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June 12, 2025

**SOLICITATION ADDENDUM NO. 1**  
**REQUEST FOR PROPOSAL P&CC25-074-RFP**  
**Rock Creek B7 Chemistry Labs Renovation - CM/GC**

**THE FOLLOWING CHANGES/ADDITIONS TO THE ABOVE-CITED SOLICITATION ARE ANNOUNCED:**

This Addendum modifies the Request for Proposal (RFP) document(s) only to the extent indicated herein. All other areas not changed or otherwise modified by this Addendum shall remain in full force and effect. This Addendum is hereby made an integral part of the RFP document. Proposers must be responsive to any requirements of this Addendum as if the requirements were set forth in the RFP. Failure to do so may result in Proposal rejection. See the RFP regarding requests for clarification or change and protests of this Addendum, and the deadlines for the foregoing.

This addendum is to be acknowledged in the space provided on the Proposer Certification Form supplied in the solicitation document. Failure to acknowledge receipt of this addendum may be cause to reject your Proposal.

The RFP closing date **REMAINS UNCHANGED: July 2, 2025 at 2:00 PM Pacific Time**

**PURPOSE: The purpose of this Addendum is to add and ATTACHMENT with the sample contracts and to reduce the insurance requirements as follows:**

**Add ATTACHMENT I – SAMPLE CONTRACT**

**Update Section II – STATEMENT OF WORK, 15.4 – Replace this section in its entirety with the following:**

**“15.4. Commercial General Liability – Minimum of \$1 million per occurrence, and no less than \$2 million combined aggregate.”**

**-END of Addendum**

Gina Dowd  
Contract Specialist

## ATTACHMENT I – SAMPLE CONTRACTS

for the following PROJECT:

*(Name and location or address)*

«Portland Community College Template General Conditions»

**THE OWNER:**

*(Name, legal status and address)*

«Portland Community College»  
«9700 SW Capitol Highway Boulevard, Suite 260»  
«Portland, Oregon 97219»

**THE ARCHITECT:**

*(Name, legal status and address)*

«[INSERT] »

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

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

The Contract Documents are enumerated in the Agreement between the Owner and Contractor, which is based on AIA Document A133-2017, as amended, (hereinafter the "Agreement"), and consist of the Agreement, these General Conditions of the Contract for Construction (the "General Conditions"), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements. Submittals are not Contract Documents unless and until they are formalized as a Change Order.

#### **§ 1.1.2 The Contract**

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

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

#### **§ 1.1.3 The Work**

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

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

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

Instruments of Service are physical representations, Drawings, Specifications, and other documents (including those in electronic form) of the tangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

### § 1.1.8 Confidential Information

Confidential Information is (1) all information (whether oral, written, electronic, by the Contractor's inspection, or otherwise), concerning the Owner's business, curriculum, course offerings, products, documents, property, or inventions including, but not limited to, all tangible, intangible, visual, electronic, present, or future information and (2) any and all information provided by the Owner and marked confidential, or identified as confidential in a separate writing, that becomes available to Contractor or its employees, subcontractors, or agents in the performance of an Agreement.

### § 1.1.9 Modification

A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect.

### § 1.1.10 Project Site

The Project Site includes (1) the real property where the Project will be constructed, (2) spaces where the Work is to be performed, and (3) staging areas.

### § 1.1.11 Affiliated Entity

The term "Affiliated Entity" shall mean the Contractor (if self-performing a portion of the Work), a parent, subsidiary, affiliate, or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor, or the Contractor itself, owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity that has the right to control the business or affairs of the Contractor. The term "Affiliated Entity" includes any member of the immediate family of any person identified above.

## § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

§ 1.2.4 The terms of any document that forms the Contract are subject to the following order of precedence:

- .1 Modifications, with the more recent modification taking precedence over an earlier modification;
- .2 The Agreement;
- .3 These General Conditions and supplementary conditions;
- .4 Drawings, Specifications, and Addenda issued before execution of the Contract, subject to Section 1.2.5;
- .5 Other documents incorporated by the terms of the Contract Documents.

**§ 1.2.5** If there is an inconsistency within or between (1) any Drawings, Specifications, or Addenda issued before execution of the Contract, or (2) any Drawings, Specifications, or Addenda and applicable standards, codes, and ordinances, then the Contractor shall provide the better quality or greater quantity of Work without requiring a change to the Contract Sum. Work described in the specifications that is not specifically located on the drawings is nonetheless included in the Work. Items reasonably inferred from the Drawings but not in the Drawings (e.g., missing doorknobs, electrical connections to HVAC, etc.) shall be deemed part of the Drawings. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation. In conflicts between the drawings and specifications, the drawings shall govern the specifications for quantity and location; the specifications shall govern the drawings for quality and performance. Figured or written dimensions govern scale dimensions, and large scale Drawings govern small scale Drawings; provided that where the Contract Documents provide for different or conflicting standards or requirements as to any portion of the Work, Contractor shall be obligated to provide the better quality, greater quantity, or comply with the more stringent requirements. The terms and conditions of this Section 1.2.4, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects or substitutes for those documents that may be used on the Project.

### **§ 1.4 Interpretation**

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

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

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications, and unless otherwise agreed with the Owner will retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution of the Instruments of Service to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

### **§ 1.6 Notice**

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

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

## **§ 1.7 Digital Data Use and Transmission**

The Owner shall establish protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form, unless otherwise already provided in the Agreement or the Contract Documents.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The Contractor and its Subcontractors cannot rely on statements, requests, or purported authorizations made by persons or entities other than the Owner's designated representatives for any purpose relating to the Work, the Contract Documents, changes, or payment.

**§ 2.1.2** The Owner may not be the owner of the real estate upon which Work will be performed at the Project Site, but in those cases will have or obtain rights necessary for the Work to be performed on the Project Site.

**§ 2.1.3** Notwithstanding anything to the contrary in any Contract Document, no officer, director, trustee, manager, partner, parent, affiliate, Owner representative, faculty member, employee, volunteer, student, agent, or other representative of the Owner shall have any personal liability to the Contractor or any other person or entity other than the Owner for any acts or omissions arising out of or relating to these General Conditions or any Contract, whether based on tort, contract, statute, administrative laws, or otherwise.

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

**§ 2.2.1** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

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

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary building permits required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect. Such successor need not be a design professional.

**§ 2.3.4** Except to the extent required for execution of the Work and requested by the Contractor in writing, the Owner shall not furnish surveys, studies, or reports regarding the physical characteristics, legal limitations or utility locations for the Project Site but shall provide an available survey and legal description of the Project Site if requested by the Contractor. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner or the Architect shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Additional copies may be purchased by the Contractor at the cost of reproduction and handling.

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies commence and continue to carry out the Work, including without limitation the correction of any deficiencies. The Owner may, pursuant to Section 9.5.1, withhold payment in whole or in part, to cover the reasonable cost of correcting such deficiencies, including Owner's expenses, attorney fees, and compensation for the Architect's additional services made necessary by the default, neglect, or failure. If current and future payments are not sufficient to cover these amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs by the Owner, the Contractor may file a Claim pursuant to Article 15.

**§ 2.5.2** If the Contractor's default or neglect results in a hazard to the safety of persons or property, the Owner may commence and continue to carry out any Work necessary to mitigate the hazard immediately, regardless of the notice period.

**§ 2.5.3** The Owner's right to commence and carry out the Work in this Section 2.5 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

#### **§ 2.6 EXCLUSION AND REPLACEMENT OF PERSONNEL**

If any of the Contractor's representatives, employees, agents, or Subcontractors (collectively, "Personnel") cause or threaten physical harm to any persons or property related to the Project, then the Owner may require the Contractor to remove those Personnel immediately. The Contractor must provide to the Owner identification of replacement Personnel no later than 48 hours after removing Personnel from the Project. Each replacement must have qualifications and experience comparable to or better than the individual or entity being replaced and be reasonably acceptable to the Owner.

#### **§ 2.7 RIGHTS and REMEDIES**

The rights described in Sections 2.3 through 2.6 shall be in addition to, and not in restriction of, the Owner's other rights or remedies. Owner's exercise of rights shall not excuse the Contractor from damages caused by breach of this Agreement or its responsibility for full performance of this Agreement. No action or inaction on the part of the Owner at any time in the exercise of any right or remedies conferred upon it under this Contract shall be deemed to be a waiver on the part of the Owner of any of its rights or remedies.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. These General Conditions apply to Affiliated Entities and contractors that are owned or controlled by, and act as, the Contractor for purposes of any Contract.

- .1 The Contractor shall be lawfully licensed with the Oregon Construction Contractor's Board at the time of solicitation of any Work and throughout the entire course of the Work. The Contractor shall maintain all required bonding and insurance required by the State of Oregon throughout the entire course of the Work.

- .2 The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall supervise, coordinate, and perform the Work in accordance with the Contract Documents in a professional, safe, and workmanlike manner and in accordance with all laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and professional standards applicable to the industries and trades involved, including without limitation strict compliance with all applicable federal, state, and local laws and building codes, certification requirements applicable to the Work, and other policies or standards incorporated in the Contract Documents.

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

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

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

- .1 The Contractor and each Subcontractor, as a condition precedent to commencement of the Work, shall:
- (a) become familiar with the location, condition, layout, and nature of the Project Site and surrounding areas and generally prevailing climate conditions;
  - (b) review all analyses, studies, and test data available to the Contractor concerning the conditions of the Project Site;
  - (c) inspect the location of the Project Site and satisfy themselves as to its condition, including all observable structural, surface, and subsurface conditions;
  - (d) evaluate the availability and cost of labor and trade Subcontractors and the availability and cost of materials, tools, and equipment; and
  - (e) determine (i) that the Contract Sum is just and reasonable compensation for all the Work, including all foreseen and foreseeable construction risks, hazards, and difficulties for which the Contractor is responsible under the Contract Documents, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the means and methods of performing the Work will not result in any lateral or vertical movement of any adjacent structure.

The Contractor or Subcontractor must notify the Owner in writing before commencing the Work if it determines that it cannot satisfy one or more of these conditions.

- .2 The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner, and shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project Site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the

Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect and the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1 through 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations and could not have recognized the applicable error, inconsistency, omission, or difference in the exercise of normal diligence, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, recognized in the exercise of normal diligence.

**§ 3.2.5** Unless otherwise specified in the Contract Documents, the Contractor shall confirm the location of each utility and shall excavate and dispose of each on-site utility. The Owner shall make available to the Contractor, and the Contractor shall study, the results of any test borings and information that the Owner has concerning subsurface conditions and site geology. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

**§ 3.2.6** At the Owner's request, the Contractor will make available to the Owner the results of any other site investigation, analyses, studies, or other tests conducted by or in possession of the Contractor and any of its agents.

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

**§ 3.3.1** The Contractor shall supervise, coordinate, and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

**§ 3.3.4** The Contractor and its Subcontractors may not use the Owner's tools, equipment, or materials unless authorized in advance by an Owner's Representative.

**§ 3.3.5** The Contractor must notify the Owner at least seven (7) working days before the interruption of any utility or operating system, regardless of the area it services, so that the Owner may notify the departments and personnel to be affected. The specific schedule for all interruptions in services must be coordinated through an Owner's Representative and the Owner's on-site plant operations personnel.

**§ 3.3.6** If the Contractor reasonably believes that suspension of the Work is warranted by reason of unforeseen circumstances that could adversely affect the quality of the Work if the Work were continued, the Contractor will immediately notify the Owner and the Architect and describe with particularity the reasons for its belief. Except as stated elsewhere in the Contract Documents or in an emergency, the Contractor shall not suspend the Work until it receives approval from the Owner.

**§ 3.3.7** Unless otherwise noted or directed, the Contractor shall perform all Work in accordance with product manufacturers' recommendations or directions. No preparatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of the Architect or an Owner's Representative. Conflicts between manufacturers' directions shall be resolved by the Architect or, if no Architect is appointed for a Project, the Owner.

**§ 3.3.8** It is understood and agreed that the relationship of the Contractor to Owner shall be that of an independent contractor as defined in ORS 670.600.

### **§ 3.4 Labor and Materials**

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

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

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

- .1 Hire all personnel for the proper and diligent performance of the Work; and
- .2 Use its best efforts to maintain labor peace for the duration of the Project.

