

Standard Form of General Conditions of Contract Between Owner and Design-Builder

Document No. 535

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Article 1

General

1.1 Mutual Obligations.

1.1.1 *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

1.2 Basic Definitions.

1.2.1 *Agreement* refers to the executed contract between Owner and Design-Builder under DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price* (2022 Edition, as revised).

1.2.2 *Allowance Item* is a description of the subject of an Allowance Value established pursuant to Section 6.4.1 of the Agreement.

1.2.3 *Allowance Value* is the amount established for an Allowance Item pursuant to Section 6.4.1 of the Agreement.

1.2.4 *Application for Payment* is the Submittal from the Design-Builder supporting payment pursuant to Article 7 of the Agreement.

1.2.5 *Basis of Design Documents* are the documents set forth in Section 3.04.F of Exhibit C.

1.2.6 *Change Order* is a written instrument issued after execution of the Agreement signed by Owner and design Builder pursuant to Article 9 of the General Conditions.

1.2.7 *Commercial Terms* are any documents that establish an agreement between the parties regarding a maximum cost, a scope of work, or a schedule, including but not limited to the GMP, an Early GMP, Not to Exceed Amount, Lump Sum, Hourly Rate, Contract Time, Target Budget, Target Schedule, Owner's Project Criteria, Initial Project Scope, or Basis of Design Documents.

1.2.8 *Contingencies* are the amounts available for Design-Builder's use and are defined in Section 6.4.4 of the Agreement. The Cost of the Work Contingency is defined in Section 6.4.4.a. The Design-Builder's Contingency is defined in Section 6.4.4.b

1.2.9 *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Owner's Project Criteria and the Basis of Design Documents unless a deviation from the Owner's Project Criteria or Basis of Design Documents (as applicable) is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

1.2.10 *Contract Amendment* is a written amendment to the Contract Documents that incorporates additional terms into the Contract Documents. Later Contract Amendments govern over earlier Contract Amendments.

1.2.11 *Contract Price* shall mean the maximum amount that the Design-Builder may be compensated pursuant to this Agreement for any given phase.

1.2.12 *Contract Time* consists of the dates set forth in Article 5 of the Agreement.

1.2.13 *Date of Commencement* is the date set forth in Section 5.1 of the Agreement.

1.2.14 *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract

Documents.

1.2.15 *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

1.2.16 *Design-Builder's Delay Rate* is the amount established in Section 6.4.5.4 of the Agreement.

1.2.17 *Design-Builder's Fee Percentage* is the percentage set forth in Section 6.2.1 of the Agreement.

1.2.18 *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

1.2.19 *Design Log* is a log of Reliable Decisions agreed upon by the parties. The Design Log supplements the Owner's Project Criteria, the Initial Project Scope, and Basis of Design Documents, as applicable

1.2.20 *Design Development Period* is the period in Phase 1 that is described in Section 6.6 of the Agreement.

1.2.21 *Design Submission or Submittal* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder (1) to the Owner under the Contract Documents; or (2) developed or prepared by or for the Design-Builder specifically to discharge its duties under the Contract Documents.

1.2.22 *Early GMP* is a GMP for a portion of the Work that is established prior to the establishment of the GMP for the entire Work as set forth in Section 6.6.1.6 of the Agreement.

1.2.23 *Early GMP Schedule* is the Schedule for progress and completion of an Early GMP Scope.

1.2.24 *Early GMP Scope* is the Scope of Work for an Early GMP.

1.2.25 *Extended General Conditions Costs* the result from the Design-Builder's Delay Rate multiplied by the number of days the project is delayed pursuant to Section 8.2 of the General Conditions as set forth in Section 6.4.5.4 of the Agreement.

1.2.26 *Final Completion* of the entire Project shall be deemed to have occurred when all of the following have occurred:

- (a) All requirements for Final Completion of the Project have been achieved and Punch List Completion has been fully satisfied;
- (b) Owner shall have received and accepted a final certificate of occupancy allowing use and occupancy of the Project;
- (c) Owner shall have received and accepted all Construction Documents, Record Documents, as-built schedule, right-of-way record maps, surveys, test data and other deliverables required under the Contract Documents;
- (d) Design-Builder shall have delivered all operating manuals, warranties and other

deliverables required by the Contract Documents;

(e) All special tools, equipment, furnishings and supplies purchased and/or used by Design-Builder as provided in this Agreement have been delivered to Owner and all replacement spare parts shall have been purchased and delivered to Owner free and clear of Liens;

(f) All of Design-Builder's obligations under the Contract Documents (other than obligations which by their nature are required to be performed after Final Completion) shall have been satisfied in full or waived in writing by Owner;

(g) Design-Builder shall have delivered to Owner a Notice of Final Completion for the Project; and

(i) All other conditions to Final Completion in this Agreement shall have been satisfied.

.1 Owner will issue a Certificate of Final Acceptance to Design-Builder at such time as Owner determines that Final Acceptance has occurred.

.2 Final Completion will not prevent Owner from correcting any measurement, estimate or certificate made before or after completion of the Work, nor shall it prevent Owner from recovering from Design-Builder, its Surety(ies), or other provider of performance security or any combination of the foregoing, overpayment or other costs sustained for failure of Design-Builder to fulfill the obligations under the Contract Documents.

1.2.27 *Force Majeure Events* mean any of the following events (provided such events are unforeseeable and beyond the reasonable control of the Design-Builder and are not due to an act or omission of the Owner or Design-Builder) which materially and adversely affects the Design-Builder's obligations hereunder and which event (or the effects of which event) could not have been avoided by due diligence and use of reasonable efforts by the Design-Builder:

(a) Any earthquake exceeding 3.5 on the Richter scale epicentered within 25 miles of the specific location of damage on the Site, any earthquake exceeding 5.0 on the Richter scale epicentered within 50 miles from the specific location of damage on the Site, and any earthquake exceeding 6.5 on the Richter scale epicentered within 75 miles from the specific location of damage on the Site, based on the final determination regarding the location and magnitude of the earthquake published by the National Earthquake Information Center in Golden, Colorado;

(b) Any blockade, rebellion, or war;

(c) Any riot, act of terrorism, or civil commotion in the Project location;

(d) Any lawsuit seeking to restrain, enjoin, challenge or delay the construction of the Work or the granting of any Regulatory Approval of the Work that is not the result of a change set forth in Section 2.5 of the General Conditions;

(e) Except as set forth in Section 2.5 of the General Conditions, the suspension of Work at the Site ordered by a Governmental Entity due to an epidemic or pandemic;

(f) Unusually Adverse Weather; or

(g) Industry wide strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions that are the not the result of Design-Builder's actions;.

1.2.29 *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition, as revised).

1.2.30 *GMP Amendment* means an amendment to the Agreement entered into by the parties at the conclusion of Phase 1 of the Project that establishes the Basis of Design Documents, the GMP, the Project Schedule and other terms agreed to by the parties

1.2.31 *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of the Agreement.

1.2.32 *Guaranteed Maximum Price* ("GMP") is the total compensation to the Design-Builder as set forth in the GMP Amendment that shall establish a binding GMP between the Parties for the Project pursuant to Section 6.1.1 of the Agreement.

1.2.33 *Hazardous Materials*, including "hazardous substances" and "hazardous waste," means any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq. ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq. ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Clean Water Act, 33 U.S.C. § 1251 et seq., each as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the above statutes or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court, (c) petroleum or crude oil excluding de minimus amounts and excluding petroleum and petroleum products contained within regularly operated motor vehicles, and (d) asbestos or asbestos-containing materials in structures and or other improvements on or in the Site (other than mineral asbestos naturally occurring in the ground).

1.2.34 *Hourly Rates* are the amounts per hour established pursuant to Section 6.4.6 of the Agreement.

1.2.35 *Initial Project Scope* is the scope of the project that the parties collaboratively establish at the conclusion of the Validation Period that represents the parties' best determination of an achievable project scope within the Target Budget

1.2.36 *Key Team Members* mean those individuals and position descriptions identified by Design-Builder during the project procurement and other individuals identified as Key Team Members with the agreement of both parties, such agreement shall not be unreasonably withheld.

1.2.37 *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

1.2.38 *Liens* mean any pledge, Lien, security interest, mortgage, deed of trust or other charge or encumbrance of any kind, or any other type of preferential arrangement (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement, any lease in the nature of a security instrument and the filing of or agreement to file any financing statement or other instrument intended to perfect a security interest).

1.2.39 *Lump Sum* is the amount established by the Parties pursuant to Section 6.4.3 of the Agreement.

1.2.40 *Lump Sum General Conditions Costs* is the amount established by the Parties pursuant to Section 6.4.5 of the Agreement.

1.2.41 *Lump Sum Scope* is the description of the scope of the Work subject to the Lump Sum established pursuant to Section 6.4.3 of the Agreement.

1.2.42 *Nonconforming Work* is any Work that is found to not be in conformance with the Contract Documents.

1.2.43 *Not to Exceed Amount* is an amount that is established pursuant to Section 6.4.2 of the Agreement.

1.2.44 *Not to Exceed Scope* is the scope of Work subject to the Not to Exceed Amount established by the parties pursuant to Section 6.4.2 of the Agreement.

1.2.45 *Open Book Basis* means providing the Owner all underlying assumptions, price quotes and data associated with pricing or compensation (whether of the Design-Builder or the Owner) or adjustments thereto, including assumptions as to costs of the Work, schedule, composition of equipment spreads, equipment rates, labor rates, productivity, estimating factors, design and productivity allowance, contingency and indirect costs, risk pricing, discount rates, interest rates, and other items reasonably required by the Owner to satisfy itself as to the reasonableness of the amount.

