the Contractor shall so notify the Owner prior to beginning any Work that could result in such contact. The Contractor authorizes the Owner to conduct a criminal background check of any such officer, agent, or employee. The Contractor also agrees to cause its subcontractors and/or suppliers and all employees, if any, that might have unsupervised contact with students to authorize the Owner to conduct such background checks, and to identify the same to the Owner prior to their entry onto the Project. The Owner shall pay any fees for the background check assessed by the Oregon Department of Education for processing the background check. If fingerprinting is required by law, the Contractor shall arrange for such fingerprinting through local law enforcement agencies and for reporting and recordkeeping of the same as and to the extent required by law, including as required under Oregon SB155, OAR 581-021-0511 and applicable Owner rules, policies and procedures. If fingerprinting is required the cost will be borne solely by the Contractor without reimbursement. In addition, the Contractor shall comply with all other Oregon Senate Bill 155 requirements and any requirements of the Owner related to Senate Bill 155, including, but not limited to, providing Owner requested information for all of the Contractor's or its subcontractors' or supplier's employees, volunteers, or agents, and providing such requested information for new employees, volunteers, or agents before they begin work. The Contractor will discuss any questions or concerns about these requirements with the Owner's designated Point of Contact before beginning Work. Compliance with this Section 3.4.8 shall not be grounds for any increase in compensation nor extension of the Contract Time. Failure of compliance by the Contractor or any subcontractor or supplier shall be grounds for immediate termination of this Contract by Owner for cause.

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and the Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents, will be performed in a good and workmanlike manner in accordance with manufacturer specifications where applicable, and will be free from defects, and that all materials and equipment selected by the Contractor or Subcontractor will be

suitable for the purposes indicated in the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Notwithstanding the above, the contractor's warranty for all elements of the work shall hold regardless of normal wear and tear. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. This warranty shall be in addition to any other warranties required by the Specifications or provided by law. The Contractor shall assign to the Owner all other warranties at the time of final completion of the Work.

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

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

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

### **§ 3.6 Taxes**

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

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

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

to the Architect and the Owner as soon as it is issued. Upon final completion, the Contractor shall deliver to the Owner all original permits, licenses and certificates of occupancy with photocopies to the Architect.

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

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

§ 3.7.4 In addition to Contractor's indemnification and other obligations set forth in this Agreement, and its confirmation that Contractor is acting as an independent contractor, Contractor will defend, indemnify and save harmless the Owner and its separate contractors, consultants, and agents and employees of any of them against any and all settlement amounts and all liabilities, costs, losses, damages, fees (including attorney fees), and expenses in connection with any third-party legal proceeding (including administrative action, enforcement action, or other conduct or allegation by an individual, the Internal Revenue Service, or any state or local government agency or any other court, entity, or agency) asserting or predicated upon an alleged employment relationship or co- or joint employment relationship between any employees of Contractor or subcontractors at any tier (or such individual's or entity's employees or subcontractors) and any of the indemnified parties, or any obligation of the indemnified parties to pay or provide wages, withholding or employee benefits.

#### § 3.7.5 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten (10) days after first observance of the conditions; otherwise Contractor's Claim will be barred. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner or the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner or Architect shall promptly notify the Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15. No increase to the Contract Sum or Contract Time shall be allowed if the Contractor knew of the concealed conditions prior to its executing the Contract or such conditions were reasonably discernable from the bidding documents or a careful review of the project site. If the Contractor encounters such a condition, and proceeds to perform any additional work or incur any additional jobsite costs in regard to such condition without prior written direction from the Owner, Contractor will be deemed to have acknowledged that such condition does not entitle Contractor to any additional compensation or extension of the Contract Time.

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

#### § 3.8 Allowances

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

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

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

### **§ 3.9 Superintendent**

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

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

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

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

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

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

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

value to each task on the schedule unless the Owner elects to waive this requirement in writing. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The construction schedule shall be updated by Contractor to reflect actual conditions on a period described elsewhere herein. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to adjust the schedule to correct the delay, including overtime and/or additional labor, if necessary. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

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

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

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

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

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



### § 3.10.6 Progress Meetings

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

### § 3.10.7 Reports

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

### § 3.11 Documents and Samples at the Site

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

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

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

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

condition for approval of progress payments. Notwithstanding the completion of the as-built drawings and any review and correction of such drawings by Contractor, neither the Architect nor Contractor shall be relieved of any responsibility each has under its contract with District for the execution and completion of Work in compliance with the Contract Documents.