**§ 3.4.4** The Contractor and all its Subcontractors shall not discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, sexual orientation, or national origin.

**§ 3.4.5** The unauthorized use, possession, sale, purchase, distribution, dispensation, or manufacture of unauthorized or illegal drugs or alcohol by the Architect or its consultants, the Contractor or its Subcontractors, or the employees or agents of any of them while on the Owner's property is strictly prohibited. The Architect and its consultants, the Contractor and its Subcontractors, and the employees and agents of any of them that are employed on any Project Site may not work under the influence of or be impaired or affected by any unauthorized or illegal drugs or alcohol.

**§ 3.4.6** The possession of firearms or other weapons by any person (including without limitation the Architect or its consultants, the Contractor or its Subcontractors, or the employees or agents of any of them) while on property owned or operated by the Owner is strictly prohibited. Weapons do not include tools needed by the person to perform the Work and that the person is authorized to use.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit, and will be performed in a good and workmanlike manner and in accordance with manufacturer specifications where applicable. Work, materials, or equipment not conforming to these requirements may be considered defective. The

Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, Subcontractor, or other special guarantees or warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4. The obligations under this Section 3.5.2 shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

### **§ 3.5.3 CORRECTION OF WORK**

If, after ten (10) days' notice, the Contractor fails to proceed to correct Work or cure any breach of warranty, the Owner may have the defects corrected and the Contractor and its surety shall be liable for all reasonable expenses incurred. In case of an emergency in which, in the opinion of the Owner or the Architect, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to the Contractor, and the Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this Section 3.5.3 are not exclusive, but are cumulative of any other Owner remedies.

### **§ 3.5.4 THIRD-PARTY WARRANTIES**

- .1 The Contractor shall obtain from Subcontractors, manufacturers, and suppliers written guarantees and warranties consistent with any requirements of the Contract Documents and in all events with the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties.
- .2 All guarantees or warranties of third parties furnished to the Contractor or Subcontractor, including without limitation from any manufacturer or supplier, shall be deemed to run for the benefit of the Owner.
- .3 The Contractor shall deliver to the Owner via the Architect electronic or hard-copy versions of all as-built documents and guarantees and warranties on materials, systems, and equipment furnished by all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. These warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign and deliver to the Owner all manufacturers' warranties not later than the date of Substantial Completion.
- .4 Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

### **§ 3.5.5 ASSIGNMENT OF WARRANTIES**

The Contractor hereby assigns to the Owner all warranties and guarantees of all Subcontractors and Sub-subcontractors, but the assignment shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

### **§ 3.5.6 REMEDIES**

Consistent with Section 13.3, the remedies stated in this Section 3.5 are not exclusive, but are cumulative of any other Owner remedies.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use, corporate activity, and other similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the trade, means-and-methods, and electrical, mechanical, and plumbing permits as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Without limitation to the foregoing, Contractor shall procure all certificates of inspection, use, occupancy, permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work including without limitation street use and street closure permits.

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

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the Project Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions; otherwise any Contractor's Claim regarding the same will be barred. The Architect will promptly investigate such conditions and, if the Architect determines, after considering Section 3.2, that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. For purposes of these General Conditions, the term "wetland" includes wetlands and water bodies subject to the federal Clean Water Act and parallel state and local rules, statutes, and regulations. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

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

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the Project Site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the Project Site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under

Section 3.8.2.2. Savings realized on an allowance shall be returned to the Owner as a reduction in the Contract Sum.

**§ 3.8.3** Materials and equipment required under an allowance shall be proposed by Contractor and selected in writing by the Owner in sufficient time to avoid delay in the Work, and must be approved in writing prior to procurement.

**§ 3.8.4** Allowances shall be separately accounted for to the Owner in each Application for Payment and at Final Payment.

### **§ 3.9 Superintendent**

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

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

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

**§ 3.9.4** New or replacement superintendents must be qualified and must have adequate experience with similar projects. The Contractor shall deliver to the Owner résumés of proposed new or replacement superintendents.

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

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's approval a Contractor's construction schedule to achieve Substantial Completion of the Work within the Contract Time (the "Project Schedule"). The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to Substantial Completion and shall not exceed the Contract Time or other milestones established in the Contract Documents until and unless the construction schedule is amended by a Change Order.

**§ 3.10.2** While the Work is being performed, Contractor will submit to the Owner monthly progress schedules for the Work (each a "Progress Schedule"), correlated with the Project Schedule, in digital and hard-copy formats as requested or appropriate. The Project Schedule and any Progress Schedule, and any amendments to either, must incorporate and correspond with agreed-upon milestones and provide for the expeditious and practicable execution of the Work within the Contract Time. A Progress Schedule may not exceed the Contract Time or other milestones established in the Contract Documents until and unless the Project Schedule is amended by a Change Order.

**§ 3.10.3** The Contractor shall perform the Work in accordance with the most recent Project Schedule approved by the Owner and Architect.

**§ 3.10.4** The construction schedule must: (1) utilize the calculated "critical path method" logic of construction activities and sequence of operations; (2) identify all distinct parts of the scheduled Work; and (3) clearly indicate the calculated critical path for completion of the Work.

- .1 The total float or contingency time within the schedule is for the exclusive use and benefit of the Project. The Owner and the Contractor may apply total float or contingency time in the schedule to meet milestones or adjust for delays. The total float or contingency time can be applied only upon prior notice to all parties and agreement to its application.

- .2 Float or contingency time within a Progress Schedule that does not affect the critical path or Contract Time is for the use of the Contractor. The Contractor may apply standard float or contingency time in the Project Schedule without prior notice to the Owner.
- .3 Changes in the Project Schedule during construction of the Project will not be approved unless the proposed revised schedule incorporates critical path logic and methodology and is in a form satisfactory to the Owner.
- .4 The Contractor will promptly update proposed Project Schedules in hard-copy and digital formats: (a) upon request by Owner; and (b) whenever a change occurs in the scope of the Work that impacts the Project Schedule, consumes total float or contingency time, or would extend Work beyond the date scheduled for Substantial Completion.

**§ 3.10.5** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

#### **§ 3.10.6 Progress Meetings**

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

#### **§ 3.10.7 Reports**

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

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

**§ 3.11.1** The Contractor shall make available, at the Project Site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

**§ 3.11.2** The Contractor shall maintain all approved permit Drawings in a manner that will make them accessible at the Project Site to governmental inspectors and other authorized agencies. All approved Drawings shall be marked and delivered to the Owner within sixty (60) days of Substantial Completion.

**§ 3.11.3** The Contractor must continuously maintain and make readily available at the Project Site all safety data sheets, safety records, daily logs, and other Contract documentation necessary to immediately ascertain the safety of the Work, Hazardous Materials requirements, and the Contract Documents.

**§ 3.11.4** The Contractor, with its Subcontractors, will prepare draft Record Construction Documents, showing all as-built conditions as required under Section 3.11.1, and submit them to the Architect for review. Based on the Architect's review and comments, if any, the Contractor will prepare and deliver to the Owner within sixty (60) days of Substantial Completion final, accurate, and complete Record Construction Documents, including without limitation record Drawings and Specifications, showing the exact "as-built" conditions of the Work.

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

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

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

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

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

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. The Contractor shall be responsible for all costs associated with submittals, Shop Drawings, Product Data and Samples submitted out of sequence.

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

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

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

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

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, to the extent that the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

### **§ 3.13 Use of Site**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

**§ 3.13.2** Before the Work commences, the Contractor shall review the real property where the Project will be constructed with the Owner in detail and identify the contents and boundaries of the Project Site. The Contractor shall ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the Project Site. The Contractor, with advance consent of the Owner, will erect such barriers and devices as are necessary to restrict access to the Project Site to the approved areas and to prevent unauthorized access to non-Work areas.

**§ 3.13.3** The Contractor and its Subcontractors shall receive prior approval from the Owner before delivering or storing any materials or tools on the Owner's premises. Upon approval, materials and tools will be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.

**§ 3.13.4** The Contractor, wherever possible and agreed upon with the Owner and to the extent required by applicable law, will allow safe access to the Owner's facilities by physically handicapped persons.

**§ 3.13.5** If the Contractor removes the Owner's property, fixtures, materials, or other equipment to perform the Work, the Contractor shall be responsible for the safekeeping of all such property, fixtures, materials, or other equipment, including without limitation ensuring that such items are not lost, damaged, or destroyed, and are returned to their original location, reinstalled, replaced, or repaired, as necessary.

**§ 3.13.6** When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

**§ 3.15.1** Each workday, the Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

**§ 3.16.1 Project Access.** The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

**§ 3.16.2 Keys.** The Contractor will be responsible for all keys issued to it or its Subcontractors for mechanical or other locked rooms. Keys will be obtained from the Owner and may not be copied, transferred, or used for any purpose other than prosecution of the Work. All keys will be returned to the Owner at the conclusion of the Work and as a condition precedent to final payment of the Contractor. If all keys are not returned and the Owner determines, in its reasonable discretion, to rekey affected locks, the Contractor will pay the cost of rekeying all affected locks. This remedy is not exclusive of any other remedy of the Owner. The term "key" includes any device used to secure a room or areas in the Owner's premises, whether by mechanical, electronic, or other means.

**§ 3.16.3 Identification.** The Architect and its Consultants, the Contractor and its Subcontractors, and the employees and agents of any of them shall comply with the Owner's policies and requirements, if any, to obtain, display, and return identification badges at any time while they are present on the Owner's property.

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

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, protect, defend, and hold harmless the Owner and its consultants, agents, and employees for, from and against suits, actions, awards, penalties, liabilities, claims, damages, losses, costs, and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the Work by the Contractor, a Subcontractor, or anyone for whose acts they may be liable:

- .1 To the extent caused by (a) the material breach of these General Conditions or the Contract Documents; (b) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (c) any negligent or tortious acts or omissions of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable; and
- .2 For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable.  
Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. Contractor's duty of defense shall arise immediately upon assertion of any claim actually or allegedly covered by this indemnification provision, and, to the fullest extent allowed by law, shall be independent of any limitations upon Contractor's duty of indemnification.

**§ 3.18.3** Notwithstanding anything to the contrary in this Section 3.18, the Contractor is not required to indemnify the Owner or its consultants, agents, or employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of the Owner or its consultants, agents, or employees, but the Contractor is required to indemnify the Owner and its consultants, agents, and employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Contractor, or the fault of the Contractor's agents, representatives, or Subcontractors.

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

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

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

**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until expiration of the correction period described in Section 12.2.2 of these General Conditions. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the Project Site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become familiar with the progress and quality of the portion of the Work completed, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine whether the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the Project Site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) deviations from the

Contract Documents, (2) deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

#### **§ 4.2.4 Communications**

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

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and approve the amounts due the Contractor within seven (7) working days after the Architect's receipt of the Application for Payment.

**§ 4.2.6** The Architect has authority to reject Work and documentation that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect shall inform the Owner contemporaneously with any rejection of Work or documentation.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, in a manner not to cause delay in the Work while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10 and 3.5.

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

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions, in consultation with the Owner, on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise in a manner not to cause delay in the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the Project Site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner and Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Failure of the Owner to object to a Subcontractor does not imply approval of specific products or materials.

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

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

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### § 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor (a) to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, (b) to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect, and (c) to make the same representations to the Contractor, including a representation that the Subcontractor is appropriately licensed to perform its portion of the Work, that the Contractor makes to the Owner, to the extent applicable to the Subcontractor's scope of the Work. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. When appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

### § 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after (a) termination of the Contract by the Owner pursuant to Section 14; or (b) stoppage of the Work by the Owner under Section 2.3, and only for those subcontracts, purchase orders and similar subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract arising after the date of assignment acceptance by the Owner.