1.2.46 *Original GMP* is the GMP set forth in the GMP Amendment.

1.2.47 *Owner's Budget* is the amount of money set aside by the Owner for the Project.

1.2.48 *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

1.2.49 *Owner Provided Information* is any document or information provided by the Owner at any time, including but not limited to the Request for Qualifications, Request for Proposals, or Owner's Criteria.

1.2.50 *Project Schedule* is the schedule provided by the Design-Builder and approved by the Owner pursuant to the General Conditions and Exhibit C.

1.2.51 *Project* is any portion of the Project that the parties determine will be scoped, priced, and constructed separately.

1.2.52 *Reliable Decision* is a decision, development, or election that refines the Owner's Project Criteria or Basis of Design Documents, that is approved by the Owner and that is set forth in the Design Log. A Reliable Decision cannot change the Owner's Project Criteria or Basis of Design Documents but shall instead constitute a further development or refinement of the design for the Project with which all subsequent design, development and Construction Documents shall be consistent.

1.2.53 *Schedule of Values* is the submission required pursuant to Section 6.1 of the General Conditions and Exhibit C.

1.2.54 *Site* are those areas designated in writing by the Owner for performance of the Work and such additional areas as may, from time to time, be designated in writing by the Owner for the Design-Builder's use in performance of the Work. For purposes of insurance (subject to any notification and other requirements imposed by the insurer(s) for approval), indemnification, safety and security requirements, the prevailing wage requirements, and payment for use of equipment,

the term "Site" shall also include (a) the field office sites, (b) any property used for bonded storage of material for the Project approved by the Owner, (c) staging areas dedicated to the Project, and (d) areas where activities incidental to the Project are being performed by the Design-Builder or Subcontractors covered by the worker's compensation policy included in the insurance described in Exhibit B, but excluding any permanent locations of Design-Builder or such covered Subcontractors.

1.2.55 *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include Design Consultants, materialmen and suppliers.

1.2.57 *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include Design Subconsultants, materialmen and suppliers.

1.2.58 *Substantial Completion or Substantially Complete* means:

- (a) The Design-Builder has completed the Work or designated portion of the Work, in accordance with the Agreement, such that the Project is in a condition that it can be used in a normal and safe manner, subject only to Punch List items and other Work that do not affect the ability to occupy the Project or designated portion thereof for such normal use and operation;
- (b) The Project or designated portion thereof is sufficiently completed in accordance with the Agreement, as modified by any executed Change Orders, so that it can be used for its intended purpose;
- (e) All conditions to acceptance by utility Owners have been satisfied or waived, and any waivers approved by the Owner, in its sole discretion;
- (d) The Design-Builder has completed commissioning the Work or designated portion thereof in accordance with the commissioning requirements in the Contract Closeout Plan set forth in Section 3.12 of Exhibit C, and the commissioning tests have been successfully performed and satisfied (subject to such commissioning which is identified in the commissioning requirements to be conducted after Substantial Completion);
- (e) To the extent applicable, all authorities having jurisdiction have confirmed and issued all pertinent approvals or other documents in respect thereof that the building and structures on the Site applicable to the portion of the Work for which Substantial Completion is sought are ready for occupancy; and
- (f) All other conditions to Substantial Completion in the Agreement shall have been satisfied.

1.2.59 *Target Budget* is the estimate for the GMP that is collaboratively established by the parties after the conclusion of the Validation Period that represents the parties' best determination of an achievable GMP.

1.2.60 *Target Schedule* is the estimated Project Schedule collaboratively established by the parties at the conclusion of the Validation Period that represents the parties' best determination of an achievable Schedule.

1.2.61 *Trend* is an issue identified in the Trend Log.

1.2.62 *Trend Log* is a log of issues that have been identified by the Design-Builder or the Owner during the design process that may cause any Commercial Term to be modified or cause the Contract Time to be exceeded.

1.2.63 *ORS 279A.107 Business* means a disadvantaged business enterprise, minority-owned business, woman-owned business, veteran-owned business or emerging small business

under ORS 200.055.

1.2.64 *Unit Prices* Are the prices established for specific units of Work as set forth in Section 6.4.6 of the Agreement.

1.2.65 *Unusually Adverse Weather* means weather that satisfies all of the following conditions:

- (a) Unusually severe precipitation, sleet, snow, hail, heat, or cold conditions in excess of the norm for the location and time of year it occurred and could not have been reasonably anticipated, documented by 10-year climatological data obtained by the U.S. National Oceanic and Atmospheric Administration from the nearest nationally recognized reporting station to the Site;
- (b) Unanticipated for the time of year;
- (c) Occurring at the Site; and
- (d) Having a materially adverse effect on the scheduled Work.

1.2.66 *Validation Period* is the time period established in Section 6.6 of the Agreement to accomplish the tasks set forth in Exhibit C, Section 2.02 for the Project.

1.2.67 *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services, incidentals, and labor whether expressly required by or reasonably inferable from the Contract Documents.

1.2.68 *Work Group* is a team of individuals with representatives from both the Owner and Design-Build Team that are responsible for developing Design Submissions, updated estimates, and updated schedules for the applicable Design Submissions Package.

Article 2

Design-Builder's Services and Responsibilities

2.1 General Services.

2.1.1 Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

2.1.2 Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with reports detailing the progress of the Work as set forth in Exhibit C, including but not limited to (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency accounts; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). In addition to the frequency set forth in Exhibit C, status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

2.1.3 Design-Builder shall prepare and submit the schedules and deliverables set forth in Exhibit C, including but not limited to the Project Schedule for the execution of the Work for Owner's review and response. The Project Schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The Project Schedule shall be revised as required by Exhibit C and the conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and

response to, the Project Schedule and other deliverables provided by Design-Builder shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

2.1.4 The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement any procedures additional to Exhibit C, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

2.1.5 Representatives of the Design-Build Team, including at a minimum of the Design-Builder's Representative and a representative from the lead designer and lead constructor, shall meet with the Owner at least on a weekly basis and shall provide to the Owner a written update regarding the status of the Project, including but not limited to the information required in Exhibit C and any issues that may have a material effect on the Project. The Design-Build Team shall issue meeting minutes within three days of meeting.

2.1.6 Design-Builder hereby assigns to Owner all its interest in first-tier subcontracts now or hereafter entered into by Design Builder for performance of any part of the Work. The assignment will be effective upon acceptance by Owner in writing and only as to those subcontracts which the Owner designates in writing. The Owner may accept said assignment at any time during the course of the Work and prior to Final Completion in the event of a suspension or termination of Design Builder's rights under the Contract Documents. Such assignment is part of the consideration to the Owner for entering into the Contract with Design Builder and may not be withdrawn prior to Final Completion.

2.2 Design Professional Services.

2.2.1 Owner does not intend to contract for, pay for, or receive any design services which are in violation of any professional licensing laws, and by execution of the Agreement, Design-Builder acknowledges that Owner has no such intent. Design-Builder shall, consistent with applicable state licensing laws, furnish through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

2.2.2 Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights. Design-Builder assumes responsibility to Owner for the proper performance of the Work of the Design Consultants and any Sub-Consultant and any acts and omissions in connection with such performance.

2.2.3 Any references in the Contract Documents to Design-Builder's responsibilities or

obligations to “perform” the design portions of the Work shall be deemed to mean that Design-Builder shall “furnish” the design for the Project.

2.3 Standard of Care for Professional Services.

2.3.1 The standard of care for all professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project. The Design-Builder shall also perform the design and construction so that the Work meets or exceeds the performance requirements set forth in the Owner’s Project Criteria, the Initial Project Scope and/or the Basis of Design Documents.

2.3.2 Design Builder shall perform all activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents.

2.4 Design Development Services.

2.4.1 Design-Builder shall provide the Design Submissions set forth in the Contract Documents. Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

2.4.1.1 Design Submissions shall be consistent with the Owner’s Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1 as well as the Commercial Terms. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time and are consistent with the Owner’s Project Criteria, the Design Log and Basis of Design Documents, as applicable. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Owner’s Project Criteria, the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

2.4.1.2 On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder’s schedule.

2.4.1.3 Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner’s comments and incorporate said responses into the next submission of Design Submissions.

2.4.1.4 If incorporation of Owner’s comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner’s Project Criteria, the Basis of Design

Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

2.4.1.5 The Design-Builder shall provide an updated cost model for the Project periodically as required in Exhibit C. The Design-Builder shall also schedule and facilitate a one-day review meeting with the Owner to present and summarize changes in the Design Submission, changes to the scheduled Milestone dates and present an overview of cost model.

2.4.1.6 Design Log. A Design Log, including a full listing of Reliable Decisions and all changes to the Initial Project Scope and Basis of Design Documents, will be maintained by the Design-Builder and provided to all attendees for review.

- a. Both parties must agree to include a Reliable Decision in the Design Log.
- b. The Design Log shall be updated after every Design Review Meeting, and in any case, on a weekly basis.
- c. Once a Reliable Decision in the Design Log is approved in writing by the Owner, it shall be binding on the Design-Builder as if set forth in the Initial Project Scope or Basis of Design Documents.
- d. The Design Log is for the sole purpose of tracking the development of the Design Submissions.
- e. If a Reliable Decision will cause a change in the Owner's Project Criteria, the Initial Project Scope or Basis of Design Decisions, or any of the Commercial Terms, such changes must be processed pursuant to Articles 9 and 10.

