

PUBLIC IMPROVEMENT CONTRACT

MERKATO ETHIOPIAN MARKET TENANT IMPROVEMENTS

This Public Improvement Contract (the “**Contract**”) is between **Prosper Portland**, the economic development and urban renewal agency of the City of Portland, Oregon (“**Owner**”), and **[CONTRACTOR]** (“**Contractor**”), each a “Party” and collectively, the “Parties”.

RECITALS

On **[DATE]**, Owner issued an Invitation to Bid soliciting qualified firms to submit sealed bids for furnishing all materials, equipment, labor, and services for the construction of **MERKATO ETHIOPIAN MARKET TENANT IMPROVEMENTS – ITB 26-01** (the “**Invitation to Bid**” or “**ITB**”). The deadline to submit sealed bids in response to the ITB was 2:00 PM on **[DATE]** (the “**Bid Submission Deadline**”).

Immediately following the Bid Submission Deadline, Owner opened **[X]** sealed bids that were submitted to Owner in response to the ITB, including a sealed bid submitted by Contractor (the “**Contractor’s Bid**”). After opening the sealed bids, Owner evaluated the bids and determined that the Contractor was a Responsible Bidder and that Contractor’s Bid was the lowest responsive bid to the ITB.

On **[DATE]**, Owner issued a written notice of its intention to award a contract to Contractor to perform the work described in the ITB (the “**Notice of Intent to Award**”). The Contract award was deemed final on **[DATE]**, because Owner received no protests within seven (7) days of issuance of the Notice of Intent to Award.

NOW THEREFORE, the Parties agree to be bound as follows:

1. **Scope of Work.** In consideration of the firm, fixed-price amount of **[VERBAL AMOUNT]** (\$**[AMOUNT]**) (the “**Contract Price**” or “**Contract Sum**”) inclusive of all bonds, insurance, permits, licenses, materials, equipment, labor, services or other costs incurred by Contractor to complete the Work in accordance with the Contract Documents, and Contractor agrees to perform and complete the Work herein described, for the Contract Price. The Work to be performed under this Contract generally consists of constructing a commercial kitchen, restaurant, and butcher market from two (2) existing cold shell commercial spaces as more specifically described in the drawings and technical specifications prepared by **Salazar Architect, Inc.** (the “**Construction Specifications**” and/or the “**Contract Drawings**”, as applicable). As used in these Contract Documents, the term “**Architect**” refers to **Salazar Architect, Inc.**, an Oregon corporation.

2. **Contract Documents.** This Contract consists of the following documents (the “**Contract Documents**”), which are hereby incorporated by reference and are listed in descending order of precedence:

- a. This “Public Improvement Contract”
- b. The “General Conditions for Public Improvement Contracts” (Exhibit A)
- c. The “Required Bond Forms” (Exhibit B)
- d. The “Prevailing Wage Rates” (Exhibit C)
- e. The “Construction Specifications” (Exhibit D)
- f. The “Contract Drawings” (Exhibit E)

- g. The “Invitation to Bid” (Exhibit F)
- h. The “Contractor’s Bid”, including all supporting bid forms (Exhibit G)

Capitalized terms used, but not defined herein, have the meanings set forth elsewhere in the Contract Documents.

3. **Effective Date and Duration.** This Contract will become effective on [DATE], or on the date of the last signature below, whichever is earlier (the “**Effective Date**”). Contractor must achieve Substantial Completion of the Work within one hundred and twenty (120) calendar days from the date Owner provides Contractor with the written Notice to Proceed, whichever occurs first (the “**Substantial Completion Deadline**” or “**Contract Time**”). Upon reaching Substantial Completion, Contractor must complete all Punch List Items within fifteen (15) calendar days to reach Final Completion of the Work.

4. **Party Representatives.** For the purposes of notice, the addresses of Owner and Contractor will, until changed, be as set forth in this Section. The parties hereto will have the right from time to time to change their respective addresses by at least five (5) days written notice to the other party.