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

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

### § 5.5 DELEGATED DESIGN SUBCONTRACTORS

The Contractor may retain various Subcontractors to perform delegated design portions of the Project ("Delegated Design Subcontractors"), which the Contractor shall identify in advance to the Owner before delegated design work commences. The Contractor assumes the obligation, as a contractual duty to the Owner, to deliver a completed and functioning Project in accordance with the Contract Documents, including without limitation all designs provided by the Delegated Design Subcontractors. The Contractor is not itself a designer and does not independently approve the details of the designs of Delegated Design Subcontractors. The Contractor shall place in its subcontracts with each of its Delegated Design Subcontractors the following terms and conditions:

- .1 The Owner is an intended third-party beneficiary of the delegated design subcontract and the delegated design Subcontractor's services and Work. The delegated design Subcontractor is not a third-party beneficiary of the Contract or any other agreement between the Contractor and the Owner, or between the Owner and the Architect or the Architect's consultants.
- .2 The delegated design Subcontractor shall maintain through the Project, and for six (6) years after Substantial Completion of the Project, standard professional liability/errors-and-omissions insurance

that is (a) in a form and with an insurance company satisfactory to the Contractor and the Owner, and (b) in compliance with the minimum insurance coverage requirements in these General Conditions.

- .3 The delegated design Subcontractor's professional errors and omissions insurance will have the terms and limits as required in these General Conditions or as agreed in advance by the Owner and the Contractor.
- .4 The delegated design Subcontractor shall notify the Contractor and the Owner no less than thirty (30) days before any cancellation, nonrenewal, or material modification of the professional errors and omissions insurance.
- .5 The delegated design Subcontractor shall submit to the Owner and the Contractor proof of all such insurance before commencing Work on the Project.

The Contractor shall also ensure that the delegated design subcontracts contain no limitation-of-liability clauses, unless approved by the Owner in writing.

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

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

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

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

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

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract.

### **§ 6.2 Mutual Responsibility**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible

for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5. If a Separate Contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall indemnify the Owner and defend it for, from, and against any claim, judgment, or award, including costs, attorney fees, and expert fees. This Section 6.2.4 does not require the Contractor to indemnify the Owner against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the liability was caused by the negligence or intentional misconduct of the Owner.

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

### **§ 6.3 Owner's Right to Clean Up**

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

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

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

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner and Contractor. A Construction Change Directive may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

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

### **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Owner or the Contractor and signed by the Owner, and Contractor stating their agreement upon all of the following:

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

**§ 7.2.2** The form of Change Order shall be AIA Document G701, Change Order. Before approval of a Change Order and upon request of the Owner, the Contractor will produce copies of all bids or other proposals, including those from Subcontractors of any tier and suppliers related to the Work proposed to be performed under the Change Order. No Change Order shall become effective until the Contractor satisfies all document requests from the Owner.

**§ 7.2.3** Agreement on any Change Order constitutes a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including without limitation all direct and indirect costs and all adjustments to the Contract Sum according to the terms and any conditions stated in the Change Order. This Section 7.2.3 does not affect the Owner's audit and audit recovery rights.

### **§ 7.3 Construction Change Directives**

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

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

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

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

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable amount for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, reasonable expenditures for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Permit fees, taxes, and costs of bonds and insurance necessitated by the changed Work; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, but no longer than seven days of receipt, the Contractor shall advise the Architect and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. If the Contractor does not timely disagree with the adjustments, the Construction Change Directive will be deemed an agreed "Change Order."

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

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

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment.

The Owner will make an interim determination for purposes of monthly approval of payment for those costs and pay the amount that the Owner determines to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

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

The Architect may order minor changes in the Work, if approved by the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

#### **§ 7.5 AGREED OVERHEAD AND PROFIT RATES**

Overhead and profit adjustments for net increases to the Contract Sum are governed by the following terms and limitations:

- .1 For Work performed by the Contractor's own forces or Affiliated Entities, the Contractor may claim no more than [Ten] percent ([10]%) of the net increase in the Contract Sum;
- .2 For Work performed by a Subcontractor, the Contractor may claim no more than [Ten] percent ([10]%) of the net increase in Contract Sum that is due to that Subcontractor;
- .3 For materials procured in connection with the Project, the Contractor may claim no more than [Ten] percent ([10]%) of the net increase in the Contract Sum attributable to those materials;
- .4 For additional Work ordered as described above that will be executed by Subcontractor or Sub-subcontractor, the Subcontractor or Sub-subcontractor may claim no more than [Five] ([5]%) of its actual Cost of the additional Work; and
- .5 Overhead, as used in this section, shall include all home office and site expenses not directly attributable to the change.

The markups for overhead and profit under this Section 7.5 will not apply to changes in the Work calculated using the unit price method. For unit price arrangements, all overhead and profit costs shall be covered by the unit price rates.

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

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

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

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

**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

## § 8.2 Progress and Completion

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

§ 8.2.2 The date of commencement cannot occur before placement of insurance. The Contractor will not commence Work or enter the Project Site before placement of insurance.

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

## § 8.3 Delays and Extensions of Time

§ 8.3.1 The Contractor may seek an extension of the Contract Time if the Contractor is delayed at any time in the commencement or progress of the Work (1) by an act or neglect of the Owner, Owner's employees, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the control and without the fault or negligence of the Contractor or its subcontractors or suppliers at any tier and that by the exercise of reasonable diligence the Contractor is unable to prevent or provide against; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time may be extended for such reasonable time as the Architect may determine. The Contractor shall be required to use best efforts to mitigate both the necessity of the delay and the period of the delay. Extension shall not exceed the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby, but in no circumstance more than a day for day increase due to the number of days of legitimate occurrence as defined above, as the Owner may determine consistent with the provisions of the Contract Documents.

§ 8.3.2 The adjustment to Contract Time must be recorded in a Change Order. All extensions of Contract Time must be net of (a) any delays caused by the fault or negligence of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract; and (b) any contingency or "float" time allowance included in the Project Schedule. No extension of Contract Time may exceed the actual amount of delay directly caused by the unforeseen occurrence identified in this Section 8.3.1.

§ 8.3.3 The Contractor must comply with Sections 15.1.3 and 15.1.4 of these General Conditions to receive any extension in Contract Time, regardless of whether the requirements of Section 8.3.1 are satisfied.

§ 8.3.4 The Contract Time is set with reference to and knowledge of weather conditions usual to the area of the Project. If adverse weather conditions are the basis for a Claim for an extension of the Contract Time, then the Contractor shall document its Claim using data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled Work.

§ 8.3.5 Except as expressly provided under Section 8.3.1(1) or (2), the Contractor may not recover delay damages, wage escalation, material escalation, extended overhead, or additional compensation of any kind resulting from the Contractor's delay in completion of the Work. Otherwise, to the fullest extent allowed by law, when the Contract Time has been extended (i) such extension of time shall be the Contractor's sole remedy for such delay, and the Contractor shall not be entitled to any delay, equitable adjustment or impact damages or other increase in compensation due to such extension, and (ii) the Contractor agrees to make no monetary claim under any legal theory for delay, interference or hindrance of any kind in the performance of this Contract for any reason, and (iii) agrees that any such claim shall be fully compensated for by an extension of time to complete performance of the Work. In addition to the other limits stated in this Section 8.3.5, to the fullest extent allowed by law, the Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, altitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar theories of damages.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

### § 9.1.2 [Deleted].

### § 9.2 Schedule of Values

The Contractor shall submit an approved schedule of values to the Owner and Architect before commencement of the Work, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner and Architect. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and Architect and supported by such data to substantiate its accuracy as the Owner and Architect may require, and unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

### § 9.3 Applications for Payment

§ 9.3.1 At least 30 days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage of five percent.

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

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit its monthly Application for Payment to the Owner and the Architect (if required by the Owner), on AIA Document G702, supported by AIA Document G703, or an equivalent form approved by the Owner, no later than the fifth day of each month. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 The Project name, site of the Work (e.g., address and suite).
- .2 Description of the Work.
- .3 Detailed cost report and updated schedule of values.
- .4 Separate documentation and accounting for Work performed pursuant to Change Orders, Construction Change Directives, or minor changes in the Work; allowances; application of contingency; and payment for materials stored other than at the Project Site.
- .5 The Contractor's executed lien, bond, and claim releases ("Releases") on forms attached as Exhibits or otherwise acceptable to the Owner. Releases shall provide a conditional release of liens, bonds, and claims for the Work that is subject to the current Application for Payment and an unconditional release for all Work performed through the date of all prior payment periods.

- .6 All other information and materials required to comply with the requirements of the Contract Documents.

The Owner may, at its option, require as a condition of payment, documentation from the Contractor evidencing that Subcontractors, Sub-subcontractors, and suppliers of every tier have provided the requisite conditional and unconditional releases and waivers of lien, claim, and bond rights to the Contractor for each Application of Payment, on forms acceptable to the Owner.

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

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

**§ 9.3.3.1** If a Subcontractor of any tier or supplier of any tier asserts a lien against all or any portion of the Project for which the Contractor received payment from the Owner, the Contractor will cause the lien to be removed and will indemnify Owner and its consultants, agents, and employees, and defend them against the lien and will reimburse the Owner and its consultants, agents, and employees for all costs, expenses, and attorney fees incurred by them in connection with or arising from the lien. At the Owner's option, the Contractor will furnish, at the Contractor's sole expense, a bond to release the lien from the Project.

**§ 9.3.3.2** The Contractor's duties to remove liens and indemnify and defend the Owner and its consultants, agents, and employees and hold them harmless from any lien created and perfected against the Project shall be enforceable regardless of whether the Owner has delivered copies of pre-lien notices to the Contractor.

**§ 9.3.3.3** If a lien is asserted against the Project or a payment bond claim is made, the Owner reserves the right to pay the Subcontractor or supplier jointly with the Contractor for Work performed by the Subcontractor or supplier, unless the Contractor promptly notifies the Owner of its reasonable objection. The Owner will be entitled to a credit against the Contract Sum for any such payments, up to the amount actually owed to the Subcontractor or supplier.

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

## **§ 9.4 Payment Approval**

**§ 9.4.1** Within 7 days after the Contractor submits its Application for Payment in accordance with Section 9.3.1, the Owner or the Architect (if designated by the Owner) will meet to review the Contractor's Application for Payment (a "Pencil Draw") for Work performed during the preceding month. The Contractor shall revise the Pencil Draw in accordance with any recommendation submitted by either the Owner or the Architect that is consistent with the requirements of the Contract Documents. After incorporating all recommendations from the Pencil Draw, the Contractor will submit a formal Application for Payment to the Owner and the Architect (if designated by the Owner) for approval and signature.

**§ 9.4.2** The approval of an Application for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount approved. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract

Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the approval of an Application for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

### **§ 9.5 Decisions to Withhold Approval**

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

- .1 defective or nonconforming Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor or a Subcontractor to make payments properly to Subcontractors, Sub-subcontractors, or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 unsatisfactory Work progress;
- .9 disputed Work, materials, or products, not to exceed one hundred fifty percent (150%) of the amount in dispute;
- .10 failure to comply with other material provisions of the Contract Documents;
- .11 failure to maintain current as-built and safety documents as required by Section 3.11; or
- .12 failure to submit affidavits pertaining to wages paid as required by statute.

**§ 9.5.2** If the Contractor disputes the Owner's or Architect's decision to withhold payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

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

**§ 9.5.4** If the Architect or the Owner withholds payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect. The Owner will notify the Contractor of a joint payment, and the Owner will receive credit against the Contract Sum for the joint payment.

**§ 9.5.5** If the Contractor disputes any determination by the Architect or the Owner with regard to any approval of payment, the Contractor nevertheless shall expeditiously continue the Work.

### **§ 9.6 Progress Payments**

**§ 9.6.1** The Owner will make progress payments to the Contractor no more than once each month based on a verified Application for Payment submitted by the Contractor and signed by the Owner, as provided in ORS 279C.570. Each progress payment will be calculated based on: (1) the percentage completion of the Work and (2) that portion of the

Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, subject to the following:

- .1 Retainage will be withheld from the total progress payment amount at five percent (5.0%) of the total amount due to the Contractor pursuant to ORS 279C.550 to .565 and ORS 701.410 to 701.420, unless otherwise expressly agreed in this Contract.
- .2 The release of retainage is contingent on Contractor satisfactorily completing the Work and its payment obligations under this Agreement. Any release of retainage shall not be construed as acceptance or approval by Owner and shall not relieve Contractor of responsibility for defective workmanship or materials or for latent defects and warranty obligations or any other obligations in this Agreement.
- .3 The amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable.
- .4 The amount of the progress payment will be reduced by amounts not approved by the Owner or by the Architect.
- .5 The amount of the progress payment will be reduced by amounts previously paid by Owner.

**§ 9.6.2** The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Payments by the Contractor to Subcontractors shall be subject to retainage of five percent (5.0%) on the total progress payment.