2.4.1.7 Trend Log. If either party does not know the extent to which a Design Submission or other potential change will alter a Commercial Term, either party may request in writing to identify a Trend in the Trend Log.

- a. The request to include a Trend in the Trend Log must include the following information:
 - i. Identification of the portion of the Design Submission for which the costs are uncertain and may cause any Commercial Term to be exceeded;
 - ii. The estimated change in the applicable Commercial Term; and
 - iii. Potential impacts or changes to the Initial Project Scope or Basis of Design Documents as a result of the Trend.
- b. Both parties must consent in writing to include the Trend in the Trend Log. The Design-Builder will track the Trend on the Trend Log, and the Trend Log shall be updated with the most recent information on a weekly basis.
- c. The parties will work collaboratively to resolve Trends in the Trend Log as quickly as possible. When a Trend in the Log is resolved and the resolution changes the Initial Project Scope or Basis of Design Documents and/or any Commercial Term, the resolution shall be memorialized in a Change Order. If the resolution does not change the Initial Project Scope or Basis of Design Documents and/or any Commercial Term, it shall be removed from the Trend Log.

2.4.2 Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified by the parties and recorded as set forth in the Contract

Documents. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above and Exhibit C. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

2.4.3 Owner's review and approval of Design Submissions, meeting minutes, the Design Log, the Trend Log, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, the Design Log, the Trend Log, and Construction Documents shall be deemed to transfer any design liability or responsibility for compliance with the Owner's Program from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

2.4.4 To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

2.5 Legal Requirements.

2.5.1 Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

2.5.2 The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements that directly affect the Work that are enacted after the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements. Design-Builder is not entitled to any adjustments if a Legal Requirement is enacted prior to the date of the Agreement or the date establishing a GMP, even if it only becomes effective after said dates.

2.6 Government Approvals and Permits.

2.6.1 Unless the parties have identified permits in an Owner's Permit List attached either as an exhibit to the Agreement or as part of the Owner's Project Criteria or Basis of Design Documents, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

2.6.2 Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

2.7 Design-Builder's Construction Phase Services.

2.7.1 Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

2.7.2 Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

2.7.3 The Design-Builder shall assemble and install all equipment according to the applicable manufacturer's installation instructions. Work that does not conform to the applicable instructions and/or any resulting errors in assembly or installation shall be corrected by the Design-Builder. If the Owner determines that the Design-Builder has incorrectly assembled, installed and/or damaged any such equipment, the Design-Builder shall, at its own expense, furnish a competent manufacturer's representative to assist, instruct and approve the Design-Builder's corrected work.

2.7.4 If any materials or equipment are stored by Design-Builder, they shall be stored so as to ensure the preservation of their quality and fitness. Materials and equipment shall be placed on platforms or other hard, clean surfaces, and not on the ground, and shall be placed under cover and heated adequately to prevent condensation, oxidation or freezing. Stored materials and equipment shall be located so as to facilitate observation. The Design-Builder shall be responsible for all damage or loss that occurs as a result of its fault or negligence in connection with the care and protection of all materials and equipment until acceptance by the Owner.

2.7.5 Design-Builder is responsible for verifying that any equipment supplied by the Owner is in working order and sufficient for the purposes for which it was intended in the Project. If equipment furnished by Owner is not in working order or is not sufficient for the Project, Design-Builder shall notify Owner immediately, and Owner shall either repair or replace the equipment, at Owner's sole discretion. Design-Builder is responsible for the proper installation of the equipment furnished by Owner.

2.7.6 Design-Builder shall provide appropriate security for the Site, and shall take all reasonable precautions and provide protection to prevent damage, injury, vandalism, theft, and loss to the Work, equipment and materials used to perform the Work, real property within the Site, and other property at or on the Site, whether owned by Design-Builder, Owner, or any other third party.

2.7.7 Design-Builder shall maintain, rebuild, repair, restore or replace all Work (including plans and specifications, and materials, equipment, supplies and maintenance equipment which are purchased for permanent installation in, or for use during construction of, the Project, regardless of whether the Owner has title thereto) that is injured or damaged prior to Substantial Completion. Following Substantial Completion, Design-Builder shall continue to have responsibility to maintain, build, repair, restore or replace all Work not 100% completed at Substantial Completion, until Owner accepts maintenance responsibility with respect to such Work. Except as provided in Section 2.7.7.2, all remaining elements of the Project shall be considered accepted for maintenance purposes as of the Final Acceptance Date. Maintenance responsibility under this Section 2.7.7 includes rebuilding, repairing and restoring all other property at the Project Site whether owned by Design-Builder, Owner or any other Person.

.1 With respect to Work on property not owned by Owner, Design-Builder's obligations under this Section 2.7.7 shall terminate upon acceptance of such Work by the property owner and the Owner.

.2 During the period after Substantial Completion until Final Acceptance, the Owner may issue a Change Order under Article 9 requiring Design-Builder to continue to have responsibility for maintaining, rebuilding, repairing, restoring and replacing Work accepted by Owner, provided, however, no Change Order is required in connection with direction to proceed with Warranty Work.

2.7.8 Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

2.7.9 Inspections. Design-Builder shall inform Owner of any part of the Work which is about to

be covered and offer a full and adequate opportunity to Owner to inspect and test such part of the Work before it is covered. At all times before Final Completion, Design-Builder shall remove or uncover such portions of the finished construction Work as directed by Owner. After examination by the Owner Representative and any other Persons designated by Owner, Design-Builder shall restore the Work to the standard required by the Contract Documents. If the Work exposed or examined is not in conformance with the requirements of the Contract Documents, then uncovering, removing and restoring the Work and recovery of any delay to any Critical Path occasioned thereby shall be at Design-Builder's cost and Design-Builder shall not be entitled to any adjustment to the Contract Price or any time extension or any other relief. Furthermore, any Work done or materials used without adequate notice to and opportunity for prior inspection by Owner (if applicable) or without inspection in accordance with the Contract Documents may be ordered uncovered, removed or restored at Design-Builder's cost and without an adjustment to the Contract Price or a time extension, or any other relief, even if the Work proves acceptable after uncovering. Except with respect to Work done or materials used as described in the foregoing sentence, if Work exposed or examined under this Section 2.7.8 is in conformance with the requirements of the Contract Documents, then any delay in any Critical Path from uncovering, removing and restoring Work shall be considered an Owner-Caused Delay, and Design-Builder shall be entitled to a Change Order for the reasonable cost of such efforts and recovery of any delay to any Critical Path occasioned thereby.

2.7.10 Title. Design-Builder warrants that it owns, or will own, and has, or will have, good and marketable title to all materials, equipment, tools and supplies provided, or to be provided, by it and its Subcontractors that become part of the Project or are purchased for Owner for the operation, maintenance, rebuild, repair or replacement thereof, free and clear of all Liens.

.1. Title to all such materials, equipment, tools and supplies delivered to the Site shall pass to Owner, free and clear of all Liens, upon the sooner of (a) incorporation into the Project, or (b) payment by Owner to Design-Builder of invoiced amounts pertaining thereto.

.2 Notwithstanding any such passage of title, Design-Builder shall retain sole care, custody, and control of, and risk of loss with respect to, such materials, equipment, tools and supplies and shall exercise due care with respect thereto until Final Acceptance or until Design-Builder is removed from the Project.

2.8 Subcontractors and Labor

2.8.1 Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld. The Contract Documents shall not be construed to create a contractual relationship of any kind between Owner and any Subcontractor of any tier.

2.8.2 Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

2.8.3 Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors

so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

2.8.4 Design-Builder shall ensure that each Subcontract (at all tiers) shall include those terms that are specifically required by the Contract Documents to be included therein as well as such additional terms and conditions as are sufficient to ensure compliance by the Subcontractor with all applicable requirements of the Contract Documents, including but not limited to the following provisions:

- .1 Effective procedures for timely resolution of claims and disputes, including an agreement by the Subcontractor to participate in any dispute proceeding pursuant to Article 10, if such participation is requested by Owner;
- .2 A standard of professional responsibility or a standard for quality equal to or better than the requirements of the Contract Documents;
- .3 A requirement to maintain usual and customary books and records for the type and scope of operations of the business in which the Subcontractor is engaged;
- .4 A provision permitting audits to be conducted by the Design-Builder and Owner according to the terms of the Contract;
- .5 A requirement to provide progress reports to the Design-Builder appropriate for the type and scope of Work performed and to meet the requirements of Exhibit C;
- .6 A requirement that the Subcontractor maintain all appropriate licenses and registrations;
- .7 A provision prohibiting assignment of the Subcontract without the Design-Builder's written consent;
- .8 The following provision: "Nothing contained herein shall be deemed to create any privity of contract between Owner and the Subcontractor, nor does it create any duties, obligations, or liabilities on the part of Owner to the Subcontractor except those allowed under Oregon law. In the event of any claim or dispute arising under the Subcontract and/or Design-Builder's contract with Owner, the Subcontractor shall look only to Design-Builder for any payment, redress, relief, or other satisfaction. The Subcontractor hereby waives any claim or cause of action against Owner arising out of the Subcontract or otherwise arising in connection with the Subcontractor's Work."; and
- .9 Provisions in form and substance satisfactory to Owner, (a) Owner is a third party beneficiary of the Subcontract and shall have the right to enforce all of the terms of the Subcontract for its own benefit, and (b) all guarantees and warranties, express or implied, shall inure to the benefit of Owner, and its respective successors and assigns.