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

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

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

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

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

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

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

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

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's or the Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and the Owner in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's and the Owner's approval or review thereof. The Contractor shall be solely responsible for errors or omissions in all submittals and Shop Drawings, whether or not the submittals and Shop Drawings have been reviewed or approved by the Architect or the Owner.

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

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

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

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

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

### **§ 3.13 Use of Site**

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

**§ 3.13.1** The Owner shall have the exclusive rights to approve of any signs erected at the Project, including without limitation signs placed on cranes or other equipment, company names, advertising on trailers, or other signs. The

Contractor and all subcontractors shall notify the Owner before signs are erected and shall obtain approval of their placement. No signs or advertising media of any nature shall be permitted on the site of Work or enclosing structures without the written approval of the Owner. Any approved signs shall comply with the applicable laws, ordinances, and/or rules. Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representations of the Owner, except with prior specific written authorization from the Owner.

### **§ 3.14 Cutting and Patching**

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

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

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

### **§ 3.15 Cleaning Up**

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

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

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

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

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

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, protect, defend and hold harmless, and reimburse the Owner, the Architect, the Architect's consultants, and the members, partners, officers, directors, agents, employees, volunteers, and successors of any of them from, for and against suits, actions, awards, penalties, liabilities, claims, damages, losses, costs, and expenses, direct and indirect, or consequential, whether directly incurred or from third parties, including but not limited to attorneys' fees, costs, design professional fees, consultant and expert witness fees and other costs incurred on such claims, and in proving the right to indemnification arising out of or resulting from performance of the Work, including but not limited to any such suit, action, award, penalty, liability, claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property in any event to the extent caused, in whole or in part, by (1) the negligent or other wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable or (2) the failure of such person or entities to perform in accordance with the Contract. The Contractor's obligation under this Article 3 shall include damage to the Owner's own property and the Project itself, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor's duty of defense shall arise immediately upon assertion of any claim actually or allegedly covered by this indemnification provision, and, to the fullest extent allowed by law, shall be independent of any limitations upon Contractor's duty of indemnification.

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

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

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

### § 4.2 Administration of the Contract

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

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

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

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

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

#### § 4.2.4 Communications

The Contractor shall endeavor to communicate through the Architect about matters arising out of or relating to the Contract; provided that the Owner and Contractor may communicate directly with each other at any time regarding the Project. Communications by and with the Architect's consultants shall be through the Architect with copies to be given to the Owner's Representative. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

§ 4.2.6 The Owner and the Architect, after consultation with the Owner, will have authority to reject Work that is defective or does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, and after obtaining the Owner's permission in each instance, the Architect will have authority to require inspection or testing of the Work in accordance with Section 13.4, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Owner to the Contractor, Subcontractors, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Contractor shall provide submittals for review so as to cause no delay in the Work. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for fabrication, installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the

Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the Contract Documents. The Architect's review is undertaken solely to satisfy its obligations to the Owner and shall not give rise to any claim by the Contractor or Subcontractors against the Architect or the Owner. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Neither the Owner nor the Architect can guarantee response times from governmental authorities.

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site or to supply materials or equipment. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor. Unless the context indicates otherwise, the term "Subcontractor" also includes subcontractors, suppliers

and consultants of the Contractor at all tiers, including subcontractors, suppliers and consultants of other Subcontractors. The term “Subcontractor” does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or already-submitted first-tier disclosure, the Contractor, as soon as practicable after Notice of Intent of award of the Contract, shall notify the Owner and the Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specifications Sections, and state the Work category followed by the name of the Subcontractor and/or fabricator (or “Contractor” where the portion of the Work is by the Contractor’s own forces). The list shall be accompanied by evidence of any qualifications required within the technical Sections of the Project Manual and satisfactory to the Architect and the Owner. This list shall be updated monthly as part of the payment process if additional Subcontractors of any tier are engaged. No progress payment will become due until this information is so furnished. No action or inaction of the Owner or the Architect in response to receipt of the names of the proposed Subcontractors or Suppliers of any tier shall constitute approval of any Subcontractor or Supplier of any tier or of its performance. Within 14 days of receipt of the information, the Owner may notify the Contractor whether the Owner (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection. If the Owner concludes that a proposed Subcontractor has materially failed to perform satisfactorily (such as causing a material delay or an unsafe working environment) on one or more projects for the Owner within three years of the bidding date or that a proposed Subcontractor is otherwise not “responsible”, at the Owner’s request, objection will be deemed reasonable and the Contractor shall replace the Subcontractor.