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

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

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

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

**§ 9.6.6** Neither approval of an Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall constitute acceptance of Work not in accordance with the Contract Documents.

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

**§ 9.6.8 [Deleted, addressed in 9.3.3.1].**

### **§ 9.7 Failure of Payment**

**§ 9.7.1** If the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount approved by the Owner and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

**§ 9.7.2** Failure of payment does not exist under Section 9.7.1 if the Owner exercises authority granted by the Contract Documents to withhold payment, notwithstanding approval by the Architect. The Contractor shall have no right to stop or suspend the Work so long as undisputed payments are made.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the latest of (a) the stage in the progress of the Work when the Work or designated portion thereof (which the Owner shall have agreed to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including without limitation issuance of a temporary certificate of occupancy or passage of any necessary governmental inspection; (b) the date of Owner's receipt of the Certificate of Substantial Completion from the Architect; or (c) the other conditions to Substantial Completion stated in this Section or otherwise in the Contract Documents have been fulfilled. The Work will not be considered Substantially Complete if appropriate cleaning has not occurred, if all systems and parts are not commissioned and usable, including balancing of the HVAC system, if utilities are not connected and operating normally, if all required occupancy permits or inspections have not been issued and/or passed, or if the Work is not safely accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change liquidated damages owed to the Owner. All Work other than incidental corrective or Punchlist Work and final cleaning shall have been completed, including but not limited to the following:

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

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is Substantially Complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The Contractor will further provide a written request to have the Architect certify that this Work has reached Substantial Completion and is ready for use or occupancy as applicable. The Contractor shall then expeditiously complete all Work items necessary in the judgment of the Architect and the Owner to achieve Substantial Completion.

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

**§ 9.8.4** When the Work or designated portion thereof is Substantially Complete, subject to the other requirements for Substantial Completion, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list prepared under this Section 9.8. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. The Owner may, but is not obligated to, require consent of surety as an additional condition to payment. No further payment will be due or owing until the payment at Final Completion.

### **§ 9.9 Partial Occupancy or Use**

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

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

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

**§ 9.9.4** The Contractor shall deliver to the Owner certificates of inspection, use, and occupancy upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment, and delivery shall be included within the Contract Sum.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection. When the Owner and Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the

Architect will promptly approve the final Application for Payment, which constitutes a representation that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and payable. The Architect's approval of the final Application for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor has fully performed the Contract, except for the Contractor's other duties, as provided in the Contract Documents, that extend beyond the date of final payment. Full performance of the Contract includes delivering Record Documents to the Owner, submitting a final Application for Payment to the Owner, providing two sets of all operation, maintenance, and warranty manuals and information of manufacturers whose equipment or materials are installed in the Work, taking all action necessary on the Contractor's part for issuance of a temporary or final Certificate of Occupancy, or its substantial equivalent, by the permitting agency, and submitting to the Owner and Architect:

- .1 an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;
- .3 a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- .4 consent of surety, if any, to final payment,
- .5 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and
- .6 valid unconditional waivers of all construction lien claims, bond claims, payment claims, and other claims by the Contractor and such Subcontractors and suppliers as the Owner designates, in the form of Exhibit \_\_ or other a form acceptable to the Owner, together with certification that the Contractor has obtained valid unconditional waivers of all such claims from each Subcontractor and Sub-subcontractor; and
- .7 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or Sub-subcontractor refuses to furnish an unconditional release or waiver required by these General Conditions, the Contractor shall indemnify the Owner and defend it against any claim or lien filed by the Subcontractor, Sub-subcontractor, or supplier and will reimburse the Owner for discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.
- .8 All original warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, as-built drawings and other documents or items required by the Contract Documents;
- .9 Originals of all permits, licenses and certificates, together with a certified statement that the Contractor has closed all necessary permit conditions and otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health departments and utilities, provided to Owner with a copy of all closed or signed off permits; and
- .10 Proof satisfactory to Owner that the Contractor has fully complied with the requirements of ORS 279C.845(7).

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

**§ 9.10.4 [Deleted].**

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

**§ 9.10.6** If final completion is not accomplished within thirty (30) days after the date of Substantial Completion, the Owner may withhold from any subsequent progress payments and from the Final Payment one hundred fifty percent (150%) of the reasonable cost of the unfinished Work necessary to attain final completion. If the Contractor fails to complete the Work necessary to attain final completion, the Owner may, without waiving any other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld.

**§ 9.10.7** Requests for payment will not be considered if submitted (1) more than thirty (30) days following completion of the Work performed or (2) on or after the date of acceptance of Final Payment, whichever is earlier.

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

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

The Contractor is solely responsible for and in sole control of jobsite safety. The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall review with all Subcontractors the methods, means, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor shall be responsible to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site.

**§ 10.1.2** The Contractor shall review with all Subcontractors the methods, means, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor shall be responsible to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site and, to the extent affected by the Work, at the Owner's adjoining facilities.

**§ 10.1.3** The Contractor will develop a fire response plan, which will be strictly enforced by the Contractor's project superintendent or safety officer. The Contractor will deliver a copy of the plan to the Owner in advance of the Work. The Contractor will supply fire extinguishers in sufficient size and quantity, distributed throughout the Project Site, to maintain a safe working environment.

**§ 10.1.4** The Contractor will ensure that all equipment furnished or installed as part of the Work is appropriately rated by Underwriters Laboratories or by another method approved by applicable laws, the applicable authority having jurisdiction, or the Owner, as appropriate.

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

- .1 Relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation;
- .2 Impose any obligation upon the Owner or the Architect to inspect or review the Contractor's safety

program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; and

- .3 Impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other person or entity.

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

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

- .1 employees on the Work, the Owner's staff, faculty, visitors, students, and vendors, and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the Project Site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction; and
- .4 adjoining operations of the Owner.

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

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including but not limited to posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, subject to the terms of the Contract, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

**§ 10.2.4** When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. The Contractor must obtain advance approval before proceeding with the storage or use of explosives, Hazardous Materials, or unusual equipment for prosecution of the Work.

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

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

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

### **§ 10.2.8 Injury or Damage to Person or Property**

The Contractor will immediately report to the Owner by telephone or messenger whenever any person at the Project Site suffers injury or if there is property damage to the Owner's existing facilities or adjoining property. The notice shall provide sufficient detail to enable the other party to investigate the matter. The Contractor will promptly follow up the notice with a written report to the Owner.

**§ 10.2.9** Without limiting any other requirement of this Section 10.2, the Contractor shall protect adjacent property and shall provide barricades, temporary fences, and covered walkways to protect the safety of passersby, as required by prudent construction practices, laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, or the Contract Documents. The Contractor shall be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon.

**§ 10.2.10** Without limiting any other requirement of this Section 10.2, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to utilities, sidewalks, curbs, adjoining property, and the property of third parties (including utility companies and governments) resulting from the performance of the Work, whether caused by the Contractor or by its Subcontractors of any tier. The Contractor shall maintain streets in good repair and traversable condition.

**§ 10.2.11** The Contractor will ensure that storage practices on the Project Site will keep combustible load levels to a minimum and in approved containers that are clearly labeled. The Contractor will provide safety data sheets to the Owner for all chemicals used on the Project Site.

**§ 10.2.12** Without limiting any other requirement of this Section 10.2, the Contractor shall maintain Work, materials, and apparatus free from damage from rain, wind, storms, frost, and heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease Work and notify the Owner and the Architect of the cessation.

**§ 10.2.13** The Contractor must ensure that all existing or operating systems, utilities, and access avenues are on and in operating condition before leaving the Project site each day. If any system, utility, or access avenue will not be operable, the Contractor must notify the Owner's Representative before the Contractor may leave the Project site that day.

**§ 10.2.14** The Contractor shall not permit open fires or smoking on the Project Site.

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

**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding Hazardous Materials as that term is defined in Section 10.3.6. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project Site, maintain available for inspection at the Project Site all safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. This program will be subject to approval of and modification by the Owner. The program must provide for notification of all personnel of potential hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the Owner a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors of any tier onto the Owner's property, including the purpose for their use on the Project.

**§ 10.3.2** In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project Site, the Contractor shall immediately (1) stop the Work or the portion of the Work affected, (2) notify the Owner and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by Contract for the existence, use, release, or discovery of Hazardous Materials.

**§ 10.3.3** With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was not introduced to the Project Site by the Contractor or its Subcontractors of any tier, the Owner shall obtain the services of a qualified environmental consultant to verify the presence or absence of the material or

substance reported by the Contractor and, if the material or substance is found to be present, to verify it to be or render it harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and the Contractor. By Change Order, the Contract Time may be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be accomplished as provided in Article 7.

**§ 10.3.3.1** With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was introduced to the Project Site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (1) proposing to the Owner and the Architect an acceptable environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3) verifying that the material is rendered harmless, as otherwise set forth in Section 10.3.3. The Contractor will not be entitled to an increase in the Contract Sum as stated in the last sentence of Section 10.3.3 if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Owner. Generally, the Owner may at its option contract directly with environmental consultants, regardless of whether the remediation work will be performed at the Contractor's expense.

**§ 10.3.4** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Owner's Representatives, and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Contractor under this Section 10.3.5 is required to indemnify the Owner or its agents or representatives to the extent of: (i) liability for death or bodily injury to persons or damage to property caused in whole or in part by the Owner's own negligence, or (ii) if the material or substance was not introduced to the Project Site by the Contractor or its Subcontractors of any tier, and Contractor otherwise complied with its obligations with this Section 10.3; but indemnity is required to the extent of the fault of the Contractor, its agents, or their respective employees and representatives.

**§ 10.3.5** "Hazardous Materials" are any substance regulated, classified, or otherwise characterized as radioactive, infectious, hazardous, dangerous, or toxic, or by words of similar meaning or effect, by any federal, state, or local statute, regulation, or ordinance currently in effect or subsequently enacted. For purposes of Sections 10.3.3 through 10.3.5, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project Site regardless of whether the Hazardous Materials were specified, required, or otherwise addressed in the Contract Documents.

#### **§ 10.4 Emergencies**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, and its consultants, agents, and employees shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. **[VERIFY WITH INSURER; IF OCIP IS PROCURED, MODIFY FOR OFFSITE OPERATIONS: [The additional-insured endorsement for CGL insurance must be written on ISO Form CG 20 10 (10 01) and CG 20 37 (10 01), or their equivalent, but shall not use either of the following forms: CG 20 10 (10 93) or CG 20 10 (03 94)].**

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds

from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit A to the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1 [RECONCILE IF OCIP IS PROCURED]** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such

rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

#### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. Owner's decision to not purchase such insurance shall not affect the parties' rights or obligations.

#### **§ 11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate written agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** The Owner shall have power to settle a loss with insurers. The Contractor may, however, object for cause to the settlement within 7 days from occurrence receiving notice of the settlement. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds received from the property insurance identified in Exhibit A to the Agreement in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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

#### **§ 12.1 Uncovering of Work**

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

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

## **§ 12.2 Correction of Work**

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

The Contractor shall promptly correct Work rejected by the Owner, Architect, or any governmental authority or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

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

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the entire Work or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly, for no additional compensation, after receipt of notice from the Owner to do so. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

**§ 12.2.2.3** The period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor, at its expense, shall remove from the Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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

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

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

## **§ 12.3 Acceptance of Nonconforming Work**

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

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

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

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law and Public Contracting Code Provisions**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

**§ 13.1.1 ORS 279A.110 (Non-discrimination certification):** Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055 or a business that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

**§ 13.1.2 ORS 279C.380 (Performance and Payment Bonds):** Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting any Construction Phase services under this Contract, and in any event not later than mutual execution of the Guaranteed Maximum Price Agreement, Contractor shall execute and deliver to Owner a good and sufficient performance bond, in the form of Exhibit \_\_\_ or other form acceptable to Owner, in a sum equal to 100% of the Contract Sum, and Contractor shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, in a sum equal to 100% of the Contract Sum, solely for the protection of claimants under ORS 279C. If an Early Work Amendment is executed, Contractor shall provide such bonds in the amount of the Early Work Price under the Early Work Amendment. Contractor shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or Guaranteed Maximum Price Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the Early Work Price or the Contract Sum, as the base may be. Consistent with ORS 279C.380(1)(a), once Contractor commences design or related services covered by this Agreement, the Contractor must provide a performance bond and payment bond in an amount equal to the full Contract Sum.