2.9 Design-Builder's Responsibility for Project Safety.

2.9.1 Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the

Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

2.9.2 Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

2.9.3 Design-Builder's responsibility for safety under this Section 2.9 is not intended in any way to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

2.10 Design-Builder's Warranty.

2.10.1 Design-Builder warrants to Owner that (i) the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship, (ii) the Project shall be fit for use for the purposes, objectives, functions, uses and requirements set out in or reasonably inferred from this Contract, and (iii) the Work shall meet all of the requirements of the Contract Documents. Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.10 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

2.11 Correction of Defective Work.

2.11.1 Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents ("Nonconforming Work"), including that part of the Work subject to Section 2.10 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

2.11.2 Nonconforming Work rejected by Owner shall be removed and replaced so as to conform to the requirements of the Contract Documents, at Design-Builder's cost and without any adjustment to the Contract Price or time extension or any other relief; and Design-Builder shall promptly take all action necessary to prevent similar deficiencies from occurring in the future. The fact that Owner may not have discovered the Nonconforming Work shall not constitute an acceptance of such Nonconforming Work. Design-Builder shall, within seven (7) days of receipt of written notice from Owner of Nonconforming Work, take meaningful steps to commence correction of such Nonconforming Work, including the correction, removal or replacement of the Nonconforming Work and any damage caused to other parts of the Work affected by the Nonconforming Work. If the correction of Nonconforming Work cannot be completed within such seven (7) day period, Design-Builder must (a) provide a schedule for correcting the Nonconforming Work and (b) commence and diligently prosecute such correction in accordance with the approved schedule to completion. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such Nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-

Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the Nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

2.11.3 Owner may agree to accept any Nonconforming Work without requiring it to be fully corrected. In such event, Owner shall be entitled to reimbursement of a portion of the Contract Price (which shall also reduce the GMP) in an amount equal to the greater of: (a) the amount deemed appropriate by Owner to provide compensation for future maintenance and/or other costs relating to the Nonconforming Work, or (b) 100% of Design-Builder's cost savings associated with its failure to perform the Work in accordance with Contract requirements. Such reimbursement (plus an administrative charge equal to 10% of the costs and expenses) shall be payable to Owner within ten days after Design-Builder's receipt of an invoice therefor. Alternatively, Owner may deduct the amount of such costs and expenses (plus an administrative charge equal to 10% of the costs and expenses) from any sums owed by Owner to Design-Builder pursuant to this Contract. Design-Builder acknowledges and agrees that Owner shall have sole discretion regarding acceptance or rejection of Nonconforming Work and the amount payable in connection therewith. Payment, reimbursement or deduction of the amounts owing to Owner under this Section 2.11.3 shall be a condition precedent to the acceptance of the applicable Nonconforming Work.

2.11.4 The one-year period referenced in Section 2.11.1 above applies only to Design-Builder's obligation to correct Nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

2.12 Contract Phases

2.12.1 Phase 1. Phase 1 shall commence upon Notice to Proceed from the Owner and shall end on the Phase 1 Completion Date as set forth in the Target Schedule, collaboratively established pursuant to Exhibit C. The services provided by the Design-Builder during Phase 1 shall be established in Exhibit C.

.1 In Phase 1, the Design-Builder shall carefully and thoroughly examine the information set forth in Exhibit C, the existing site conditions, and any other information provided by the Owner with respect to the Project. Such information includes, but is not limited to, as-built drawings of the existing facilities; necessary testing of existing facilities; geotechnical and other site conditions; and legal, permitting, and regulatory requirements and restrictions

.2 The Design-Builder may not rely on information provided by the Owner and must validate all information provided by the Owner during Phase 1 as set forth in Exhibit C.

.3 The Design-Builder shall provide the submissions set forth in Exhibit C on an open book and transparent basis. In addition, the Design-Builder and the Owner shall, consistent with any applicable provision of the Contract Documents, agree upon the quantity and level of development for Design Submissions that the Owner may wish to review, which Design Submissions may include Milestone Design Submissions, design criteria, drawings, diagrams and specifications setting forth the Project requirements. Design Submissions shall be consistent with the Commercial Terms, as they may develop through the design process set forth in the Contract Documents.

.4 If the Design-Builder discovers or should have discovered with reasonable diligence Material Differences from the actual conditions at the Site or the Owner Provided Information, Design-Builder shall, upon discovery but no later than at the conclusion of Phase 1, provide Owner with written notice of any such Material Differences. A "Material Difference" is defined as one that would either a) impact the Owner's Project Criteria, the Initial Project Scope, the Design-Builder's Fee Percentage or a Commercial Term or b) be considered a Differing Site Condition. Design-Builder shall not be entitled to a Change

Order for any Material Difference during Phase 2, including but not limited to for Differing Site Conditions, pursuant to Section 4.2.1 of the General Conditions, if the Material Difference could have been discovered, with reasonable diligence, during Phase 1 and was not disclosed pursuant to this Section.

2.12.2 Phase 2. Phase 2 is the final phase of each Project where the Design-Builder: (i) completes the design services and develops Construction Documents for the Project, (ii) performs the construction, start-up, testing and commissioning and closeout of the Project, (iii) undertakes any necessary warranty services for the Project, and (iv) performs other services as set forth in Exhibit C, the GMP Amendment and any Early GMP Amendment.

Article 3

Owner's Services and Responsibilities

3.1 Duty to Cooperate.

3.1.1 Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-Builder's performance of its obligations under the Contract Documents.

3.1.2 Owner shall provide timely reviews and approvals of Design Submissions and Construction Documents consistent with the turnaround times set forth in in the Agreement, by agreement of the Owner and Design-Builder, or the approved Design-Builder's schedule, as applicable.

3.1.3 Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents, provided, however, Owner shall have no liability to the Design-Builder for failure to notify the Design-Builder or failure to discover such defects or noncompliant Work.

3.2 Furnishing of Services and Information.

3.2.1 The Owner's Project Criteria sets forth the information provided by the Owner.

3.2.2 Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. **3.3 Financial Information.**

3.3.1 RESERVED.

3.3.2 Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

3.4 Owner's Representative.

3.4.1 Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf

of Owner.

3.4.2 Without limitation, Owner may engage professional architects or engineers, construction managers, project inspectors and other persons to assist Owner during the Project.

3.5 Government Approvals and Permits.

3.5.1 Owner shall obtain and pay for those permits, approvals, licenses, government charges and inspection fees set forth in the Permitting Strategy Plan established pursuant to Section 3.09 of Exhibit C.

3.5.2 Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

3.6 Owner's Separate Contractors.

3.6.1 Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

3.7 Access to the Work

3.7.1 Owner and its designated representatives shall have access to the Work at all times. Design-Builder shall not carry on Work except with the knowledge of Owner and its designated representatives. Owner may require special inspection or testing of any portion of the Work, whether it has been fabricated, installed, or fully completed. Inspection or observation of Work shall not relieve Design-Builder from any obligation under the Contract Documents.

Article 4

Hazardous Materials, Differing Site Conditions and Archaeological Resources

4.1 Hazardous Materials.

4.1.1 Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Materials encountered at the Site that could have been reasonably discovered during the Validation Period. Unless working with Hazardous Materials is part of the scope of the Work, upon encountering any Hazardous Materials, Design-Builder will stop Work immediately in the affected area and duly notify Owner immediately thereof telephonically or in person, to be followed immediately by written notification, and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

4.1.2 Upon receiving notice of the presence of suspected Hazardous Materials that are not set forth as part of the Work or that could not have been reasonably discovered during the Validation Period, Owner shall take the necessary measures required to ensure that the Hazardous Materials are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Materials have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Materials or render the Hazardous Materials harmless.

4.1.3 Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Materials have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all

government and quasi-government entities having jurisdiction over the Project or Site.

4.1.4 Unless expressly provided in the Contract Documents to be part of the Work, Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Materials.

4.1.5 To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Materials at the Site pursuant to this Section.

4.1.6 Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for any release or threatened release of a Hazardous Material (a) which was brought onto the Site by any DB-Related Entity, or (ii) which was negligently removed or handled by the Design-Builder, regardless of the source, origin or method of deposit of such Hazardous Materials ("Design-Builder Release of Hazardous Materials"). Design-Builder shall indemnify, defend and hold harmless Owner and Owner's elected and appointed officials, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from any such release or threatened release.

4.1.7 With respect to Hazardous Materials that are part of the Work, Design-Builder agrees to comply with all applicable regulatory authorities, including but not limited to any statute, regulation, or regulatory agency regarding such Hazardous Materials. Design-Builder agrees to work cooperatively with Owner and regulatory agencies with jurisdiction over the Project to properly handle, dispose of, and/or remediate any Hazardous Materials.

4.2 Differing Site Conditions.

4.2.1 Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Owner Provided Information in Exhibit C or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition. Notwithstanding the preceding, provided the parties sign the applicable GMP Amendment, Design-Builder shall not be entitled to a Change Order for Differing Site Conditions if the Differing Site Condition was discovered or could have been discovered, with reasonable diligence, during Phase 1.

4.2.2 Upon encountering a Differing Site Condition, Design-Builder then Design-Builder shall immediately notify Owner thereof telephonically or in person, to be followed by written notification within five days. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered. Design-Builder shall immediately stop Work in and secure the area pending further instructions.

4.2.3 If directed by Owner, Design-Builder shall promptly conduct such further investigation. If Design-Builder continues to believe that the material or condition falls within the scope of Section 4.2.1, Design-Builder shall at that time also advise Owner of any action recommended to be taken regarding the situation. Owner then will determine whether Design-Builder's findings and proposed actions are acceptable and either approve, or require modification of, Design-Builder's proposed actions. If the condition involves discovery of Hazardous Materials that are Owner's responsibility under the Contract, Owner shall advise Design-Builder regarding its plans for Hazardous Materials Remediation and shall coordinate with Design-Builder in performance of such activities, in accordance with Section 4.1.