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

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

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

## § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each first-tier Subcontractor, to the extent of the Work to be performed by the first-tier Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the first-tier Subcontractor’s Work that the Contractor, by these Contract Documents, assumes toward the Owner and



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

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

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

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

#### **§ 5.4 Contingent Assignment of Subcontracts**

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontracts, purchase orders and similar subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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

§ 5.4.5 Contractor shall assign to Owner, from time to time as Owner may request, all assignable guaranties, warranties and indemnities by any Subcontractor or Sub-subcontractor or any person providing material, equipment or services in connection with the Work. Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### § 5.5 Subcontractors as Assignees and Third-Party Beneficiaries

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

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

### ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner (as to the Owner's own forces) or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

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

#### § 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly

notify the Architect and the Owner in writing of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to so notify the Architect and the Owner of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not actually or readily apparent unless reasonably discoverable.

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

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

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

### § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### § 7.2 Change Orders

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

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

§ 7.2.2 The form of Change Orders shall be AIA Document G701, Change Order.

§ 7.2.3 If the Change Order provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation. At a minimum, the Contractor shall submit an itemized breakdown of the cost and/or time required by the Change in the Work, including but not limited to, the following:
  - .a Material quantities and costs.
  - .b Direct labor hours and hourly rates for specific work or operation to be performed.
  - .c Equipment costs or rental charges.

- .d Specified overhead and profit.
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 As provided in Section 7.5; or
- .4 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .5 As provided in Section 7.3.7.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner or at the Owner's election, the Architect, and signed by the Owner and at the Owner's election, the Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Sections 7.3.4 and 7.5.

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

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

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change (but in any event excluding Corporate Activity Tax); and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5.2 As to CM/GC contracts only, the terms used in Section 7.3.5.1, including but not limited to Items .1 through .5, shall be subject to the provisions of Articles 7 and 8 of the Agreement.

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

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

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

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

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

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

**§ 7.3.12** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect or the Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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

#### **§ 7.4 Minor Changes in the Work**

**§ 7.4.1** The Architect and the Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and/or Owner and shall be binding on the Owner and Contractor unless objected to by Owner prior to implementation of the change. The

Contractor shall carry out such written orders promptly and the Contractor shall be entitled to no additional compensation and no change in the Contract Time as a result thereof.

### §7.5 Pricing Components

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

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

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

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

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

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

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

§ 7.5.5 Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined as the lesser of the manner stated in their Subcontract, or in the manner as prescribed in this Section 7.5 (and, if this is a CM/GC contract, as further limited pursuant to Sections 4 and 5 of the A133 Agreement).

§ 7.5.6 Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (excluding the project manager, project engineers, project foreman, superintendent, safety costs, small or hand tools or expendable charges, to the extent within the defined Cost of the Work), taxes (except for sales and use tax), warranty, safety costs, quality control/assurance, purchasing, small or hand tool or expendable charges,

preparation of as-built drawings, impact on unchanged Work, Claim preparation, and delay and impact costs of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. The total aggregate amount of Fee allowed on Work performed by Contractor's own forces shall be limited to Contractor's original Fee percentage of the allowed costs of the change in the Work, but not more than 10% of the allowed costs of the change in the Work. The Contractor also shall receive the Fee identified in clause (2) below (or if less, Contractor's original fee percentage) on the amount owed directly to a Subcontractor or Supplier for materials supplied or work properly performed by that Subcontractor or Supplier.

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

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

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

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

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

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

#### **§ 7.6 Change Proposals**

Within the time limits set out in this Section 7.6, after receipt of a Request For Change Order Proposal or a Construction Change Directive, the Contractor shall submit to the Owner and the Architect a written Change Order Proposal setting out any proposed adjustment in the Contract Sum or Contract Time, or both, to which the Contractor believes it (1) would be entitled as a result of the change in the Work proposed in the Request For Change Order Proposal or (2) is entitled as a result of the change in the Work directed by the Construction Change Directive. Such Change Order Proposal may be in the form of a lump sum proposal (with adequate cost substantiation as required by the Owner and calculations showing the amount of markups on costs), or a unit price proposal, or a combination thereof, for a proposed increase in the Contract Sum, and in similar form for a proposed extension of the Contract Time, and otherwise shall be in such form and in such detail as the Owner or the Architect may require. Such Change Order Proposal shall be submitted as soon as practicable after the Contractor's receipt of the Request For Change Order Proposal or the Construction Change Directive, but in no event later than thirty (30) days after the Contractor's receipt of the Request For Change Order Proposal or the Construction Change Directive.