**§ 13.1.3 ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing):** Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the Work provided for in this Contract; pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug testing program is in place. If Contractor neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Agreement as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Contractor. Owner's payment of such a claim shall not relieve Contractor or Contractor's surety from its obligation to any unpaid claims.

**§ 13.1.4 ORS 279C.510 (Recycling/Composting):** If this Contract includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

**§ 13.1.5 ORS 279C.515 (Failure to Pay Promptly):** If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if Contractor or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being

paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.

**§ 13.1.6 ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime):** Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Contractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

- .1 For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- .2 For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- .3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or in ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

Contractor shall, and shall require its Contractors, to give notice in writing to their employees who perform Work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

**§ 13.1.7 ORS 279C.520(1)(b) and 279C.520(1)(c) (Compliance with Pay Equity Provisions; Employee Pay Discussion):**

- .1 **Discrimination Prohibition.** The Contractor shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause.
- .2 **Salary Discussion.** The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

**§ 13.1.8 ORS 279C.525 (Notice of Environmental Regulations):** State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- .1 Federal Agencies: Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.

- .2 State Agencies: Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
- .3 Local Agencies: City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.
- .4 Tribal Governments.

**§ 13.1.9 ORS 279C.530 (Payment for Medical Care and Workers' Compensation):** Contractor shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

All employers, including the Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

**§ 13.1.10 ORS 279C.545 (Time Limitations on Claims for Overtime):** Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, provided the Contractor or Subcontractor has:

- .1 Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
- .2 Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

**§ 13.1.11 ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors):** Contractor shall include in each subcontract for property or services with a first-tier subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Contractors to include a similar clause in each contract with a Sub-subcontractor or supplier.

**§ 13.1.12 ORS 279C.605 (Notice of Claim on Bond):** Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

**§ 13.1.13 ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):**

- .1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker that Contractor, any subcontractor, or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled "Definitions of Covered Occupations for Public Works Contracts in Oregon." The applicable prevailing wages will be those in effect at the start of the Construction Phase or, if applicable, the Early Work Amendment.
- .2 The prevailing wage rates for public works contracts in Oregon are contained in the following publications: The [INSERT] Prevailing Wage Rates for Public Works Projects in Oregon, the [INSERT] PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at [http://www.boli.state.or.us/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml) and are hereby incorporated as part of the Contract Documents.
- .3 Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- .4 The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- .5 If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.
- [.6 This Contract is also subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding subsection j(i) of this section, if this Contract is subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in subsection j(i) of this section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Multnomah County, Building Construction Type) and are hereby incorporated by reference as part of the Contract Documents. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.]

**§ 13.1.14 ORS 279C.836 (Public Works Bond Required):** The Contractor shall:

- .1 file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).
- .2 Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

**§ 13.1.15 ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):**

- .1 Contractor and every Subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the

prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or Subcontractor's surety that Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Contractor or Contractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.

- .2 The certified statement shall be delivered or mailed by Contractor or Subcontractor to Owner. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner shall retain 25% of any amount earned by the Contractor until the Contractor has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within 14 days after the Contractor files the certified statements required by this Section.
- .3 Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

**§ 13.1.16 ORS 671.560, 701.026 (Landscape/Construction Contractors License Required):** If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Subcontractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.026. Contractor shall further certify that all Contractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above noted statutes before they commence Work under this Contract. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify Owner immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

**§ 13.1.17 When Work Is Performed on Owner's property Contractor Shall Comply With the Following:**

- .1 **Identification.** Contractor shall carry photo identification and will present such, to anyone on request while performing Work at Owner's facilities. Subcontractors that do not have specific uniforms for employees, shall provide identification tags as described above, or another mechanism that the Owner in its sole discretion determines is required to easily identify Subcontractor personnel.
- .2 **Sign-in Required.** As required by schools and at other Owner facilities, each day of work Contractor's employees, agents, representatives, Architect, Consultants, and Contractors shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on each person at all times they are in the school or other facility.
- .3 **No Smoking.** Smoking or other use of tobacco is prohibited at the Owner's facilities.
- .4 **No Weapons or Firearms.** Except as provided by Oregon Statutes, weapons and firearms are prohibited at Owner's facilities.

**§ 13.1.18 No Unsupervised Contact with Students.** Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Contractor will ensure that Contractor, and its employees, agents, representatives, and Subcontractors have no direct unsupervised contact with students while at Owner's facilities. Contractor will work with the Owner to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that its

employees, agents, representatives, Architect, Consultants, and Contractors will not have direct, unsupervised, contract with students in a particular circumstance or circumstances, Contractor shall so notify the Owner before performing any services that could result in such contact. Contractor authorizes Owner to obtain information about Contractor and Contractor's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Contractor that will have unsupervised contact with students. Contractor also agrees to cause Contractor's Subcontractors to authorize Owner to conduct such background checks. Contractor shall pay all fees assessed by Oregon Department of Education for processing the background checks. Owner may deduct the cost of such fees from a progress or final payment to the Contractor under this Contract, unless the Contractor elects to pay such fees directly.

**§ 13.1.19 First-Tier Subcontractors.** The Contractor may only engage and substitute first tier subcontractors as permitted by ORS 279C.370, 279C.585, and 279C.590.

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

**§ 13.1.21 Laws, Rules and Regulations OAR 137-049-0200.** The following laws, rules and regulations are incorporated herein by this reference whether or not specifically mentioned above. The Owner and Contractor shall comply with their respective obligations therein:

- (A) Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- (B) Demonstrate that an employee drug testing program is in place (ORS 279C.505(2));
- (C) If the Contract calls for demolition Work described in ORS 279C.510(1), a condition requiring Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- (D) If the Contract calls for lawn or landscape maintenance, a condition requiring Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- (E) Payment of claims by public officers (ORS 279C.515(1));
- (F) Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- (G) Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- (H) Hours of labor in compliance with ORS 279C.520;
- (I) Environmental and natural resources regulations (ORS 279C.525);
- (J) Payment for medical care and attention to employees (ORS 279C.530(1));
- (K) A Contract provision substantially as follows: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));
- (L) Maximum hours, holidays and overtime (ORS 279C.540);
- (M) Time limitation on claims for overtime (ORS 279C.545);

- (N) Prevailing wage rates (ORS 279C.800 to 279C.870);
- (O) BOLI Public Works bond (ORS 279C.830(2));
- (P) Retainage (ORS 279C.550 to 279C.570);
- (Q) Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- (R) Contractor's relations with subcontractors (ORS 279C.580);
- (S) Notice of claim (ORS 279C.605);
- (T) Contractor's certification of compliance with the Oregon tax laws in accordance with ORS 305.385; and
- (U) Contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

**§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, or elsewhere in the Contract Documents, the Contractor shall not assign the Contract as a whole or in part without written consent of the Owner. The assigning Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a successor public agency or to a lender providing construction financing for the Project. The Contractor shall execute all consents reasonably required to facilitate the assignment.

**§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

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

**§ 13.4 Tests and Inspections**

**§ 13.4.1** Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities.

- .1 Unless otherwise provided, the Contractor shall schedule and make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority or by independent testing laboratories, that may be required by the permitting jurisdiction. The Owner shall retain and pay for any private inspectors or testing laboratories that are required. The cost of the private inspections and tests shall not be included in the Contract Sum, unless the test, inspection or approval arises from the fault of the Contractor or a Subcontractor or supplier.
- .2 The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures.

- .3 The Contractor shall forward to the Owner and the Architect copies of all inspection results, test results, orders, permits, and other directives or correspondence received by the Contractor from any inspector, testing laboratory, or agency with jurisdiction over the Work.
- .4 The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded, unless the test, inspection or approval arises from the fault of the Contractor or a Subcontractor or supplier. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.
- .5 No inspection performed or failed to be performed by the Owner waives any of the Contractor's obligations or may be construed as an approval or acceptance of any part of the Work.

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

**§ 13.4.3** If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's or Architect's services and expenses, shall be at the Contractor's expense, including without limitation the cost of retesting for verification of compliance, if necessary, until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents.

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

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

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

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

### **§ 13.5 Interest**

Late payments will accrue interest as provided in ORS 279C.570(2).

### **§ 13.6 Enforcement**

**§ 13.6.1** If any provision of these General Conditions is unenforceable for any reason, then the provision shall continue in effect only to the extent that it remains valid and enforceable. The unaffected remaining provisions of these General Conditions and any Contract shall remain in full force and effect.

**§ 13.6.2** Historical lack of enforcement of any laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work shall not constitute a waiver of the Contractor's responsibility for compliance with the law in a manner consistent with the Contract Documents unless and until the

Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

### § 13.7 CONFIDENTIALITY

Contractor acknowledges that it or its employees, subcontractors, or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is the confidential information of the Owner or Owner's clients. All Confidential Information shall be considered privileged and confidential. Any reports or other documents or items including software, that result from Contractor's use of the Confidential Information and any Work Product that the Owner designates as confidential are deemed Confidential Information. Confidential Information shall be deemed not to include information that: (a) is or becomes (other than by disclosure by Contractor) publicly known; (b) is furnished by the Owner to others without restrictions similar to those imposed by this Agreement; (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; (d) is obtained from a source other than the Owner without the obligation of confidentiality; (e) is disclosed with the written consent of the Owner; or (f) is independently developed by employees or agents of Contractor who can be shown to have had no access to the Confidential Information..

#### § 13.7.1 Non-Disclosure

- .1 The Contractor agrees not to use the Owner's Confidential Information to the detriment of the Owner or for any reason other than the provision of Services to the Owner under this Agreement. Furthermore, the Contractor will not assert any intellectual property right in any invention or derivative information developed by the Contractor from the use of the Owner's Confidential Information, nor will the Contractor at any time, directly or indirectly, reverse engineer or recreate, or attempt to reverse engineer or recreate, any of the Owner's Confidential Information.
- .2 The Contractor will maintain the Owner's Confidential Information in strict confidence and will not disclose the Owner's Confidential Information to any "Person" (defined to include individuals, partnerships, companies, limited liability companies, entities, corporations, or agents thereof). In maintaining the confidentiality and security of the Owner's Confidential Information, the Contractor will, at a minimum, use the same safeguards and measures used by the Contractor to maintain the confidentiality and security of its own Confidential Information of a similar kind or nature, but in no event will the safeguards and measures used by the Contractor fall short of reasonable care. The Contractor further agrees not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to the Owner under this Agreement, and that each of its employees, subcontractors, and agents must be subject to confidentiality and non-use obligations at least as restrictive as those set forth in this Agreement.
- .3 If the Contractor or any of its Representatives become legally compelled (by deposition, public records request, interrogatory, request for documents, subpoena, civil investigative demand, or similar process) to disclose any of the Owner's Confidential Information, the Contractor and its Representatives (if applicable) will provide the Owner with prompt prior written notice of such requirement so that the Owner may seek a protective order or other appropriate remedy and the Contractor will exercise reasonable efforts to assist the Owner in securing such protective order or remedy. If such protective order or other remedy is not obtained, or that the Owner waives compliance, the Contractor and its Representatives agree: (a) to furnish only that portion of the Owner's Confidential Information which, in accordance with advice of counsel, is legally required to be furnished; and (b) to exercise reasonable efforts to obtain assurances that confidential treatment will be accorded the Owner's Confidential Information so furnished. The disclosure of the Owner's Confidential Information pursuant to this Section will not cause any such Confidential Information so disclosed to no longer be deemed the Confidential Information of the Owner.

§ 13.7.2 Contractor shall use its best efforts to assist the Owner in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise the Owner immediately in the event Contractor learns or has reason to believe that any person who has had

access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will at its expense cooperate with the Owner in seeking injunctive or other equitable relief in the name of the Owner or Contractor against any such person. Contractor agrees that, except as directed by the Owner, Contractor will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Agreement, and that upon termination of this Agreement or at the Owner's request, Contractor will turn over to the Owner all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

**§ 13.7.3** Notwithstanding the termination or expiration of this Agreement, the Contractor's obligations of non-disclosure and non-use with respect to the Owner's Confidential Information under the terms of the Agreement will continue until the date on which the Contractor and its representatives and agents no longer possess or retain the Owner's Confidential Information, whether in tangible or in intangible form.