4.2.4 Owner shall have the right to require Design-Builder to recommence work in the area at any time, even though an investigation or other work may still be ongoing, so long as recommencing work would not violate any Legal Requirements. Design-Builder shall promptly recommence Work in the area upon receipt of notification from Owner to do so. On recommencing Work, Design-Builder shall follow all applicable procedures contained in the Contract Documents and all other Legal Requirements with respect to such work, consistent with Owner's determination or preliminary determination regarding the nature of the material or condition.

4.3 Archaeological Resources

4.3.1 In the event the Design-Builder or any of its Subcontractors inadvertently discover any archaeological, paleontological, biological, cultural, or other resources at any time during the project, Design-Builder shall immediately notify the Owner telephonically and suspend all excavation activities at the site.

4.3.2 Design-Builder shall follow the procedures set forth in Section 4.2 with respect to addressing the discovery of and shall be entitled to a Change Order as set forth therein, provided, however, that the Design-Builder shall not be entitled to a Change Order if the archaeological, paleontological, biological, cultural, or other resource was discovered or could have been discovered, with reasonable diligence, during Phase 1.

4.3.3 "Archaeological Resource" shall mean any material remains of human life or activities which are of interest. This shall include all sites, objects, structures, artifacts, implements, and locations of prehistoric or archaeological interest, whether previously recorded or still unrecognized, including, but not limited to objects pertaining to prehistoric and historic American Indian or aboriginal burials, campsites, dwellings, and their habitation sites, including rock shelters and caves, their artifacts and implements of culture such as projectile points, arrowheads, skeletal remains, grave goods, basketry, pestles, mauls and grinding stones, knives scrapers, rock carvings and paintings, and other implements and artifacts of any material or form.

4.3.4 Any Archaeological Resources that may be discovered during progress of the Work shall, at Owner's sole discretion, be the property of Owner.

Article 5 **Insurance and Bonds**

5.1 Design-Builder's Insurance Requirements.

5.1.1 Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

5.1.2 Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

5.1.3 Upon signing and returning the signed Agreement to the Owner, and in any event, prior to performing any Work under this Agreement, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment.

If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

5.1.4 The Design-Builder's maintenance of insurance, its scope of coverage, and limits as required herein shall not be construed to limit the liability of the Design-Builder to the coverage provided by such insurance, or otherwise limit the Owner's recourse to any remedy available at law or in equity. Design-Builder shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.

5.1.5 If Design-Builder maintains higher insurance limits than the minimums shown above, Owner shall be insured for the full available limits of commercial general and excess or umbrella liability maintained by Design-Builder, irrespective of whether such limits maintained by Design-Builder are greater than those required by this Agreement or whether any certificate of insurance furnished to the Owner evidences limits of liability lower than those maintained by Design-Builder.

5.1.6 Design-Builder's insurance coverage shall be primary insurance with respect to Owner. Any insurance, self-insurance, or insurance pool coverage maintained by Owner shall be excess of Design-Builder's insurance and shall not contribute with it.

5.1.7 Design-Builder shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of Design-Builder-provided insurance as set forth herein, except Design-Builder shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. Design-Builder shall ensure that the Owner is an additional insured on each subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 10 10 01 for ongoing operations and CG 20 37 10 01 for completed operations.

5.1.8 Failure on the part of the Design-Builder to maintain the insurance as required shall constitute a material breach of contract, upon which the Owner may, after giving as least five business days' notice to Design-Builder to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Owner on demand, or at the sole discretion of the Owner, offset against funds due Design-Builder from the Owner.

5.2 Owner's Liability Insurance.

5.2.1 Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located such liability insurance to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

5.3 Builder's Risk Insurance.

5.3.1 The Parties shall determine prior to mobilization on site who will obtain Builder's Risk Insurance. Unless otherwise provided in the Contract Documents, the Builder's Risk insurance shall be from insurance companies authorized to do business in the state in which the Project is located builder's risk insurance on an "all risk" or equivalent policy form upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by shall be the broadest coverage commercially available and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. A copy of the builder's risk policy shall be made available to the other Party. The builder's risk insurance shall include physical loss or

damage to the Work, including temporary buildings, debris removal, and damage to materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. Design-Builder is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

5.3.2 Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

5.3.3 Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.2 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

5.3.4 Any loss covered under the builder's risk insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

5.3.5 Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

5.4 Bonds and Other Performance Security.

5.4.1 If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

5.4.2 All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in Oregon.

Article 6 **Payment**

6.1 Schedule of Values.

6.1.1 Design-Builder shall submit for Owner's review and approval a schedules of values for all of the Work as set forth in Exhibit C. The Schedule of Values will (i) subdivide the Work into its respective parts based on the project's Work Breakdown Structure (WBS); (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work. Design-Builder will furnish, as part of the Schedule of Values,

adequate and reliable cost justification and documentation on an Open Book Basis so as to provide both Owner and Design Builder a transparent understanding of the cost data estimates and bids that comprise the initial baseline Schedule of Values as well as any updates thereto. Design-Builder will provide a final Schedule of Values with the GMP Proposal.

6.1.2 Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first Application for Payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first Application for Payment.

6.2 Monthly Progress Payments.

6.2.1 On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment.

6.2.2 Prior to submitting an invoice Design-Builder will provide to the Owner on the 10th day of each month a proposed progressed Primavera Schedule and progress reports for Owner's review for 1 week.

6.2.3 After the monthly Schedule progress and progress reports are reviewed and approved Design-Builder will provide to the Owner on the 25th day of each month an invoice and Schedule of Values, along with the Primavera Schedule and progress reports provided fifteen (15) days prior. Invoices from the Design-Builder will be based on the actual time and reimbursable expenses incurred to complete the work for items included in the Cost of the Work. General Conditions will be invoiced as required pursuant to the Agreement. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and shall be in a form acceptable to Owner, including but not limited to the following information:

- .1 An Invoice Cover Sheet that will include the following items:
 - a. Project name and title;
 - b. Invoice number (numbered consecutively, starting with "1");
 - c. Period covered by the invoice (specific beginning and ending calendar days);
 - d. Total amount authorized;
 - e. Total amount invoiced through last period;
 - f. Current invoice amount;
 - g. Total invoiced to-date;
 - h. Percent invoiced;
 - i. Remaining Contract Price (exclusive of the Allowance amounts), GMP, and remaining Allowance amounts;
 - j. Retainage withheld;
 - k. Net amount due Design-Builder
 - l. Total amount earned to date for the Project as a whole;
 - m. Authorized signature, title of signer and date of signature; and
 - n. Signatures of Design-Builder and Design-Builder's Quality Control Manager
- .2 An itemization of the costs incurred pursuant to the Contract, including but not limited to:
 - a. The detailed amounts spend for the Cost of the Work under Section 6.3 of the Agreement incurred during the period of the Application for Payment and the back-up documentation for the Cost of the Work, including but not limited to timesheets, invoices, purchase orders, or any other document

- that evidences the Cost of the Work or any other cost for which Design-Builder requests reimbursement;
- b. The Design-Builder's Fee Percentage incurred;
- c. Allowance Items established under Section 6.4.1 of the Agreement;
- d. Not to Exceed Amounts established under Section 6.4.2 of the Agreement;
- e.
- f. Any Lump Sums established pursuant to Section 6.4.3 of the Agreement;
- g. Costs charged to Contingencies under Section 6.4.4. of the Agreement;
- h. Design-Builder's Lump Sum General Conditions Costs established under Section 6.4.5 of the Agreement, if applicable; and
- i. Unit Prices and Hourly Rates established under Section 6.4.6 of the Agreement, if applicable.
- .3 The monthly periodic deliverables in Exhibit C for the relevant Phase of the Work;
- .4 Certification by the Design-Builder's Quality Control Manager certifying that
 - a. The Work has been performed in accordance with the approved quality Control Program; and
 - b. the elements of the approved Quality Control Program and all the measures and procedures provided for therein are functioning properly and are being followed.
- .5 A Conditional Waiver and Release on Progress Payment, in the statutory form, signed by Design-Builder and each Subcontractor or supplier that provided services, materials or equipment included in the invoice.
- .6 An Unconditional Waiver and Release Upon Progress Payment, in the statutory form, signed by Design-Builder and each Subcontractor or supplier that provided materials or equipment included in any preceding invoice and for which Design-Builder received payment.
- .7 Other supporting documents as requested by Owner to facilitate its determination of the amount payable including but not limited to:
 - a. Hours and rates for sole sourced work.
 - b. Material and equipment purchase orders and delivery backup.
 - c. Progressed CPM resource loaded Primavera project schedule.
 - d. Subcontractor invoices.
 - e. Total retainage held.
 - f. Design-Builder's Certified BOLI Payroll.

6.2.4 Cash Flow

- .1 Along with the baseline CPM resource loaded schedule the Design-Builder will provide an overall anticipated monthly cash flow for the project. The format for this cash flow will follow the example set forth in Exhibit C.
- .2 Every month the Design-Builder will update this cash flow with the following information
 - a. Baseline planned monthly costs
 - b. Actual monthly costs
 - c. Earned (Budgeted Work Completed) Monthly Costs

d. Forecast monthly costs to complete the project

6.2.5 The Application for Payment may request payment for equipment and/or materials delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

- .1 The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
- .2 The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
- .3 Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
- .4 Design-Builder furnishes Owner a certificate of insurance extending Design-Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
- .5 The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;
- .6 Owner shall at all times have the right of access in the company of Design-Builder;
- .7 Design-Builder and its surety assume total responsibility for the stored materials;
- .8 Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site; and
- .9 Upon payment, Owner will receive the equipment and materials free and clear of all Liens and encumbrances.