- a. The Owner’s Contract Manager for this Contract is Kevin Flagg. Unless otherwise specified in the Contract Documents, the Owner’s Contract Manager serves as both the Owner’s Representative and the Contract Administrator, and is authorized to act on behalf of the Owner in the administration of the Contract. The Owner’s Contract Manager serves as the initial point of contact for Owner and their contact information is as follows:

Address: 220 NW 2nd Avenue, Suite 200, Portland, OR 97209

Email: FlaggF@ProsperPortland.us

Phone: 240-463-1724

- b. The Contractor’s Contract Manager for this Contract is [NAME]. The Contractor’s Contract Manager is authorized to act on its behalf in the administration of the Contract and serves as the initial point of contact for Contractor. Contact information for Contractor’s Contract Manager is as follows:

Address: [] _____

Email: []

Phone: []

[Signatures on next page]

CONTRACTOR DATA, CERTIFICATION, AND SIGNATURE

Contractor's Legal Name: _____
Contractor's Project Manager: _____
Mailing Address: _____
Phone Number: _____ Email: _____
Oregon SoS Registration No. _____ Entity Type: _____
Oregon CCB License No. _____ Portland Business License No. _____

I, the undersigned, agree to perform the Work as outlined in this Contract in accordance with the terms and conditions of the Contract Documents; and hereby certify under penalty of perjury that I/my business am/is not in violation of any Oregon tax law.

Approved by the Contractor: _____
Authorized Signature _____ Date _____
Print Name & Title: _____

PROSPER PORTLAND SIGNATURES

Approved by: _____
Cornell Wesley, Executive Director _____ Date _____

Approved as to Form: _____
Prosper Portland General Counsel _____ Date _____

**EXHIBIT A: GENERAL CONDITIONS FOR PUBLIC
IMPROVEMENT CONTRACTS**

ARTICLE 1 – GENERAL PROVISIONS

§ 1.1 Basic Definitions.

Capitalized terms used, but not defined, in these General Conditions have the meanings set forth in the Public Improvement Contract.

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Contract Documents Section of the Contract. A “Modification” is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) if and only if permitted by the Owner’s agreement with the Architect and Contractor is so notified in writing by Owner, a minor change in the Work approved by the Architect in accordance with the General Conditions.

§ 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 may 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.

§ 1.1.3 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 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 (or those portions) of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The “Initial Decision Maker” is the person identified as the Contract Manager for each party in the Public Improvement Contract as is the person designated to render initial decisions on Claims in accordance with Section 15.2.

§1.1.9 Knowledge

The terms “knowledge,” “recognize” and “discover,” their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, will be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize and discovers or should discover consistent with Contractor’s warranties at Section 3.5. Similarly, the term “reasonably inferable” and similar terms in the Contract Documents will be interpreted to mean reasonably inferable by a contractor familiar with the project and consistent with the warranties of the Contract.

§1.1.10 Architect and Engineer

The terms “Engineer,” in the Contract Documents, is used in reference to the professionals who are qualified and registered in Oregon and hold a valid certificate to practice under ORS 672.002 -672.325, The terms “Architect,” in the Contract Documents, is used in reference to the who are qualified and

registered in Oregon and hold a valid certificate to practice under ORS 671. The Engineer and Architect for the Project, if any, are identified in the Public Improvement Contract. If no Engineer or Architect is identified in the Public Improvement Contract, then all such references in the Contract Documents will be deemed as references to Owner.

§ 1.1.11 Punch List Item(s).

The term "Punch List Item" is defined in Section 9.8.2.