**§ 13.7.4 Injunctive Relief.** Contractor acknowledges that breach of this Section, including disclosure of any Confidential Information, will give rise to irreparable injury to the Owner that is inadequately compensable in damages. Accordingly, the Owner may seek and obtain injunctive relief against the breach or threatened breach of this Section, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of the Owner and are reasonable in scope and content.

## **ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

### **§ 14.1 Termination by the Contractor**

**§ 14.1.1** The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not approved an Application for Payment and has not notified the Contractor of the reason for withholding approval as provided in Section 9.4.1, or because the Owner has not made payment of the approved amount within the time stated in the Contract Documents.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days not related to phasing of the Work through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;

- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 fails to observe the training, safety, and other precautions required in Article 10, including Contractor's own safety policies for the Project;
- .5 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .6 fails to comply with the current Contractor's construction schedule;
- .7 is adjudged bankrupt makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency;
- .8 submits one or more Applications for Payment in which the Contractor overstates the amount to be paid, by the Owner; or
- .9 otherwise substantially breaches a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate the Contract and may, subject to any prior rights of the surety:

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

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

**§ 14.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation shall survive termination of the Contract.

**§ 14.2.5** If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

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

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

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

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

**§ 14.4.1** The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and a reasonable overhead and profit on the Work performed. The Contractor hereby waives and releases all other claims for payment and damages, including without limitation anticipated profits.

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

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

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

#### **§ 15.1.2 Time Limits on Claims**

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

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Architect. Claims by the Contractor under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later; otherwise the Claim will be deemed barred. The Owner or the Contractor must identify known bases for each Claim and the nature and amount of relief sought.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents.

#### **§ 15.1.4.2 [Deleted].**

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior

notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide timely notice in accordance with Section 15.1.3 constitutes waiver of the Claim.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.6.2** Claims for additional time are governed by Section 8.3. Failure to provide timely notice in accordance with Section 15.1.2 constitutes waiver of the Claim.

#### **§ 15.2 Initial Decision**

**§ 15.2.1** To facilitate the resolution of Claims between the Contractor and the Owner, the parties shall attempt in good faith first to resolve Claims that are made before Final Payment by the following dispute-resolution process. The parties agree not to proceed to arbitration until the following process has been attempted. Neither party's rights, defenses, Claims, and remedies shall be considered waived, released, or adversely affected by its participation in this process, but this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

- .1 All reasonable efforts will be made by the the Contractor's project manager to resolve any Claims that arise during the Work in a prompt and equitable manner. If the parties fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Contractor's senior executive responsible for the Project.
- .2 The Contractor's senior executives shall meet with the Owner's designated senior representative at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in the Agreement.
- .3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to arbitration under Section 15.3.

**§ 15.2.2 [Deleted].**

**§ 15.2.3 [Deleted].**

**§ 15.2.4 [Deleted].**

**§ 15.2.5 [Deleted].**

**§ 15.2.6 [Deleted].**

**§ 15.2.6.1 [Deleted].**

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

**§ 15.2.8** If a claim, dispute or other matter in question relates to or is the subject of a bond, the party asserting such matter may proceed in accordance with applicable Oregon law to comply with the bond notice or filing deadlines prior to resolution of the matter by the Owner.

**§ 15.2.9** Contractor shall make its employees and principals, as well as its work and project records, available to the Owner upon the Owner's request, in the event that there is any dispute concerning the compliance of the Work with

the Agreement or the Contract Documents. The availability of such personnel and documentation shall be provided without the necessity of a subpoena, request for production or similar legal process. In the event that the Owner is required to utilize some form of legal process to obtain such ability, the Owner shall be entitled to recover its reasonable attorney fees and the costs expended in obtaining access to such personnel and documentation, regardless of whether the Owner is the prevailing party in connection with any later dispute resolution, mediation, arbitration, or litigation regarding such matters.

### **§ 15.3 Mediation**

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

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

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

### **§ 15.4 Arbitration**

**§ 15.4.1** Every Claim shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc., except there shall be a single arbitrator regardless of the amount in dispute. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the Arbitration Service of Portland, Inc., unless the parties elect another person or entity to administer arbitration proceedings.

**§ 15.4.1.1** A demand for arbitration shall be made within a reasonable time after the Claim has arisen, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations or repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

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

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

**§ 15.4.4.1** Subject to the rules of the Arbitration Service of Portland, Inc. or other applicable arbitration rules, the Owner may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a

party provided that (1) the arbitrations to be consolidated substantially involve common questions of law or fact, and (2) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

**§ 15.4.4.2** Subject to the rules of the Arbitration Service of Portland, Inc. or other applicable arbitration rules, the Owner may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration.

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

**§ 15.4.4.4** The Contractors grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

### **§ 15.5 Attorneys' Fees**

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

DRAFT

# AIA® Document A133™ - 2019

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

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

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

Portland Community College  
9700 S.W. Capital Highway, Suite 260  
Portland, Oregon 97219  
« »

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

« [TBD] »« »  
« »  
« »  
« »

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

« [TBD] »  
« »  
« »

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

« [TBD] »« »  
« »  
« »  
« »

The Owner and Construction Manager agree as follows.

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

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

AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## ARTICLE 1 INITIAL INFORMATION

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

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

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

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

« [TBD] »

§ 1.1.2 The Project's physical characteristics:

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

« [TBD] »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

« The estimated construction cost budget for the Project (inclusive of Fee and Contingency) is \$[TBD] »

§ 1.1.4 The Owner’s design and construction milestone dates: [ADDITIONS BELOW CAN BE REPLACED WITH ACTUAL DATES IF KNOWN AT TIME OF CONTRACT EXECUTION]

.1 Guaranteed Maximum Price proposal submission date:

OPTIONS «INSERT DATE»  
«at \_\_\_% Construction Document Completion»  
«To be established in the Project Schedule prepared and approved in accordance with Sections 3.1.4.»

.2 Construction commencement date:

OPTIONS «INSERT DATE»  
«To be established in the Project Schedule prepared and approved in accordance with Sections 3.1.4.»

.3 Substantial Completion date or dates:

OPTIONS «INSERT DATE»  
«To be established in the Project Schedule prepared and approved in accordance with Sections 3.1.4.»

.4 Other milestone dates:

« »

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

« [TBD] »

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

« [TBD] »

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

« [TBD] »

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

« [TBD] »

« »  
« »  
« »  
« »  
« »  
« »

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

« [TBD] »

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

.1 Geotechnical Engineer:

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**.2 Civil Engineer:**

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**.3 Other, if any:**

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

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**§ 1.1.11** The Architect’s representative: **[TBD]**  
*(List name, address, and other contact information.)*

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

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

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**§ 1.1.14** The Owner’s requirements for subcontractor procurement for the performance of the Work: **[TBD]**  
*(List any Owner-specific requirements for subcontractor procurement.)*

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**§ 1.1.15** Other Initial Information on which this Agreement is based: **[TBD]**

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**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner may adjust the Owner’s budget for the

Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

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

## ARTICLE 2 GENERAL PROVISIONS

### § 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's negotiation and acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. If the Owner authorizes construction Work prior to the execution of the Guaranteed Maximum Price Amendment, the Contract Documents will also include an Early Work Amendment. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### § 2.2 Relationship of the Parties

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

### § 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended, (the "General Conditions"), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

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

## ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

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

### § 3.1 Preconstruction Phase

#### § 3.1.1 Extent of Responsibility

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

Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

Notwithstanding the above, the Guaranteed Maximum Price shall include all work necessary to comply with applicable laws, statutes, codes, rules and regulations in effect at the time of execution of the Guaranteed Maximum Price Amendment.

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

### § 3.1.3 Consultation

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

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

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

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

### § 3.1.4 Project Schedule

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

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

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

§ 3.1.4.4 The submission date for the Guaranteed Maximum Price proposal is a Project milestone and, once accepted by the Owner, shall not be changed without the express written consent of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations for schedule recovery to the Owner and Architect.

### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager's recommended phased construction shall consistent with any proposed phase construction set forth in the Owner's Request for Proposal.

### § 3.1.6 Cost Estimates

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

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

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

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

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

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

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

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

**§ 3.1.11 Subcontractors and Suppliers**

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

§ 3.1.11.2 The Construction Manager shall develop subcontractor and supplier bidding interest in the Project, and identify availability of subcontractors and vendors necessary to perform the project. In addition, the Construction Manager shall identify any potential subcontracts for which prequalification at time of bid, or selection by competitive proposal as opposed to bid, shall be necessary or advantageous to the Owner.

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

**§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's review and the Owner's approval, and well in advance of construction, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items and, upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. The Construction Manager shall expedite the delivery of long-lead-time items.

**§ 3.1.13 Compliance with Laws**

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

**§ 3.1.14 Other Preconstruction Services**

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

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

**§ 3.1.14.1 Site Inspection and Evaluation**

The Construction Manager will:

- .1 Advise the Owner of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and soil pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; hazardous materials testing; or other tests or reports required for the Construction Manager's services, by law, or by the Contract Documents;
- .2 Recommend and assist the Owner in arranging for the services of engineers or consultants for those tests and services when they are reasonably necessary or required, but shall not itself contract with those engineers or consultants;
- .3 Assist the Owner in arranging for and coordinating those tests or services that are approved and contracted for by the Owner;

- .4 Review all inspections and reports, advise the Owner of their results and recommendations, provide the Owner with copies of those reports or results, if necessary, and report to the Owner and the provider of the inspections or reports any errors or inconsistencies discovered;
- .5 Obtain from the Owner's consultants or engineers the soil bearing, percolation, elevation, and other values necessary to prepare the Construction Manager's estimates, proposals, or reports; and
- .6 Request verification of this information as necessary to perform its services.

To the extent that the Owner agrees with the Construction Manager's recommendations, the Owner shall contract with consultants and engineers as identified in this Section 3.1.14, and pay for their services.

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### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time established under Section 1.1.4.1, the Construction Manager shall submit to the Owner a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's approval. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The purpose of the Guaranteed Maximum Price proposal is to identify the Work specifications and the pricing (including subcontractors and suppliers) and schedule thereof; the Construction Manager shall not and may not include in its Guaranteed Maximum Price proposal any proposed clarification, assumption, qualification, exclusion, or other term that is at variance or conflicts with, that amends, or that adds to the terms and conditions of the Contract Documents unless approved by the Owner in the Owner's sole discretion.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The dates of Substantial Completion and Final Completion upon which the proposed Guaranteed Maximum Price is based, if not stated in this A133 Contract;
- .5 A date by which the Owner must accept the Guaranteed Maximum Price;
- .6 A construction schedule identifying commencement and completion dates for Project milestones;
- .7 A detailed and summary of the competitive bids received from prospective subcontractors for each portion of the Work, with the Construction Manager's recommendations for retention of subcontractors and the assumptions and effects of subcontractor selection on the proposed Guaranteed Maximum Price; and
- .8 A schedule of values breaking down the Guaranteed Maximum Price Proposal by task and trade, and including a copy of any bids or subcontractor estimates, in accordance with the procurement requirements herein.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the

Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The contingency included in the Guaranteed Maximum Price proposal is subject to the restrictions in Section 6.1.7.1 of this Agreement.

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

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price proposal, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall be in the form of Exhibit A and shall set forth:

- .1 the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based;
- .2 the date of commencement of the Work;
- .3 the Project Schedule, which must include the anticipated date of Substantial Completion; and
- .4 the date of the applicable Prevailing Wage Rate publications (if not previously established pursuant to an Early Work Amendment).

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

**§ 3.2.8** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect in writing of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents. If the Construction Manager does not provide notification of an inconsistency within 14 days of receiving the revised Drawings and Specifications, the revisions shall be considered accepted with no change in the Guaranteed Maximum Price or Contract Time.

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

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

**§ 3.2.11** Prior to execution of the Guaranteed Maximum Price Amendment or applicable Early Work Amendment, Construction Manager shall not commence demolition or construction of any aspect of the Work.

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

expressly and wholly subject to the terms of this Agreement. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

**§ 3.2.13** The Owner will not pay any amount that exceeds the Guaranteed Maximum Price specified under this Contract unless the amount results from material changes to the scope of the Work set forth in this Contract and parties agree in writing to the material changes as provided herein.