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

## ARTICLE 8 TIME

### § 8.1 Definitions

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

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

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

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

### § 8.2 Progress and Completion

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

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

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

§ 8.2.4 If a receiving area is specified in the Contract Documents and access to it by semi-tractor/trailers for unloading purposes are not substantially complete and ready for the Owner’s use by the date specified in the Contract Documents, the Owner may incur costs and expenses for leasing of alternate space, transportation, labor, overtime, reshipment, delay, and other damages. For each calendar day after the date specified in the Contract Documents that the receiving area and access are not substantially complete and ready for the Owner’s use, liquidated damages may be payable under the Contract Documents, or in the absence of such a provision, actual damages may be payable for such late completion.

### § 8.3 Delays and Extensions of Time

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

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

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



§ 8.3.2 All claims for extension of time shall be made in writing to the Owner no more than seven (7) days after the commencement of the delay; otherwise they shall be deemed waived and barred. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and shall notify the Owner within ten (10) days after the event causing the delay has ceased. Claims relating to time otherwise shall be made in accordance with applicable provisions of Article 15.

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

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

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

### § 9.2 Schedule of Values

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

### § 9.3 Applications for Payment

§ 9.3.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application. At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or the Architect require, such as copies of requisitions, and releases and waivers from Contractor, Subcontractors and suppliers in the form of Exhibit C, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 Draft Application: On or about the 25th of each month, the Contractor shall submit to the Architect and the Owner, a report on the current progress of the Work as compared to the Contractor's Construction Schedule, and a draft, itemized Application for Payment for work performed during the prior calendar month. This draft shall not constitute a payment request or formal Application for Payment. The Contractor, the Owner, and the Architect shall confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Owner or the Architect may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the Contract Documents. The Application shall also state that prevailing wages have been paid in accordance with the mailed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, unless otherwise noted on the application. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

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

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

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

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

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

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

#### **§ 9.4 Certificates for Payment**

**§ 9.4.1** The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and the Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and the Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

#### **§ 9.5 Decisions to Withhold Certification**

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

- .1 defective or nonconforming Work not remedied; 150% of the estimated value of such defective Work may be withheld;
- .2 third party claims, including but not limited to construction lien claims and bond claims, filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, services, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor or third party;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8 failure of the Contractor to submit updates of the Contractor's construction schedule as required by Section 3.10.1.1;

- .9 failure to submit affidavits pertaining to wages paid as required by statute; failure of the Contractor to provide satisfactions of claims of mechanics', material suppliers', design professionals', construction or similar liens or claims;
- .10 failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment; failure of the Contractor to provide waivers and releases from the Contractor and first-tier Subcontractors;
- .11 liquidated damages; or
- .12 any other grounds for withholding under this Contract or at law.

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

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

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

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

#### § 9.6 Progress Payments

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

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

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

§ 9.6.2.2 Should the Contractor withhold payment from a first-tier Subcontractor due to a bona fide dispute, the Contractor shall notify the Owner. The Owner may then withhold such funds from the Contractor until the dispute is resolved; provided that this Section 9.6.2 shall not be construed or applied to prevent the Contractor from receiving payment from the Owner for Work performed by the Contractor or by another Subcontractor when such Work is the subject of a backcharge by the Contractor against the Subcontractor involved in the bona fide dispute. In accordance with ORS Chapter 279C, unless payment is subject to a good-faith dispute as defined in ORS Chapter 279C, if Contractor or any first-tier Subcontractor fails, neglects, or refuses to make payment to person or entity furnishing

labor or materials for this Project within thirty (30) days after receipt of payment from the Owner, the Contractor or first-tier Subcontractor shall owe the person or entity the amount due plus interest charges commencing at end of ten (10) day period that payment is due, unless payment is subject to good faith dispute as defined in ORS Chapter 279C. The rate of interest charged shall be equal to three (3) times the discount rate on ninety (90) day commercial paper in effect at Federal Reserve Bank on the date thirty (30) days after date payment was received from the Owner, but the rate of interest shall not exceed thirty percent (30%). The amount of interest may not be waived. Additionally, if Contractor or any Subcontractor fails, neglects, or refuses to pay person or entity furnishing labor or material for the Project, the person or entity may file a complaint with the Construction Contractors Board, unless payment is subject to a good-faith dispute as defined in ORS Chapter 279C. The payment of a claim in the manner authorized in this Section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