§ 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 is as binding as if required by all; performance by the Contractor will be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. If inconsistencies exist within or between parts of the Contract Documents, or between the Contract Documents and applicable laws, regulations, standards, codes or ordinances, the Contractor will: (i) provide the better quality or greater quantity of Work; and/or (ii) comply with the more stringent requirement. This section does not relieve the Contractor of any of its obligations under Sections 3.2 and 3.7.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents will 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 will be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents will 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 will not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

Contract Documents in accordance with such recognized meanings.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those that are (1) specifically defined in the Contract Documents or (2) the titles of numbered articles.

§ 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 Except as may be expressly stated to the contrary in the contract between the Architect and the Owner, the Architect and the Architect's consultants will be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers will not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the 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, solely and exclusively for execution of the Work. All copies made under this authorization must 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, 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 must be provided in writing to the designated Contract Manager identified in the Public Improvement Contract and will be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission (with receipt confirmed) if a method for electronic transmission is set forth in the Contract.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 must be provided in writing and will 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

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they must endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Contract or the Contract Documents. Unless otherwise provided in the Contract Documents, the Contractor will retain drawings and specifications and other records in native file format and provide them to the Owner upon request or as otherwise required in the Contract Documents, but for day-to-day communications with the Owner regarding Work matters, other file formats such as .pdf may be utilized for convenience unless the Owner requests a different format.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The Owner has designated in the Public Improvement Contract a representative who will have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization ("**Owner's Representative**"). Except as otherwise provided in Section 4.2.1, no entity other than the Owner has such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner will furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information will include a correct statement of the record legal title to the

property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INTENTIONALLY OMITTED

§ 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 will secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Architect, if any, is identified in the Public Improvement Contract and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 Intentionally omitted.

§ 2.3.4 The Owner will furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor will be entitled to rely on the accuracy of information furnished by the Owner but must exercise proper precautions relating to the safe performance of the Work. If the Contractor has reason to believe that any Owner-furnished information is inaccurate or inconsistent in any material respect, Contractor must submit to Architect and Owner a request for information as soon as practicable. Contractor must verify all existing grades, conditions and dimensions of existing physical conditions and structures and must report any inconsistencies in writing to the Architect and the Owner. Contractor must establish all lines and levels required to execute the Work and will bear all costs involved and be responsible for their accuracy and maintenance.

§ 2.3.5 The Owner will furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner will also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work 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 will furnish to the Contractor one copy of the Contract Documents for purposes of

making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to comply with any of its obligations under 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 will 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 the Owner may have, correct such default or neglect. The Contract Administrator or Owner may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Contract Administrator and/or Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor must pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Contract Administrator, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Extent of Owner's Rights

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner: (i) contained in the Contract Documents; (ii) at law; or (iii) in equity. Notwithstanding those rights, in no event will the Owner have control over, charge of or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, all of which are the Contractor's responsibility.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Public Improvement Contract and is referred to throughout the Contract Documents as if singular in number. The Contractor must be lawfully licensed to perform the Work, including, without limitation, a license from the Oregon Construction Contractors' Board and authorization to perform work in the State of Oregon, a City of Portland business license, and an Equal Employment Opportunity (EEO) certification from the City of Portland. The Contractor has designated a representative in the Public Improvement Contract who will have express authority to bind the Contractor with respect to all matters under this Contract (the "Contractor's Representative"). The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor must perform the Work in accordance with the Contract Documents. Except as expressly indicated to the contrary in this Contract, where the Contractor is responsible for performing an obligation or meeting a requirement relating to the Work, it is also responsible for causing any Subcontractors, Sub-subcontractors, or other persons performing work on behalf of the Contractor to meet such obligations or requirements in all respects consistent with the Contract Documents.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor must, before starting each portion of the Work, carefully study and compare the various Contract Documents

relative to that portion of the Work, as well as
the

information furnished by the Owner pursuant to Section 2.3.4, must take field measurements of any existing conditions related to that portion of the Work, and must observe any conditions at the 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 design information contained in the Contract Documents; however, the Contractor must promptly report to the Architect and Contract Administrator (if other than the Architect) 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. The Owner does not guarantee the exactness of grades, elevations, dimensions or locations given on any Drawings issued by the Architect, or the work installed by other contractors. Therefore, the Contractor must satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases where Contractor's Work intersects or connects with existing or other work, Contractor must verify at the site all dimensions relating to such existing or other work. Contractor must promptly and without cost to Owner rectify all errors resulting from Contractor's failure to so verify all such grades, elevations, dimensions or locations.