**§ 3.2.14 Alternates.**

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

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

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

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

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

**§ 3.3 Construction Phase**

**§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of the General Condition, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

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

**§ 3.3.1.3** "Early Work" means construction services, construction materials and other Work authorized by the parties to be performed under the Contract in advance of the establishment of the Guaranteed Maximum Price. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to entering into the Guaranteed Maximum Price Amendment will materially and positively affect the development or completion of the project.

**§ 3.3.2 Administration**

**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect within the earlier of (i) seven days after the meeting, or (ii) by the next OAC meeting.

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

**§ 3.3.2.3 Monthly Report**

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

**§ 3.3.2.4 Daily Logs**

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

**§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

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

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

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

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

**§ 3.3.2.10** In addition to the meetings set forth above and any other obligations of Construction Manager, Construction Manager shall assist Owner in dealing and working with the neighborhood groups, government agencies and/or funding sources (public or private) for the Project, attend meetings with such entities, if applicable or requested by Owner, assist

Owner in completing forms and applications, organizing information, and assembling documents and materials, and generally assist Owner as necessary in connection with its financing, permitting, and approval activities for the Project. Construction Manager shall assemble such documents and materials as may be appropriate for the anticipated discussion at such meetings, and shall make presentations regarding the Project to such entities as applicable and as requested by Owner. Construction Manager shall receive no extra compensation for attending such meetings or making such presentations.

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

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

#### ARTICLE 4 OWNER'S RESPONSIBILITIES

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

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

##### § 4.1.2 [Deleted]

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

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

§ 4.1.4.1 Subject to Section 3.1.14.1, the Owner shall furnish necessary tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

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

§ 4.1.4.3 The Owner, when such services are specifically required under this Contract, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

**§ 4.2 Owner's Designated Representative**

The Owner shall designate in writing a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish timely requested information expeditiously. The Owner's representative shall not have the authority to waive any provisions of the Contract Documents or to approve or authorize any change in the Guaranteed Maximum Price or the Contract Time except in writing. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Owner may change its representative at the Owner's discretion.

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

**§ 4.3 Architect**

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

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

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

**§ 5.1 Compensation**

**§ 5.1.1** For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

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

« [INSERT] »

(only services performed after the date of mutual signature of this Agreement are compensable)

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

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

« [INSERT] »

Individual or Position	Rate

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

**§ 5.1.3 [Deleted]****§ 5.2 Payments**

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

**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice.

**ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES****§ 6.1 Contract Sum**

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

**§ 6.1.2** The Construction Manager's Fee:

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

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

No Fee shall be applied to the following items: [Insurance, Bond Charges, LIST OTHERS] and any other item for which no fee is to be applied under the Contract Documents ("Fee Exclusion Terms").»

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

« \_\_\_\_% of the net increase or decrease to the Cost of the Work resulting from the change, subject to Section 7.5 of the A201 General Conditions. [INSERT]»

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

« [INSERT] »

**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed «Eight Five» percent («85»%) of the standard rental rate paid at the place of the Project.

**§ 6.1.6** Liquidated damages, if any:

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

If the Construction Manager fails to achieve Substantial Completion of the Work within the Contract Time and as otherwise required by the Contract Documents, the Owner is entitled to recover from the Construction Manager as liquidated damages and not as a penalty for Owner's loss of use of the Work sum of [\$\_\_\_\_\_ adjust per contract] per day which shall commence on the first day following the expiration of the Contract Time and continuing until the date of Substantial Completion. Such liquidated damages are hereby agreed to be a reasonable estimate of the loss of use damages the Owner will incur as a result of delay in the completion of the Work. The Owner may deduct any accrued liquidated damages from any unpaid amount due or to become due to the Construction Manager. Any liquidated damages not so deducted shall be paid to the Owner by the Construction Manager upon demand together with interest as provided by Oregon law. The Construction Manager's obligation to pay liquidated damages for the applicable period shall not require Owner's establishment of any actual damages for such delay. The Owner's right to liquidated damages for delay is not affected by partial completion, occupancy, or beneficial occupancy. The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation additional Owner costs related to the Project, and the right to collect consequential damages in any case where liquidated damages are unenforceable or otherwise unavailable. The provisions shall not relieve or release the Construction Manager from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors or under the indemnification and warranty provisions of this Contract, or other damages that are not expressly covered by liquidated damages.

**§ 6.1.7 Other:**

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

All cost savings resulting from completion of the Work below the Guaranteed Maximum Price shall accrue to the Owner.

**§ 6.1.7.1 Construction Contingency**

Owner and Construction Manager will include within the Guaranteed Maximum Price one construction contingency (the "Construction Contingency"). The Construction Contingency will equal no more than [X percent] of the Cost of the Work estimate included in the Guaranteed Maximum Price Amendment, and will be used only for reasonable and necessary costs incurred that are considered reimbursable as a Cost of the Work but not included in a Change Order.

- .1 Application of the Construction Contingency is subject to Owner's prior approval. The Construction Manager must provide backup documentation supporting the cost Construction Manager covered using Construction Contingency funds.
- .2 Construction Contingency funds may be applied, without limitation, to Costs of the Work for gaps in Construction Manager or Subcontractor costs for specific required materials and labor to install; noncompensable delays; errors or failed tests not caused by the negligence of Construction Manager or any persons for which the Construction Manager is responsible; Subcontractor performance issues; damaged work not covered by insurance; and mitigation or acceleration of Work with associated overtime and expediting expenses due to changes in the construction schedule caused by occurrences beyond the control and without the fault or negligence of the Construction Manager or its Subcontractors and that by the exercise of reasonable diligence the Construction Manager cannot prevent.
- .3 Construction Contingency funds may not be applied for design modifications created after commencement of construction Work, additions to the scope of the Work that were specifically excluded in the Guaranteed Maximum Price Amendment, and conditions or events that are unforeseeable or unknown to Construction Manager.
- .4 Upon final completion of the Project, any unused Construction Contingency funds will be subtracted from the Guaranteed Maximum Price and not included in the calculation of Savings.
- .5 Costs which would cause the Construction Contingency to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.
- .6 The Construction Manager will maintain a contingency log that list (a) the amount of each application of contingency; and (b) all adjustments to line items in the schedule of values resulting from the application of contingency. The Owner shall have access to this log at all times.
- .7 The status of the Contingency will be evaluated by Owner and the Construction Manager on a regular basis to reallocate unused or unneeded Contingency to Owner, or to allow the Owner to potentially add scope, to enhance aspects of the Project, or otherwise pay for Change Orders without increase to the Guaranteed Maximum Price. Such reallocation shall be based on an evaluation of remaining risk to the Project, and such reallocation shall not be unreasonably opposed or delayed by the Construction Manager.

« »

**§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

### § 6.3 Changes in the Work

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

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of the General Conditions, General Conditions of the Contract for Construction.

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

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

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of the General Conditions shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 The Guaranteed Maximum Price established in the Guaranteed Maximum Price Amendment will include all elements necessary to complete the Work in accordance with the Contract Documents and, consequently, Change Orders increasing the Guaranteed Maximum Price will not be allowed except in limited circumstances as set forth below:

- .1 **Scope Changes.** Owner material revisions on scope Project items previously approved by the Owner and incorporated in the pricing of the Guaranteed Maximum Price.
- .2 **Concealed or Unknown Condition.** Significant cost arising from concealed or Unknown Conditions as described in Section 3.7.4 of the General Conditions.
- .3 **Regulatory Agency Changes.** Significant cost incurred as a result of changes in regulatory requirements but only where such requirements change after preparation of the Guaranteed Maximum Price Amendment and were not known or anticipated.
- .4 **Material Design Errors or Omissions.** Material errors or omissions in the Drawings or Specifications that could not have been reasonably anticipated or discovered by the Construction Manager before the Guaranteed Maximum Price was established, including but not limited to Work required or directed by the Owner that differs from any assumptions or clarifications included in the Guaranteed Maximum Price Amendment. Design errors and omissions do not include: (a) failure to coordinate between trades; or (b) design changes made at the request of the Construction Manager in order to facilitate the constructability of the Project.
- .5 **Escalation.** Escalation in the cost of materials or equipment caused by tariffs, taxes, assessments, fees and other regulatory costs enacted after the effective date of this Agreement ("Governmental Escalation"), to the following extent. Construction Manager agrees to use its best efforts to obtain advantageous prices from subcontractors and material suppliers to avoid Governmental Escalation. In the event of price increases of building materials, products, or equipment during the performance of this Contract arising from Governmental Escalation, Construction Manager will provide written notice to Owner identifying the building materials, products, or equipment at issue, the base and increased cost, the source of supply, supported by price quotations or other information confirming the increased cost. If Owner directs Construction Manager to proceed with the purchase of the building materials, products, or equipment at the increased cost, the Contract Sum will be adjusted as follows: (i) no adjustment to the extent Governmental Escalation (net of reduction in costs from reductions in the above cost factors) exceeds \_\_\_\_\_% of the Contract Sum prior to such adjustment and (ii) equitably adjusted by Change Order for such net increased cost above such clause (i) threshold. [Alternative: the Contract Sum will be equitably

adjusted to the extent Government Escalation (net of reduction in costs from reductions in the above cost factors) exceeds unused Contingency].

§ 6.3.6 Events for which the Guaranteed Maximum Price shall not be adjusted and no Change Order will be issued include the following:

- .1 **Subcontractor Gaps.** Gaps in scope coverage between Subcontractors, including self-performed Work, that occur after the Guaranteed Maximum Price Amendment is signed.
- .2 **Scope Gaps.** An item indicated in the Drawings or Specifications that was not picked up in the Guaranteed Maximum Price and not specifically excluded from the Guaranteed Maximum Price.
- .3 **Document Ambiguities.** Ambiguities in the Construction Documents that the Construction Manager knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the Guaranteed Maximum Price.
- .4 **Subcontractor Failure.** A Subcontractor goes bankrupt or otherwise fails to perform.
- .5 **Price Escalations.** Subject to Section 6.3.5.5, escalation of materials, equipment, or labor prices.
- .6 **Estimating Errors.** The Construction Manager's estimating errors.
- .7 **Expediting Costs.** Expediting costs for critical materials.
- .8 **Coordination Claims.** Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Construction Manager or among Subcontractors.
- .9 **Other.** Any other grounds.

## ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 7.1 Costs to Be Reimbursed

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

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

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

§ 7.1.4 In no event shall the Cost of the Work include the cost of any item more than once.

### § 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval. Construction Manager will bill costs described in this Section 7.2.2 at the hourly rates established in Construction Manager's Proposal Fee Schedule for on-site management staff, which is attached as Exhibit [redacted] to this Agreement.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory, administrative, or home office estimating personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work and only with the Owner's prior written approval, and limited to the personnel and activities

listed below. Construction Manager will bill costs described in this Section 7.2.2.1 at the hourly rate established in Construction Manager's Proposal Fee Schedule for off-site management staff, which is attached as Exhibit [redacted] to this Agreement. Except as provided above, home office administrative tasks are included in the Fee and are not to be charged to the Project.

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

« »

**§ 7.2.3** Wages and salaries of the Construction Manager's supervisory, administrative, or home-office estimating personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work and only with the Owner's prior written approval. Construction Manager will bill costs described in this Section 7.2.3 at the hourly rates established in Construction Manager's Proposal Fee Schedule for off-site management staff, which is attached as Exhibit [redacted] to this Agreement.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates are inclusive of Section 7.2.4 charges, and shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

**§ 7.2.6** To the extent agreed labor rates are not stated in the Contract, the Construction Manager shall submit to the Owner a detailed breakdown of all labor rates proposed for the Project under this Section 7.2. Rate breakdowns must be in a format acceptable to Owner, but shall at least identify the portion of each rate allocated to each of the following costs: base wages, taxes, insurance, vacation or holiday funds, retirement accounts, profit, and allowances (e.g., vehicle allowance). Prior to establishing contractually defined rates for supervisory labor, field labor, equipment rentals and purchases, cell phone reimbursement, vehicle reimbursement or any other contractually-established rates, the College will request and analyze Contractor calculation details to ensure rates are calculated in accordance with the terms of the Contract. Calculation details will include detailed review of components of burden, markups, and any other variables included in the calculation of these rates.

### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. The costs in any cost-plus subcontracts must conform to the requirements of this Article 7, and must include a cap.