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

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

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

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

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

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

§ 9.6.9 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner may notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, Subcontractors, or anyone else for whose acts or omissions any of them are responsible, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor the required undisputed amount within seven days after the date established in the Contract Documents, the amount certified by the Architect or

awarded by binding dispute resolution, then the Contractor may, upon fourteen (14) additional days' written notice to the Owner and the Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. Contractor shall have no right to stop or suspend the Work, withhold services or Work, or terminate this Agreement if Contractor timely is paid all undisputed amounts after applicable withholdings, and if so paid, Contractor shall proceed with the performance of its obligations hereunder with reservation of rights, but subject to the other terms of this Agreement regarding assertion of Claims.

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the latest of (a) the stage in the progress of the Work when the Work or designated portion thereof (which the Owner shall have agreed to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including without limitation issuance of a temporary certificate of occupancy or passage of any necessary governmental inspection; or (b) the date of Owner's receipt of the Certificate of Substantial Completion from the Architect. The Work will not be considered Substantially Complete if appropriate cleaning has not occurred, if all systems and parts are not commissioned and usable, including balancing of the HVAC system, if utilities are not connected and operating normally, if all required occupancy permits or inspections have not been issued and/or passed, or if the Work is not safely accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, not does such occupation toll or change liquidated damages owed to the Owner. All Work other than incidental corrective or Punchlist Work and final cleaning shall have been completed, including but not limited to the following:

- .1 Obtain temporary occupancy permits, pressure vessel permits, elevator permits, all specialty permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- .2 Submit the Contractor's Punchlist of items to be completed or corrected and written request for inspection.
- .3 Complete items identified by architect and engineers Punchlist.
- .4 Complete final start-up, testing, and instruction and training sessions on all major building systems, including but not limited to HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security and clocks, lighting controls and elevators.
- .5 Submit for review final O&M manuals, as-builts, and warranties. Warranties to state start of warranty is established by the posted date of Substantial Completion.
- .6 Turn over all extra stock to the Owner.
- .7 Make final changeover of locks and transmit new keys to the Owner and advise the Owner of the changeover in security provisions.
- .8 Discontinue or change over and remove temporary facilities and services from the Project site.
- .9 Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- .10 Complete building commissioning as required by the Specifications.

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

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect or Owner will make an inspection to determine whether the Work or designated portion thereof (which the Owner has agreed to accept separately) is Substantially Complete. If either the Architect's or Owner's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect and/or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and/or Owner to determine Substantial Completion.

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

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

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

- .1 HVAC system;
- .2 Electrical system;
- .3 Data communication system(s);
- .4 Intercom system, the life safety system(s);
- .5 Security system.

When the Contractor considers that the Critical Systems are up and running and ready for normal operation as specified for each Phase, the Contractor shall so notify the Architect and Owner in writing a minimum of seven (7) days prior to the Date of Substantial Completion for that portion or Phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection of these systems to determine whether the Critical Systems are complete and ready for normal operation. If the Architect's or Owner's inspection discloses that the Critical Systems are not Substantially Complete or that any item which is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Critical Systems and pay the costs associated with the re-inspections, including fees of the Architect and its consultants. When the Critical Systems are ready for operation, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Warranties on the Critical Systems required by the Contract Documents shall commence on the later of the Date of Commissioning or Date of Substantial Completion, unless otherwise provided in the Contract Documents. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

## **§ 9.9 Partial Occupancy or Use**

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

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and the Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

## § 9.10 Final Completion and Final Payment

### § 9.10.1

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

### § 9.10.2 Final Acceptance And Payment

- .1 Neither final payment nor any remaining retained percentage shall become due until the Owner has formally accepted the Project. To achieve final acceptance, the Architect must issue a Certificate of Final Completion and a final Certificate for Payment under Section 9.10.1, a final occupancy permit must have been issued or all governmental inspections necessary for use and occupancy must have been unconditionally made and passed (as applicable), and the Contractor must have submitted to the Architect:
  - (a) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in anyway be responsible or encumbered have been paid or otherwise satisfied, except for any claims of Subcontractors of any tier that are specifically identified on the affidavit;
  - (b) A certificate evidencing that insurance required by the Contract Documents shall remain in force 30 days after final payment is due is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
  - (c) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
  - (d) Consent of surety, if any, to final payment;
  - (e) Certification that the materials in the Work are "lead-free" and "asbestos-free";