§ 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 must promptly report to the Architect and Contract Administrator (if other than the Architect) any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect and Contract Administrator (if other than 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 will submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor must 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, the Contractor will 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.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor must supervise and direct the Work, using the Contractor's best skill and attention. The Contractor will 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 must evaluate the jobsite safety thereof and will 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 must give timely notice to the Owner and Architect, and must propose alternative means, methods, techniques, sequences, or procedures. The Owner may request that the Architect evaluate the proposed alternative, and if so, such evaluation is solely for the purpose of assessing conformance with the design intent for the completed construction. Unless the Owner objects to the Contractor's proposed alternative (or concurs with an objection of the Architect), the Contractor will perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

§ 3.4 Labor and Materials

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor will 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. By making requests for substitutions the Contractor: (i) represents that Contractor has investigated the proposed substitute and determined that it is equal or superior in all respects to that specified; (ii) represents that the Contractor will provide the same warranty for the substitution that the Contractor would have for that which was substituted; (iii) certified that the cost data presented is complete and includes all related costs under this Contract except any Architect redesign costs; (iv) waives all claims for additional costs related to the substitution; and (v) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be completed in all respects.

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

§ 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. Work, materials, or equipment not conforming to these requirements will 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 must furnish satisfactory evidence as to the kind and quality of materials and equipment.

The Contractor hereby assigns to Owner, as of the time of Final Completion of the Work, all manufacturers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve all such warranties. If it is legally necessary, the Contractor may retain the right to directly enforce any such warranty during the one-year period following the date of Substantial Completion, referred to in Section 12.2.2. The Contractor must execute such instruments and take such other steps as necessary or as otherwise may be reasonably requested by the Owner to effectuate the assignment of the warranties as of the date of Final Completion of the Work.

THESE WARRANTIES SET FORTH ABOVE AND ELSEWHERE IN THE CONTRACT DOCUMENTS ARE SOLE AND EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING FROM COURSE OF DEALING AND USAGE OF TRADE.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents must be issued in the name of the Owner or be transferable to the Owner and will commence in accordance with Section 9.8.4.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor must secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after

execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor must 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 will assume appropriate responsibility for such Work and will bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents, and were not reasonably inferable from the Contract Documents (including the Environmental Documents and any environmental reports, consent judgments, prospective purchaser agreements, or other related materials referenced therein), 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, and were not reasonably inferable from the Contract Documents (including the Environmental Documents and any environmental reports, consent judgments, prospective purchaser agreements, or other related materials referenced therein), the Contractor must promptly provide detailed written notice to the Owner and the Contract Administrator before conditions are disturbed and in no event later than 7 days after first observance of the conditions, which notice must contain a recommendation from the Contractor as to how to proceed and a detailed estimate of the impacts on the Contract Sum and Contract Time, if any. The Owner will promptly investigate such conditions and, if the Owner believes that they differ materially, were not reasonably inferable, as described in clauses (1) or (2), and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Owner will approve an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner believes that the conditions at the site are not materially different or were reasonably inferable from the

Contract Documents and that no change in the terms of the Contract is justified, the Owner will promptly notify the Contractor, stating the reasons. If the Contractor disputes the Owner's determination, that Contractor may submit a Claim as provided in Article 15. If the Owner believes the Contractor has not provided adequate information or documentation in order to make a determination, the Owner will promptly request such additional information or documentation, and the Contractor will provide such supplemental information or documentation within seven (7) days of Owner's request or the Contractor's request for an equitable adjustment of Contract Sum or Contract Time will be deemed waived. Nothing in this Section 3.7.4 waives Contractor's continuing responsibility for the work site or for taking all reasonable steps that would be exercised by a reasonably prudent contractor to minimize costs and delays associated with concealed or unknown conditions described in this Section.