6.2.6 All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

6.2.7 The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, Liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

6.3 Withholding of Payments.

6.3.1 On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, or otherwise disputes all or part of an Application for Payment, it will notify Design-Builder in writing prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof. When Design-Builder removes the grounds for withholding payment, Design-Builder shall provide written evidence thereof. If such evidence is satisfactory to Owner, Owner will include the amount so withheld in the next scheduled progress payment.

6.3.2 Specifically and without limitation, Owner may deduct from each payment the following:

- .1 Claims against Design-Builder;
- .2 Defective Work not remedied or Work not performed in accordance with the Contract Documents;
- .3 Failure of Design-Builder to make proper payments to any of its Subcontractors;
- .4 Failure to perform the Work in accordance with the Current Schedule;
- .5 Damage to other work or property caused by Design-Builder or any entity for which Design-Builder is responsible;
- .6 Damages owing to Owner under the terms of the Contract;
- .7 Any and all other circumstances in which Owner determines that it is necessary to protect its interests.

6.3.3 Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

6.4 Right to Stop Work and Interest.

6.4.1 If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof, provided Design-Builder gives Owner five business days' written notice of its intent to stop work and an opportunity to cure the late payment.

6.5 Design-Builder's Payment Obligations.

6.5.1 Design-Builder will pay Design Consultants and Subcontractors within seven days of receipt of payment from the Owner, unless its contractual obligations to such parties provide for a shorter time period, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's Liens as set forth in Section 7.3 hereof. Owner may issue joint checks made payable to Design-Builder, Subcontractor(s) and material or equipment suppliers. Joint check payees are responsible for the allocation and disbursement of funds included as part of any such joint check payment. Joint check payment does not create a contract, rights, or obligations between Owner and any Subcontractor or material or equipment supplier.

6.6 Substantial Completion.

6.6.1 Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work representing an Interim Milestone, has achieved Substantial Completion. Within ~~ten~~ (10) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Substantial Completion in accordance with the requirements of the Contract Documents. Owner will conduct reasonable inspections, surveys and/or testing as Owner deems necessary. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, Owner will promptly advise Design-Builder as to any errors, omissions, deviations, defects, or deficiencies in the Work necessary to be corrected as a condition to Substantial Completion and as to any errors, omissions, deviations, defects or deficiencies which may be corrected as Punch List items. Upon correction of the errors, omissions, deviations, defects, or deficiencies identified as a prerequisite to Substantial Completion, Design-Builder shall provide written notification to Owner and Owner will conduct another round of inspections, surveys and/or tests. This procedure shall be repeated until Owner finds that all prerequisites to Substantial

Completion have been met. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

6.6.2 Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner may release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

6.6.3 Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

6.7 Final Completion

6.7.1 Design-Builder shall notify Owner when it believes the entire Work, or to the extent permitted in the Contract Documents a portion of the Work, has achieved Final Completion. Within ten (10) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that Design-Builder has achieved Final Completion in accordance with the requirements of the Contract Documents. Owner will conduct reasonable inspections, surveys and/or testing as Owner deems necessary. If such inspections, surveys and/or tests disclose that any Work does not meet the requirements of the Contract Documents, Owner will promptly advise Design-Builder as to any errors, omissions, deviations, defects or deficiencies in the Work necessary to be corrected as a condition to Final Completion and as to any errors, omissions, deviations, defects or deficiencies which may be corrected as Punch List items. Upon correction of the errors, omissions, deviations, defects, or deficiencies identified as a prerequisite to Final Completion, Design-Builder shall provide written notification to Owner and Owner will conduct another round of inspections, surveys and/or tests. This procedure shall be repeated until Owner finds that all prerequisites to Final Completion have been met. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Final Completion that will set forth the date of Final Completion of the Work or portion thereof.

6.8 Final Payment.

6.8.1 When the Design-Builder has completed all Work on all Projects in accordance with the terms of the Contract Documents and received a Certificate of Final Completion, the Design-Builder shall properly execute and submit a Final Application for Payment final invoice to Accounts Payable. Once the Final Application for Payment has been processed, the Owner's Procurement Department will issue the Certificate of Completion and Release to be executed by the Design-Builder and returned to the Procurement Officer. The Certificate of Completion and Release shall constitute a waiver of all claims by the Design-Builder except for unsettled claims specifically stated, if any. There will only be one Final Payment at the conclusion of all Projects.

6.8.2 At the time of submission of its Final Application for Payment, Design-Builder shall provide the following:

- .1 The Certificate of Completion and Release which shall warrant that the Design-

Builder has fully completed its work included in the Contract and has fully paid for labor, materials, equipment, services, taxes and all other costs and expenses of every nature and kind whatsoever resulting from this Contract. If any dispute exists between the Design-Builder and any person, firm or corporation to which Design-Builder might be obligated in connection with this Contract, the Design-Builder shall state the name of claimant and amount and general nature of claim against the Contractor. The Certificate of Completion and Release shall state the amount and nature of all present and future claims that the Design-Builder may have against the Owner relative to this Contract. The Contract work shall not be complete until after the Design-Builder has returned to the Procurement Officer a properly completed Certificate of Completion and Release.;

- .2 Unconditional Waiver and Release Upon Final Payment, in a form acceptable to Owner, from all Subcontractors.;
- .3 Consent of Design-Builder's surety, if any, to Final Payment;
- .4 Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents; and
- .5 Any additional documents, certificates, records, plans, releases or other materials established in the Project Closeout Plan as required for Final Completion. .

6.8.3 Retainage will be released pursuant to Oregon law. If any liens remain unsatisfied from the retainage, the Design-Builder shall refund to the Owner such amounts as the Owner may have been compelled to pay in discharging such liens including all costs and reasonable legal fees.

6.8.4 Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

6.8.4 Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.10 and 2.11 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

Article 7

Indemnification

7.1 Patent and Copyright Infringement.

7.1.1 Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the

defense of such actions.

7.1.2 If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

7.1.3 Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

7.1.4 The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

7.2 Tax Claim Indemnification. Not Used

7.3 Payment Claim Indemnification.

7.3.1 Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's Liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's Lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or Lien, including, if necessary, the furnishing of a mechanic's Lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or Lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

7.4 Design-Builder's General Indemnification.

7.4.1 Except as set forth in Section 7.4.2 below, to the fullest extent permitted by law, Design-Builder shall indemnify, defend (with counsel approved by Owner), and hold harmless Owner, Owner's Authorized Representative, and their respective officers, directors, agents, employees, partners, members, stockholders and affiliated companies (collectively "Indemnitees") from and against all liabilities, damages, losses, claims, expenses (including reasonable attorney fees), demands and actions of any nature whatsoever which arise out of, result from or are related to: (a) any damage, injury, loss, expense, inconvenience, or delay arising out of the acts or omissions of Design-Builder, its Subcontractors, personnel, or agents; (b) any accident or occurrence which happens or is alleged to have happened in or about the Job Site or any place where the Work is being performed, or in the vicinity of either, at any time prior to the time the Work is fully completed in all respects; (c) any failure of Design-Builder to observe or perform any duty or obligation under the Contract Documents which is to be observed or performed by Design-Builder, or any breach of any agreement, representation, or warranty of Design-Builder contained in the Contract Documents or in any subcontract; (d) the negligent acts or omissions of Contractor, a Subcontractor, or anyone directly or indirectly employed by them or any one of them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder (except to the extent otherwise void under ORS 30.140); and (e) any

lien filed upon the project or bond claim in connection with the Work..

7.4.2 For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

7.4.3 Neither Design-Builder nor any attorney engaged by Design-Builder shall defend the claim in the name of Owner or any department or office of Owner, nor purport to act as legal representative of Owner or any of its departments or offices, without first receiving from Owner's legal counsel authority to act as legal counsel for Owner, nor shall Design-Builder settle any claim on behalf of Owner without the approval of Owner's legal counsel. Owner may, at its election and expense, assume its own defense and settlement.

7.4.4 If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts. Solely for the purposes of the indemnification obligations under this Agreement, Design Builder specifically and expressly waives any immunity that may be granted it under any workers' compensation or industrial insurance acts; provided that such waiver shall be expressly limited to Design-Builder's indemnity obligations herein and shall not be intended as a benefit to any third party. Further, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable to or for any third party under workers compensation acts, disability benefits acts, or other employee benefits acts. This waiver was mutually negotiated.

7.4.5 No Effect on Other Rights. The obligations described in this Section 7.4 shall not be construed to limit rights and obligations provided by law or equity which would otherwise exist in favor of a Person indemnified hereunder.

7.4.6 Notification of Third Party Claim. Owner and Design-Builder shall each provide timely notification to the other party of the receipt of any third party claim relating to the Contract.

7.5 Lower Tier Contractors Indemnification Obligations

7.5.1 Design-Builder shall include in its contracts with all lower tier contractors, including but not limited to its Design Consultant, Subconsultants, and Subcontractors, the indemnification obligations set forth in this Agreement and the General Conditions and shall include Owner as an Indemnitee for all such indemnification provisions.