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

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction, subject to Paragraph 9.3.2 of the General Conditions.

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

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

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

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

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

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

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

#### § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract at the following fixed rates applied to the Cost of the Work: Bonding Rate \_\_\_% and Project Insurance Rate \_\_\_%; provided the Insurance Rate shall be \_\_\_% if an OCIP policy is procured.

§ 7.6.1.1 The Construction Manager's Fee shall not be assessed against insurance or bonding costs.

§ 7.6.2 Sales, use, or similar taxes (but not income or corporate activity taxes, which are included in the Construction Manager's Fee), imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable. The Construction Manager's Fee shall not be assessed against the cost of sales, use, or similar taxes.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay. The Construction Manager's Fee shall not be assessed against the cost of the building permit.

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

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

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

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site and not used on other projects, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, or between Construction Manager and any Subcontractor or supplier, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval.

### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of the General Conditions that do not arise from the negligence of Construction Manager, its subcontractors or suppliers, which Work shall be performed by and paid for by Construction Manager without reimbursement.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager or its subcontractors or suppliers at any tier, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. The Work described in this Section 7.7.3 does not include Work performed during or after the one-year period for correction of Work, which Work Construction Manager shall perform without reimbursement.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

### § 7.8 Related Party Transactions

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

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

### § 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include any costs not allowed by the General Conditions except as expressly modified in this Agreement or by written notification (e.g., change order to this Agreement signed by the Owner and Construction Manager) and shall not include the following:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;

- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Except as provided in Section 7.7, any costs not specifically and expressly described in Section 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6;
- .11 Fines other than those incurred because of the acts or omissions of the Owner or Owner's Representatives;
- .12 Bonuses, profit sharing, incentive compensation, deferred compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .13 Consultants to the Construction Manager not previously approved in writing by the Owner;
- .14 Corporate accounting and check processing costs;
- .15 Cost of the Work performed under guaranties or warranties;
- .16 Premiums for insurance and bonding other than those that are directly and solely attributable to the construction of the project;
- .17 Travel, lodging, food, or relocation expenses; and
- .18 Any cost incurred by Construction Manager, including bond costs in response to any payment claim, lien, stop notice, bond claim or other such claims, unless the cost incurred by Construction Manager is solely the result of Owner's failure to make a payment to Construction Manager when due and payable with respect to the Work in question.

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

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. The Construction Manager shall notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

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

#### ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. Subcontractors be solicited as provided in Section 9.3. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

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

difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

**§ 9.3 Subcontractor Selection.** Pursuant to ORS 279C.337(3), the Construction Manager's subcontractor selection process must meet the following parameters:

- .1 Absent a written justification prepared by the Construction Manager and approved by the Owner as more particularly provided for in this section, the Construction Manager's Subcontractor selection process must be "competitive," meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the Contract requirements;
- .2 When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
  - (a) The Construction Manager must prepare and submit a written justification to the Owner, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, emergency circumstances, the Construction Manager's need to utilize a key Subcontractor member of the Construction Manager's project team consistent with the Construction Manager's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;
  - (b) For a "sole source" selection of a subcontractor to proceed, the Owner must evaluate the written justification provided by the Construction Manager and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
  - (c) The Construction Manager must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Owner;
  - (d) The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
  - (e) The Owner must approve the Construction Manager's use of the non-competitive Subcontractor selection process prior to the Construction Manager's pursuit of the non-competitive process.
- .3 A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process;
- .4 If the Construction Manager or an Affiliate or subsidiary of the Construction Manager will be included in the subcontractor selection process to perform particular construction Work on the project, the Construction Manager must disclose that fact in the selection process documents and announcements.

The Contract must also identify the conditions, processes and procedures the Construction Manager will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party.

**§9.3.5 Subcontractor Approvals and Protests.** The Construction Manager shall include in its solicitation documents a process by which a adversely affected bidder or proposer may protest the selection of subcontractors and suppliers. The Construction will resolve in protests in writing. The Construction shall notify the owner of the filing and disposition of any protest. The Owner retains the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements. The Construction Manager shall any documents relating to the subcontracting process to the Owner upon the Owner's requests. Any documents that are shared with the Owner become public records subject to disclosure.

**§9.3.6 Construction Manager Self-Performance or Performance by Construction Manager Affiliates or Subsidiaries Without Competition.** The Construction Manager must obtain approval of the Owner before the Construction Manager or an Affiliate or subsidiary of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate or subsidiary of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager's RFP proposal to perform Construction Manager Services for the project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate or subsidiary of the Construction Manager. If required by the Owner, the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

**§9.3.7 Unsuccessful Subcontractor Briefing.** ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule for a particular solicitation, the Construction Manager will:

- .1 Allow a subcontractor 60 days from the Construction Manager's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the Construction Manager under this section; and
- .2 Set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

**§9.3.8 Award of Subcontracts.** All subcontract awards require the Owner's approval in accordance with the General Conditions.

## ARTICLE 10 ACCOUNTING RECORDS

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

this Contract. The Construction Manager shall preserve these records for a period of five years after final payment, or for such longer period as may be required by law. Construction Manager shall cooperate with any audits.

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

§ 10.1.3 The Construction Manager's records shall include but not be limited to accounting records, written policies and procedures, subcontractor files (including proposals of successful and unsuccessful bidders), original estimates, estimating work sheets, correspondence, change order files (including documentation covering negotiated settlements), the items described in Section 10.1.1, and any other supporting evidence necessary to substantiate charges related to the Contract shall be open to inspection and subject to audit and/or reproduction. Such records subject to examination shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to costs associated with the Contract, and records relating to the performance of the Work.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and in the General Conditions. The application shall be in a form acceptable to the Owner and shall include an accounting by natural expense categories and the schedule of values.

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

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§ 11.1.3 Pursuant to ORS 279C.570, the Owner shall make payment to the Construction Manager not later than thirty (30) days after receipt of the Construction Manager's Application for Payment or 15 days following issuance of the Certificate for Payment, whichever is earlier date. Late payments shall accrue interest in accordance with and at the rate set forth in ORS 279C.570(2).

*(Federal, state or local laws may require payment within a certain period of time.)*

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

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

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

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

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect and the Owner.

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

§ 11.1.7 In accordance with the General Conditions and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 As a condition of approval, but without limitation of any other conditions, each Application for Payment must contain written certification by Construction Manager:

- .1 That the Application for Payment represents an accurate estimate of the percentage of Work completed for each portion of the Work for which partial payment is sought;
- .2 That to Construction Manager's best knowledge, no claims of lien and no bond claims have been asserted or perfected as of the date of the Application for Payment;
- .3 That all amounts claimed for payment in the Application for Payment that are due and payable have been paid in full or will be paid from funds received pursuant to the Application for Payment;
- .4 That all subcontractors and suppliers paid or to be paid pursuant to the Application for Payment have executed valid and binding conditional waivers of lien claim and bond rights and claims for payment through the date of the Application for Payment, which waivers are included with the Application for Payment;
- .5 That Construction Manager has included its conditional signed waiver of any and all its lien and bond rights and other claims for payment through the date of the Application for Payment; and
- .6 That there is no other known claim for payment against Owner, except as stated in the Application for Payment.

11.1.7.2 Each progress payment will be calculated based on the Costs of the Work incurred as claimed in the Application for Payment, together with the proportional amount of the Contractor's Fee, subject to the following:

- .1 Retainage will be withheld from the total progress payment amount at five percent (5.0%) of the total amount due to the Contractor;
- .2 The amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable; and
- .3 The amount of the progress payment may be adjusted by the Owner or the Architect if the total amount of progress payments would exceed an amount commensurate with the percentage of completion of the Project as determined by the Owner or the Architect with reference to the actual completion of the Work and the Contractor's schedule of values.

### § 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Final Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

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

«See Section 11.1.7.2.1.»

§ 11.1.8.1.1 The following items are not subject to retainage:

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

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

**§ 11.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:  
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

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

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Final Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8.  
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

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**§ 11.1.9** If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of the General Conditions.

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

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

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

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

## **§ 11.2 Final Payment**

**§ 11.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

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

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the Owner's approval of the Architect's final Certificate for Payment and after the following additional conditions have been satisfied:

- .5 Construction Manager has submitted for itself and for all its subcontractors and suppliers conditional final, executed, and binding certificates, releases, and waivers of all lien and bond rights and claims and all unresolved claims for payment in a form acceptable to Owner;
- .6 Construction Manager has submitted to Owner all record or as-built plans, manuals, operation instructions, directions, safety manuals or guides, and any other deliverables required by the Contract Documents;
- .7 All rights, warranties, title, and claims to materials, equipment, or systems supplied under this Agreement have been validly transferred to Owner or Owner's assignee; and
- .8 All necessary inspections, approvals, licenses, and permits have been successfully obtained or properly excused and the Project may be occupied and used without restriction.

«Notwithstanding the foregoing, payment of any or all retainage may be withheld for 60 days following final completion of the Work of Construction Manager or its subcontractors or suppliers for which retainage is held. Owner may, at its sole option and without creating precedent or waiver, approve the release of retainage for Work that has been completed and accepted upon receipt of a binding unconditional waiver or release of all bond and lien rights and claims associated with that portion of the Work or upon Owner's receipt of a valid bond that is sufficient to pay any claims that may be asserted for the portion of the Work, including attorney fees. »

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify that it will not conduct an audit.

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

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

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to give notice of and invoke the dispute resolution procedure Section 15 of the General Conditions. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 [Deleted. See 11.2.1.]

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

## ARTICLE 12 DISPUTE RESOLUTION

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**§ 12.1 [Deleted]****§ 12.2 Binding Dispute Resolution**

The method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Article 15 of the General Conditions

Litigation in a court of competent jurisdiction

Other: (Specify)

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**ARTICLE 13 TERMINATION OR SUSPENSION****§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

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

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, for reasons other than Construction Manager's default, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. Termination of this Agreement shall not eliminate or limit any Owner claims.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause.

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

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

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

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

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

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

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

### § 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of the General Conditions.

### § 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of the General Conditions, the amount, if any, to be paid to the Construction Manager under Article 14 of the General Conditions shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

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

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

§ 13.2.2.3 If at any time the Owner's termination for cause is determined to be unjustified or incomplete, it shall be converted to and deemed a termination for convenience as of the original date.

### § 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of the General Conditions, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

«None.»

## § 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of the General Conditions, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

**ARTICLE 14 MISCELLANEOUS PROVISIONS**

§ 14.1 Terms in this Agreement shall have the same meaning as those in the General Conditions.

**§ 14.2 Successors and Assigns**

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of the General Conditions, the Construction Manager shall not assign the Contract as a whole without written consent of the Owner. If the Construction Manager attempts to make an assignment, the Construction Manager shall nevertheless remain legally responsible for all obligations under the Contract.

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

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « [TBD] » (\$ « [TBD] » ) for each occurrence and « [TBD] » (\$ « [TBD] » ) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than « [TBD] » (\$ « [TBD] » ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage. Construction Manager must provide coverage using ISO Form CA 00 01 or an equivalent form approved in advance by the Owner.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « [TBD] » (\$ « [TBD] » ) each accident, « [TBD] » (\$ « [TBD] » ) each employee, and « [TBD] » (\$ « [TBD] » ) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « [TBD] » (\$ « [TBD] » ) per claim and « [TBD] » (\$ « [TBD] » ) in the aggregate.

**§ 14.3.1.6 Other Insurance [TBD]**

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

Coverage	Limits

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

**§ 14.3.2 Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 14.3.2.1** The Construction Manager shall provide bonds as required under Section 3.1.4 of the General Conditions.

**ARTICLE 15 SCOPE OF THE AGREEMENT**

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

**§ 15.2** The following documents comprise the Agreement:

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

[  ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .6 Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

**SAMPLE EXHIBIT LIST**

- Exhibit “C” Form of Claim Waiver
- Exhibit “D” Request for Proposal and Addenda
- Exhibit “E” Construction Manager’s Proposal
- Exhibit “F” Construction Manager’s General Conditions Charges
- Exhibit “G” Payment and Performance Bond Forms
- Exhibit “H” Owner Access Standards

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

**PORTLAND COMMUNITY COLLEGE**

**[TBD]**

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

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

ATTACHMENT I \_ SAMPLE CONTRACTS

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*(Printed name and title)*

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*(Printed name and title)*