§ 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 must immediately suspend any operations that would affect them and must promptly notify the Owner and Architect. Upon receipt of such notice, the Owner will promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor must continue to suspend such operations until otherwise instructed by the Owner but must 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 OMITTED

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, must notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt

of the information, the 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 Architect to provide notice within the 14-day period will constitute notice of no reasonable objection.

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

§ 3.10 Construction, Submittal and Meeting Schedules

§ 3.10.1 The Contractor, promptly after execution of the Contract, must submit for the Owner's and Contract Administrator's information a contractor's construction schedule for the Work (unless the Pre-Construction Services Agreement or other contract between Owner and Contractor requires delivery earlier, in which case the schedule must be delivered at such earlier date). The schedule must 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 must provide for the orderly progression of the Work to completion and must not exceed time limits current under the Contract Documents. The schedule will be revised at appropriate intervals as required by the conditions of the Work and Project. The schedule submitted by the Contractor must be consistent with the time of completion set forth in the Contract, and if it is not, submittal of the schedule and approval by the Owner does not override the date(s) set forth in the Contract.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, must submit a submittal schedule for the Contract Administrator's approval. The Contract Administrator's approval will not be unreasonably delayed or withheld, provided that the Contract Administrator is not required to approve schedules that are inconsistent with the Contract schedule or other provisions of the Contract Documents. The submittal schedule will

(1) be coordinated with the Contractor's construction schedule, and
(2) allow the Contract Administrator 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 will not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor must perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect and the deadlines set forth in the Contract Documents. Nothing in this Section 3.10 limits or affects the Owner's right to assess liquidated damages for the Contractor's failure to meet any deadlines set forth in the Contract Documents.

§ 3.10.4 The construction schedule must be in a detailed, precedence-style critical path management ("CPM") format satisfactory to the Owner and the Architect. The schedule must:

- (i) provide a graphical representation of all activities and events that will occur during performance of the Work;
- (ii) identify each phase of construction and occupancy;
- (iii) establish dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the Contract Documents, including any dates set forth in the Contract (all of the dates referenced in this clause (iii) are referred to herein as "Milestone Dates"); and
- (iv) be consistent with the Contract.

Once the Owner and Architect accept the construction schedule it will be binding on Contractor. If it is not accepted, the Contractor will promptly revise the schedule consistent with the Owner and Architect's recommendations and resubmit it for approval. The Contractor will monitor the Work's progress to ensure that it conforms with the construction schedule and must promptly advise Owner and Architect of any delays or potential delays. Contractor will update the approved schedule (i.e. provide a progress report) to reflect actual conditions as set forth in Section 3.10.1 or if Owner or Architect so request. If a progress report indicates any delays, the Contractor must propose an affirmative plan to correct the delay, including overtime and/or additional labor, as necessary. In no event will any progress report adjust the Contract Time, a Milestone Date or the Contract Sum unless the Owner agrees and authorizes such an adjustment through a Change Order.

§ 3.10.5 If the Owner determines that the performance of the Work as of a Milestone Date has not progressed or reached the level of completion that the Contract Documents require, the Owner may order the Contractor to take corrective measures to expedite the Work, including: (i) working additional shifts or overtime; (ii) supplying additional labor, equipment and facilities; and (iii) other similar measures ("Corrective Measures"). Corrective Measures will continue until the Work's progress aligns with the completion stage required by construction schedule and the Contract Documents. The Owner's right to require Corrective Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor is not entitled to an adjustment to the Contract Price if the Owner requires Corrective Measures under this section.