7.6 Survival

7.6.1 The Indemnification obligations in this Article shall survive the expiration or termination of this Agreement.

7.7 Limited Recourse.

7.7.1 None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful

misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

Article 8

Time

8.1 Obligation to Achieve the Contract Times.

8.1.1 Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement, a GMP Amendment, and any Early GMP Amendment.

8.2 Delays to the Work.

8.2.1 Except as set forth in Section 9.6 below, if Design-Builder is delayed on the critical path in the performance of the Work due to unforeseeable acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible ("Unavoidable Delays"), the Contract Time(s) for performance shall be reasonably extended by Change Order, but only to the extent that the critical path of the Contract Time has been impacted. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Materials, and Force Majeure Events. Design-Builder shall provide notice and documentation of any delay pursuant to Article 10.

8.2.2 In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement. The adjustment to the Contract Price for delay shall be limited to the Design-Builder's Delay Rate as set forth in Section 6.4.5.4 of the Agreement.

8.2.3 Design-Builder shall not be entitled to recover for "Avoidable Delays", which are delays that would otherwise be considered to be Unavoidable Delays but that:

- .1** Could have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Design-Builder or its Subcontractors;
- .2** Affect only a portion of the Work and do not necessarily prevent or delay the prosecution of other parts of the Work nor the completion of the whole Work within the Contract Time;
- .3** Do not impact activities on the accepted critical path schedule; and
- .4** Are associated with the reasonable interference of other contractors employed by Owner that do not necessarily prevent the completion of the whole Work within the Contract Time.

Article 9

Changes to the Contract Price and Time

9.1 Change Orders.

9.1.1 A Change Order is a written instrument issued after execution of the Agreement signed by

Owner and Design-Builder, stating their agreement upon all of the following:

- .1 The scope of the change in the Work;
- .2 The amount of the adjustment to the Contract Price or any Commercial Term; and
- .3 The extent of the adjustment to the Contract Time(s).

9.1.2 All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes. Unless expressly set forth in the Change Order, Change Orders shall include all costs, including but not limited to all incidental and indirect costs and time extensions associated with the Change. Changes Orders will not be allowed unless there is an actual change to the Work.

9.1.3 If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

9.1.4 Owner may make changes in the Project, including but not limited to adding and/or removing Work from the Project. In such case, Design-Builder shall work with the Owner to adjust the remaining Work to meet as many of Owner's Project changes as reasonably possible within the applicable Commercial Term. At Owner's sole discretion, it may remove Work from the Project rather than increase the applicable Commercial Term to equitably adjust for claims by Design-Builder pursuant to Article 10 or Differing Site Conditions pursuant to Section 4.2.

9.2 Work Change Directives.

9.2.1 A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

9.2.2 Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

9.3 Minor Changes in the Work.

9.3.1 Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

9.4 Contract Price Adjustments.

9.4.1 The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

- .1 Unit prices set forth in the Agreement or as subsequently agreed to between the parties;
- .2 A mutually accepted lump sum, properly itemized and supported by sufficient

substantiating data to permit evaluation by Owner;

.3 The Cost of the Work as well as fees and any other markups set forth in the Agreement;

.4 The increase in the Lump Sum General Conditions as set forth in Section 6.4.5.4 of the Agreement; or

.5 If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.4 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including the Design-Builder's Fee Percentage (if applicable), as may be set forth in the Agreement.

9.4.2 If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

9.4.3 If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

9.5 Emergencies.

9.5.1 In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

9.6 Limitations on Changes to the Contract Time and Contract Price

Notwithstanding anything in Article 9, the risks arising from the following events or circumstances shall be borne exclusively by Design-Builder, shall not be the basis for any relief, changes in the Contract Price, changes in the Contract Time, or otherwise, to Design-Builder:

.1 Delays in obtaining or delivery of goods or services from any Subcontractor, unless Subcontractor's reason for delay arises from an event that would otherwise be excusable to Design-Builder under this Agreement;

.2 Delays of common carriers unless the common carrier's reason for the delay arises from an event that would otherwise be excusable to Design-Builder under this Agreement;

- .3 General market and economic conditions affecting the availability, supply or cost of labor, equipment and materials, construction equipment and supplies, or commodities;
- .4 Weather conditions, except conditions that are within the definition of a Force Majeure;
- .5 Strikes, labor disputes, work slowdowns, work stoppages, boycotts or other similar labor disruptions that are the result of Design-Builder's actions;
- .6 The suspension, termination, interruption, denial or failure to obtain or nonrenewal of any permit, license, consent, authorization or approval which is necessary for the performance of the Work or the operation or maintenance of the Work, except for any such matter involving an approval required or provided by Owner;
- .7 Material Differences as defined in Section 2.12.1.4 that could have been discovered during Phase 1 and were not disclosed by Design-Builder during Phase 1; and
- .8 Bankruptcy or insolvency of a Subcontractor or inability of a Subcontractor to perform, unless the underlying cause of such inability would otherwise be considered grounds for an Excusable Delay hereunder.

Article 10

Contract Adjustments and Disputes

10.1 Requests for Contract Adjustments and Relief.

10.1.1 If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide an initial written notice to the other party of the basis for its claim for relief. The initial written notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, the initial written notice shall be given within a reasonable time, in any case not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. Such written notice shall be separate from the Design Log or Trend Log maintained by the Design-Builder, unless the parties specifically agree to allow the Design Log or Trend Log to operate as such written notice of claims. The initial written notice shall include a description of the claim for relief requested, a description of the occurrence giving rise to the claim for relief, and a preliminary analysis of the cost and schedule impact of the claim for relief.

10.1.2 The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the following:

- .1 The circumstances giving rise to the claim for relief,
- .2 The specific contractual adjustment or relief requested;
- .3 The basis of the entitlement to the claim for relief;
- .4 The cost of the claim for relief, including an itemized description of the Cost of the Work associated with the claim for relief;

.5 The impact of the claim for relief on the Project Schedule, including a proposed revised Project Schedule;

.6 Proposed efforts to mitigate the impacts on the cost and schedule.

10.1.3 The failure to provide timely written notice of any claim for relief shall operate as a waiver of such claim, but only to the extent that the failure to provide timely written notice prejudices the position of the non-claiming party.

10.2 Dispute Avoidance and Resolution.

10.2.1 The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

10.2.2 Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

10.2.3 If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

10.2.4 If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the Arbitration Service of Portland, pursuant to its rules governing construction disputes. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation. Good faith mediation is a condition precedent to proceeding with arbitration or other binding dispute resolution procedure. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

10.3 Arbitration.

10.3.1 Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Arbitration Service of Portland's rules governing construction disputes, which are in effect when submitted to arbitration, unless the parties mutually agree otherwise.

10.3.2 The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any

court having jurisdiction thereof.

10.3.3 Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

10.3.4 The substantially prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

10.4 Duty to Continue Performance.

10.4.1 Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

10.5 CONSEQUENTIAL DAMAGES.

10.5.1 NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

10.5.2 The limitations of liability for consequential damages under Section 10.5.1 shall not apply to or limit any right of recovery a party may have respecting the following:

- .1 Losses (including defense costs) to the extent (i) the loss is covered by the proceeds of insurance required to be carried hereunder or for which Design-Builder was required to provide insurance coverage, or (ii) Design-Builder is deemed to have self-insured the loss pursuant to the Contracts;
- .2 Losses in connection with any illegal activities, fraud, recklessness, criminal conduct, intentional misconduct, bad faith, or gross negligence;
- .3 Design-Builder's indemnities under Article 7 or elsewhere in this Contract;
- .4 Design-Builder obligation to pay liquidated damages under this Contract; and
- .5 Losses arising out of Design-Builder's Release of Hazardous Materials.

Article 11

Stop Work and Termination

11.1 Owner's Right to Stop Work.

11.1.1 Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

11.1.2 Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if (i) its cost or time to perform the Work has been materially and adversely impacted by any suspension or stoppage of the Work by Owner, (ii) the Design-Builder is entitled to the adjustment pursuant to the other provisions of the Contract Documents, and (iii) the Design-Builder complies with all provisions of the Contract Documents regarding an adjustment to the Contract Price and/or Contract Time.

11.2 Owner's Right to Perform and Terminate for Cause.

11.2.1 If any one of the following events occur, the Owner, in addition to any other rights or remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below:

- .1** Design-Builder (i) fails promptly to begin the Work under the Contract Documents, (ii) fails to perform the Work with sufficient resources (supervision, workers, equipment, and material) to assure timely completion of said Work, or (iii) fails to complete any Work by the relevant Scheduled Interim Milestone Dates or Substantial or Final Completion Dates;
- .2** Design-Builder fails to perform the Work in accordance with the Contract Documents, including conforming to applicable standards set forth therein in constructing the Project, or refuses to remove and replace rejected materials or unacceptable Work;
- .3** Design-Builder discontinues the prosecution of the Work (exclusive of work stoppage (i) due to termination of its performance by Owner, or (ii) due to and during the continuance of a Force Majeure event or suspension by Owner);
- .4** Design-Builder fails to resume performance of Work which has been suspended or stopped, within a reasonable time after receipt of notice from Owner to do so or (if applicable) after cessation of the event preventing performance;
- .5** Design-Builder shall have become insolvent, or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts or makes an assignment for the benefit of creditors;
- .6** Insolvency, receivership, reorganization or bankruptcy proceedings shall have been commenced by or against Design-Builder;
- .7** Any material representation or warranty made by Design-Builder in the Contract Documents or any certificate, schedule, instrument or other document delivered by Design-Builder pursuant to the Contract Documents shall have been false or materially misleading when made;
- .8** Design-Builder materially breaches any agreement, representation or warranty contained in the Contract Documents;
- .9** Design-Builder assigned or transferred the Contract Documents or any right or interest herein, except as expressly permitted under Section 13.2.1; or
- .10** Design-Builder fails to discharge or obtain a stay of any final judgment(s) or order for the payment of money against it in excess of \$100,000 in the aggregate arising out of the prosecution of the Work (provided that for purposes hereof posting of a bond in the amount of 125% of such judgment or order shall be deemed an effective stay);
- .11** Design-Builder failed, absent a valid dispute, to make payment when due for labor, equipment or materials in accordance with its agreements with Subcontractors and applicable law, or failed reasonably to comply with the instructions of Owner consistent with the Contract Documents;
- .12** Design-Builder violates any Legal Requirements in performance of the Work; or
- .13** Design-Builder fails to provide and maintain the Performance and Payment Bonds and insurance as required hereunder.