- (f) All warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, as-built drawings and other documents or items required by the Contract Documents;
  - (g) Originals of all permits, licenses and certificates, together with a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health departments and utilities, provided to Owner with a copy of all closed or signed off permits,
  - (h) Proof satisfactory to Owner that the Contractor has fully complied with the requirements of ORS 279C.845(7); and
  - (i) That, if the Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor has complied with the requirements of ORS 279A.120.
- .2** If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may:
- (a) Retain funds in such amount as to defray the cost of the claim or of foreclosing the lien or bond assertion of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or
  - (b) Accept a bond from the Contractor satisfactory to the Owner to indemnify the Owner against such claim or lien.

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

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

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

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

#### **§ 9.10.4 Waiver of Claims**

- .1** Final Payment to Contractor: Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing, not previously settled or waived, and identified by that payee as unsettled at the time of final Application for Payment.
- .2** Change Orders: The execution of a Change Order shall constitute a waiver of Claims by the Contractor and all subcontractors arising out of the work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. General reservations of rights will be deemed waived and void.

#### **§ 9.11 Records**

The Contractor shall maintain books, records, documents, and other evidence pertaining to the costs incurred by the Contractor in connection with or related to the Contract ("Records") to such extent and in such detail as will properly reflect and fully support all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor shall preserve such records for a period of three

years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. In the event of a claim or dispute the Contractor agrees to make available at the office of the Contractor at all reasonable times all records for inspection, audit and reproduction by the Owner and its representatives. These requirements shall be applicable to and included in each Subcontract and purchase order issued with respect to the Work, except fixed price Subcontracts where the price is \$25,000 or less.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

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

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

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

### **§ 10.2 Safety of Persons and Property**

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

- .1 employees and others performing labor or services or furnishing materials or equipment on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property and structures at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors.

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

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

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 through 10.2.1.4 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to the negligent or other wrongful acts or omissions of the Owner or the Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 The Contractor shall immediately report to the Owner and the Architect all accidents arising out of or in connection with the Work which cause death, serious personal injury or substantial or significant property damage. The Contractor shall promptly thereafter submit a written report of such accident, giving full details and statements of any witnesses.

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

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

**§ 10.2.11 Injury or Damage to Person or Property**

The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner. Written notice of the injury or damage, whether or not insured, shall be given to the Owner within a reasonable time not exceeding seventy-two (72) hours after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

§ 10.2.12 Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents.

§ 10.2.13 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in

the performance of the Work or designated portion, and all Work in process and completed Work or designated portion. Contractor shall not permit open fires or smoking on the Project site.

### § 10.3 Hazardous Materials and Substances

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

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

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

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

§ 10.3.4 The Contractor shall indemnify and reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.5 If, without negligence on the part of the Contractor, Subcontractor, or anyone for whose acts or omissions any of them are responsible, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

#### § 10.4 Emergencies

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

#### § 10.5 Spill Responsibility

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

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

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

§ 10.5.3 The Contractor shall be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Contractor's (i) fault or (ii) failure to perform in accordance with the Contract Documents. Nothing in this Section 10.5 shall limit the Contractor's liability or responsibility under any other provision of the Contract Documents.

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

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

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 Contractor's Liability Insurance**

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

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

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

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

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

### **§ 11.3 Performance Bond and Payment Bond**

**§ 11.3.1** The Contractor shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum. The form of the bonds shall be as set out in the procurement documents and the identity of the surety shall be acceptable to the Owner in its reasonable discretion. The Contractor shall deliver the required bonds to the Owner prior to or with the signed (by the contractor) Agreement to the Owner Representative at the address of the first page of this Agreement. The Contract shall not be executed by the Owner until the bonds have been received and validated.

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

### **§ 11.3.3 Power Of Attorney**

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

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

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

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

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 Uncovering of Work**

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

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

### **§ 12.2 Correction of Work**

#### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or the Owner as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and the Owner's attorneys' fees and related costs, disbursements and expenses made necessary thereby, shall be at the Contractor's expense without reimbursement from the Owner.

#### **§ 12.2.2 After Substantial Completion**

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents or by law, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall correct it at the Contractor's expense without reimbursement from the Owner promptly after receipt of written notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. During the applicable period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor on grounds of breach of warranty. The obligations of Contractor under this Section 12.2 shall survive acceptance of the Work under the Contract and termination of the Contract, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages. If the Contractor fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or the Architect, the Owner may correct it in accordance with Section 2.5. If payment of the Contract Sum has already been made by the Owner then upon demand the Contractor shall reimburse the Owner pursuant to Section 2.5. Without voiding specified warranties or relieving the Contractor of its responsibilities under this Section 12.2.2, the Owner reserves the right to make repairs as necessary to maintain the structure and its contents and operability. In addition:

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

§ 12.2.2.2 The period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion of the Work as a whole by the period of time between Substantial Completion of the Work as a whole and the actual completion of that portion of the Work.

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

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is defective or not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The Owner shall never be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases the Owner shall be entitled to full removal and correction of defective or non-conforming Work.

### § 12.4 Effect of Observations and Approvals of the Work

§ 12.4.1 The Contractor shall not be relieved from its obligations to perform the Work pursuant to the Contract Documents, or from responsibility for defects or nonconformities in the Work, either by the observations or reviews



of the Work by the Owner, the Architect or other persons or entities or by other inspections, tests or approvals of the Work by any agency, entity or person.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

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

### **§ 13.2 Successors and Assigns**

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

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

### **§ 13.3 Rights and Remedies**

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

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

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

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

### **§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall schedule and make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded, unless the test, inspection or approval arises from the fault of the Contractor or a Subcontractor or supplier, except as provided in Section 13.4.3. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

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

### § 13.5 Interest

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

### § 13.6 Time Accrual of Claims

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

### § 13.7 Exculpatory Provision

No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against any affiliate, partner, member, officer, director, trustee or beneficiary of the Owner on account of any agreement contained in the Agreement or any other Contract Documents, whether expressed or implied. Liability with respect to the entry and performance of this Agreement and all other Contract Documents, however it may arise, with respect to the Owner shall be asserted and enforced only against the Owner, and Contractor shall have no recourse to any assets of any affiliate, partner, member, director, officer, employee, trustee, beneficiary or other representative of

the Owner. Any and all personal liability, if any, beyond that which may be asserted against the Owner is expressly waived and released by Contractor and by all persons or entities claiming by, through and under Contractor.

### **§ 13.8 Interpretation**

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

### **§ 13.9 Survival**

**§ 13.9.1** All rights and obligations set out in the Contract shall survive completion of the Project or termination of the Contract (1) as to the parties rights and obligations that arose before such completion of the Project or termination and (2) as is necessary to give effect to rights and obligations that arise after such completion of the Project or termination but derive from a breach or performance failure that occurred accrual would be under appropriate law before such completion of the Project or termination.

### **§ 13.10 Waiver, Amendment and Extension; Rights**

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

### **§ 13.11 Extent of Contract**

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

### **§ 13.12 Severability**

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

### **§ 13.13 Counterparts**

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

### **§ 13.14 Authority**

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

### **§ 13.15 Representations**

Contractor represents that (1) it has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) it has reviewed, analyzed, and has current knowledge of the site; and (3) it has reviewed, analyzed, and has found sufficient for completion of the Work the Contract Documents. Contractor acknowledges and warrants that any exceptions to this representation have been specifically identified in the Contract Documents.

### **§ 13.16 Operation and Maintenance Manuals**

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

### § 13.17 Training

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

### § 13.18 Compliance with All Governmental Laws and Regulations

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

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

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

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;

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

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of entire days scheduled for the Work completion, or 180 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner, and if the Owner fails to cure such reason during the seven (7) day period, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work executed, and costs incurred by reason of such termination.

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

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, at least seven (7) days' written notice, terminate the Contract in whole or in part and may end employment of the Contractor and may:

- .1 Exclude the Contractor from the site and take possession of all or a portion of materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of some or all subcontracts pursuant to Section 5.4; and
- .3 Finish the Work or a portion thereof by whatever reasonable means and method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the Owner completes the Work and costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived exceeded the unpaid Contract Sum, such excess shall be paid by the Contractor to the Owner. Contractor shall be responsible and shall pay all the Owners' claims for costs and damages upon demand, pending

reconciliation pursuant to this Section 14.2.4. The amount to be paid to the Contractor or the Owner, as the case may be, shall be determined and, at the Owner's option, certified by the Architect upon application by the Owner. This obligation for payment shall survive termination of the Contract.