11.2.2 Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

11.2.3 Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder and the Surety shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

11.2.4 If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

11.3 Design-Builder's Right to Stop Work.

11.3.1 Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

- .1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or
- .2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

11.3.2 Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

11.4 Design-Builder's Right to Terminate for Cause.

11.4.1 Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

- .1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder

or anyone for whose acts Design-Builder may be responsible.

.2 Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

.3 Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

11.4.2 Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

11.5 Bankruptcy of Owner or Design-Builder.

11.5.1 If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

.1 The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

.2 The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

11.5.2 The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

11.6 Termination for Convenience.

11.6.1 Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement or any portion thereof. In such event, Owner shall pay Design-Builder for the following:

.1 All Work executed and for proven loss, cost or expense in connection with the Work allowable pursuant to the Agreement;

.2 The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

.3 The amount set forth in Article 8 of the Agreement.

11.6.2 Notwithstanding anything to the contrary contained herein, if a termination occurs prior to execution of the applicable GMP Amendment, the amount payable to Design-Builder, inclusive of all payments previously made to Design-Builder and costs of demobilization, shall in no event exceed the applicable Not To Exceed Amount.

11.6.3 Under no circumstances is Design-Builder entitled to anticipatory or unearned profits or consequential or other damages as a result of a termination or partial termination under this Section 11.6 or Agreement Section 8. The payment to Design-Builder determined in accordance with this Section 11.6 and Agreement Section 8 constitutes Design-Builder's sole and exclusive remedy for a termination under this Section 11.6 and Agreement Section 8.

11.6.4 If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

11.6.5 After receipt of a Notice of Termination for Convenience, and except as directed by Owner, Design-Builder shall immediately proceed as follows, regardless of any delay in determining or adjusting any amounts due under this Section 11.6.:

.1 Stop Work as specified in the notice;

.2 Place no further Subcontracts or orders for materials, services or facilities relating to the Work terminated, except as necessary for mitigation of damages;

.3 Unless instructed otherwise by Owner, terminate all Subcontracts to the extent they relate to the Work terminated;

.4 Assign to Owner in the manner, at the times, and to the extent directed by Owner, all of the right, title, and interest of Design-Builder under the Subcontracts so terminated, in which case Owner will have the right, in its sole discretion, to accept performance, settle or pay any or all claims arising out of the termination of each such Subcontract;

.5 Settle outstanding liabilities and claims arising out of such termination of Subcontracts, with, to the extent required by Owner, the approval or ratification of Owner, which approval or ratification shall be final;

.6 Transfer title to and deliver to Owner, as directed by Owner, (i) the Work in process, completed Work, supplies and other material produced or acquired for the Work terminated, and (ii) the Construction Documents and all other completed or partially completed drawings (including plans, elevations, sections, details and diagrams), specifications, records, samples, information and other property which would have been required to be furnished to Owner if the Work had been completed, and (iii) all intellectual property (including documentation, disclosures and drafts), licenses and Data;

.7 Complete performance in accordance with the Contract Documents of all Work not terminated;

.8 Take all action which may be necessary, or Owner may direct, for the protection and preservation of the property related to the Contract Documents which is in the possession of Design-Builder and in which Owner has or may acquire an interest;

.9 As authorized by Owner, use its best efforts to sell at reasonable prices any property of the types referred to in Section 11.6.5.6; provided, however, Design-Builder (i) is not required to extend credit to any purchaser, and (ii) may acquire such property under the conditions prescribed and at prices approved by Owner. Design-Builder shall apply the proceeds of any such sale or disposition to reduce any amounts owed by Owner under the Contract Documents, or if no amount is owing, Design-Builder shall apply such proceeds as directed by Owner; and

.10 Upon receipt of request from Owner, submit to Owner a list of termination inventory not previously disposed of and excluding items authorized for disposition by Owner. Within 45 days of Owner's receipt of the list, Design-Builder shall deliver such inventory to Owner and Owner will accept title to such inventory as appropriate.

Article 12

Electronic Data

12.1 Electronic Data.

12.1.1 The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

12.2 Transmission of Electronic Data.

12.2.1 Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

12.2.2 Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

12.2.3 By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

12.3 Electronic Data Protocol.

12.3.1 The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not

limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree to the following protocols, terms and conditions set forth in this Section 12.3.

12.3.2 Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

12.3.3 The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

12.3.4 The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

Article 13

Miscellaneous

13.1 Confidential Information.

13.1.1 Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain.

13.1.2 A party receiving Confidential Information agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project, subject to public records laws and judicial judgments or orders requiring disclosure.

13.2 Assignment.

13.2.1 Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

13.3 Successorship.

13.3.1 Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

13.4 Governing Law.

13.4.1 The Agreement and all Contract Documents shall be governed by the laws of the State of

Oregon, without giving effect to its conflict of law principles. The venue of any proceeding for the litigation and/or resolution of any dispute under the Contract Documents shall be Clackamas County, Oregon.

13.5 Severability.

13.5.1 If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

13.6 No Waiver.

13.6.1 The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future performance.

13.7 Headings.

13.7.1 The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

13.8 Notice.

13.8.1 Any notice, demand, consent or other communication made pursuant to this Contract shall be in writing and shall be (a) delivered personally to the party to whom the same is directed, or (b) sent by facsimile, recognized courier service (e.g. Federal Express) or registered or certified mail, return receipt requested, postage prepaid; or (c) sent by electronic mail and in each case, addressed as follows:

If to Owner:

If to Design-Builder:

Notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

13.9 Amendments.

13.9.1 The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

13.10 Survival.

13.10.1 The dispute resolution provisions contained in Section 10, and all other provisions which

by their inherent character should survive termination of the Contract and/or Final Acceptance, shall survive the termination of the Agreement and the date on which Final Acceptance occurs.

13.11 No Estoppel.

13.11.1 Owner shall not, nor shall any officer thereof, be precluded or estopped by any return or certificate made or given by any Owner representative or other officer, agent, or employee of Owner under any provisions of the Contract from at any time (either before or after the final completion and acceptance of the Work and payment therefor) pursuant to any such return or certificate showing the true and correct amount and character of the work done, and materials furnished by Design-Builder or any Person under the Contract or from showing at any time that any such return or certificate is untrue and incorrect, or improperly made in any particular, or that the work and materials, or any part thereof, do not in fact conform to the Contract Documents; and Owner shall not be precluded or estopped, notwithstanding any such return or certificate and payment in accordance therewith, from demanding and recovering from Design-Builder such damages as it may sustain by reason of Design-Builder's failure to comply with the Contract Documents.

13.12 Further Assurances.

Design-Builder shall promptly execute and deliver to Owner all such instruments and other documents and assurances as are reasonably requested by Owner to further evidence the obligations of Design-Builder hereunder, including assurances regarding assignments of Subcontracts contained herein.

13.13 Turn Over of Designs and Drawings

13.13.1 Upon final acceptance or termination of this Agreement, the Owner shall be entitled to, and the Design-Builder shall turn over to the Owner, all such designs, drawings, tracings and the like prepared pursuant to this Agreement, except for record copies, which the Design-Builder may use for its internal reference purposes subject to the nondisclosure provisions of this Agreement, which shall survive the completion or termination hereof.

13.14 Limitation on Third Party Beneficiaries.

13.14.1 Except as expressly provided in this Agreement (such as warranty and indemnity provisions), it is not intended by any of the provisions of this Agreement to create any other third party beneficiary under this Agreement or to authorize anyone not a Party to maintain a suit for personal injury or property damage pursuant to the terms or provisions hereof. Except as otherwise provided in this Section 13.13, the duties, obligations and responsibilities of the Parties pursuant to this Agreement with respect to third parties shall remain as imposed by law.

13.15 Independent Contractor

13.15.1 Design-Builder is an independent contractor, and nothing contained in the Contract Documents shall be construed as constituting any relationship with Owner other than that of project owner and independent contractor. In no event shall the relationship between Owner and Design-Builder be construed as creating any relationship whatsoever between Owner and Design-Builder's employees. Neither Design-Builder nor any of its employees is or shall be deemed to be an employee of Owner. Except as otherwise specified in the Contract Documents, Design-Builder has sole authority and responsibility to employ, discharge and otherwise control its employees and has complete and sole responsibility as a principal for its agents, for all Subcontractor and for all other Persons that Design-Builder or any Subcontractor hires to perform or assist in performing the Work.

13.16 Entire Agreement.

13.16.1 The Contract Documents contain the entire understanding of the parties with respect to the

subject matter hereof and supersede all prior agreements, understandings, statements, representations and negotiations between the parties with respect to its subject matter.

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