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

#### § 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1 on all Work executed only. No adjustment shall be made to the extent

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

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the Contract in whole or in part for the Owner's convenience and without cause. Termination for convenience shall not impair Owner's other rights, including without limitation its rights and remedies for negligence and breach of this Agreement, and including without limitation rights of self-help, deduction and offset.

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

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

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

§ 14.4.4 If the Owner terminates for cause, the Owner at any time may, by notice to Contractor, convert the termination to a termination for convenience. In the event the Owner terminates for cause and it is determined that the Owner did not have sufficient cause for termination, such termination shall be deemed at the Owner's convenience under this Section. Termination for convenience shall not impair the Owner's other rights, including its rights and remedies for any breach of this Contract. In no event shall Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Contract by the Owner, with or without cause.

#### § 14.5 Termination and Suspension by the Owner

§ 14.5.1 In the event the Owner terminates the Contract in part under Section 14.2 or 14.4 or suspends the Contract in part under Section 14.3, the Contractor shall cooperate with the Owner and all other persons and entities performing work or services on the Project as necessary and required to facilitate the efficient and proper performance and completion of (1) the overall Project, if the Owner completes the entire Project, or (2) the portion of the Project the Owner completes, if the Owner completes less than the entire Project. In the event of a termination, the Owner expressly reserves the right to recover damages arising out of or related to Contractor's

performance of the Contract. Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 Stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
- .3 Procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 Assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, in which case the Owner shall have the right, in its discretion, to accept such assignments or any of them, and settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 With the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 Transfer title and deliver to the entity or entities designated by the Owner the fabricated or 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 years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work.

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

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

§ 14.5.4 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a claim for equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim by the Contractor for an equitable adjustment under this Section must be asserted within thirty days from the effective date of the partial termination or it shall be deemed barred.

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Claims

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

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor shall be initiated by written notice to the other party. Claims by the Contractor shall be initiated within seven (7) days after occurrence of the event giving rise to such Claim or within seven (7) days after the Contractor first recognizes or should have recognized the condition giving rise to the Claim. Unless a different period for assertion of particular Claims is specifically identified in this Agreement, Contractor must give written notice of any Claim to the Owner not later than seven (7) days after occurrence of the event giving rise to the Claim or Contractor first becomes aware of the Claim, whichever is sooner, or the Claim shall be deemed forever time barred and waived. Contractor's notice shall provide sufficient detail to enable the Owner to investigate the matter, and shall include a clear description of the Claim, the proposed change in the Contract Sum and/or Contract Time of the Claim, and data supporting the Claim. Failure to properly submit the notice of Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and subcontractors of any tier) is entitled. Prior to the initiation of a dispute resolution procedure, the Owner or its representatives shall have the right to audit and copy any subcontractor or supplier of any tier whose claim is part of or included in the Claim. All Claims shall be addressed to the Owner unless an earlier time for notice of the Claim is established under another provision of this Agreement. In addition, a copy of the Claim notice shall be sent concurrently to the Owner's Representative. All unresolved Contractor Claims shall be deemed waived and released by Contractor unless Contractor has strictly complied with the time limits of the Contract Documents.

#### § 15.1.4 Continuing Contract Performance

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

#### § 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Notice under Section 15.1.3 shall contain sufficient detail and substantiating data to permit evaluation of the Claim by the



Owner. No such Claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### § 15.1.6 Claims for Additional Time

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

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

#### § 15.2 Initial Matters

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

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

#### § 15.3 Mediation

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

dispute resolution proceedings under this Contract or applicable law. The Owner may commence binding dispute resolution at any time at the election of the Owner.

**§ 15.3.2** At the Owner's election, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement, or the Arbitration Service of Portland in accordance with its applicable Mediation Procedures in effect on the date of the Agreement as selected by the Owner ("Arbitration Service"). A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending attempted mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

#### **§ 15.4 Arbitration**

**§ 15.4.1** If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim, if not resolved by mediation (if Owner elected to mediate), shall be subject to arbitration. The arbitration, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service in accordance with the applicable Arbitration Rules of the Arbitration Service in effect on the date of the Agreement, except there shall be a single arbitrator. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

**§ 15.4.3** The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

#### **§ 15.4.4 Consolidation or Joinder**

**§ 15.4.4.1** Subject to the rules of the Arbitration Service or other applicable arbitration rules, the Owner, or with Owner approval the Contractor, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the Arbitration Service or other applicable arbitration rules, the Owner, or with Owner approval the Contractor, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

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

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

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

#### § 15.5 Attorneys' Fees

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