§ 3.10.6 The Owner will have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees. The Contractor will, upon Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. A postponement or rescheduling of the Work under this section may be grounds for an extension of the Contract Time under Section 8.3.1.

§ 3.10.7 The Owner and Contractor will meet regularly throughout the performance of the Work in accordance with a schedule approved by Owner.

§ 3.11 Documents and Samples at the Site

The Contractor must 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 will 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.

§ 3.12 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 will 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.

§ 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 will 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 must be in accordance with approved submittals except that the Contractor will 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 will 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 will 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 will not apply to such revisions.

§ 3.12.10 The Contractor will 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 will not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor will be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor must cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal will 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, must bear such professional's written approval when submitted to the Architect. The Owner and the Architect will be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided 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 must furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor must 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 will not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor will 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 must 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 must 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 must 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 will not be unreasonably withheld. The Contractor must 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 The Contractor must 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 must 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 will be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

The Contractor must pay all royalties and license fees. The Contractor must defend suits or claims for infringement of copyrights and patent rights and hold the Owner and Architect harmless from loss on account thereof, but will 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 will be responsible for the loss unless the information is promptly furnished to the Architect and the Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, including without limitation the Oregon Tort Claims Act, except to the extent caused by the gross negligence or willful misconduct of an indemnitee, the Contractor must indemnify and hold harmless the Owner, the City of Portland, Architect, and their respective consultants, and agents, officials, commissioners and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from any Contractor Party's performance of the Work, provided that such claim, damage, loss, or expense is attributable to (i) bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than

the Work itself), but only if any part of such injury is caused by the negligent acts or omissions of any Contractor Party, (ii) a Contractor Party violating a law, ordinance, regulation, or other binding directive from a government authority that bears on the performance of the Work, or (iii) failure to secure and pay for permits, fees, approvals, licenses and inspections as the Contract Documents require. Such obligation will not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. "Contractor Party" means each of, and collectively, the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be responsible.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by a Contractor Party, the indemnification obligation under Section 3.18.1 will not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 Environmental Indemnity and Responsibility of Contractor. In addition to, and not in limitation of, the other indemnification obligations of the Contractor pursuant to this Section 3.18, Contractor agrees as follows:

1. Contractor will be held responsible for and must indemnify, defend (with counsel of Owner's choice) and hold harmless Owner from and against any costs, expenses, damages, claims, and causes of action, (including reasonable attorney fees), or any of them, resulting from all spills, releases, discharges, leaks and disposal of environmental pollution, including storage, transportation, and handling during the performance of the Work which occur as a result of, or are contributed by, the negligence or actions of a Contractor Party or any failure to perform in accordance with the Contract Documents (except to the extent otherwise void under ORS 30.140). Nothing in this Section limits Contractor's responsibility for obtaining insurance coverages required under the Contract Documents, and Contractor must take no action that would void or impair such coverage.

2. Contractor agrees to promptly dispose of such spills, releases, discharge or leaks to the satisfaction of Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup will be at no cost to the Owner and be

performed by properly qualified personnel.

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

(a) Properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances

(b) Maintain copies of all 'Material Safety Data Sheets' at the Work site at all times along with a 'Health and Safety Plan' in conformance with OR-OSHA requirements;

(c) Be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials which Contractor has brought onto the Work site; and

(d) Promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

4. Contractor must report all reportable quantity releases to applicable federal, state, and local regulatory and emergency response agencies. Reportable quantities are found in 40 CFR Part 302, Table 302.4 for hazardous substances and in OAR 340-142-0050 for all products addressed therein. Upon discovery, regardless of quantity, Contractor must telephonically report all releases to the Owner. A written follow-up report will be submitted to Owner within 48 hours of the telephonic report. Such written report must contain, as a minimum:

(a) Description of items released (identity, quantity, manifest no., and all other documentation required by law.)

(b) Whether amount of items released is EPA/DEQ reportable, and, if so, when it was reported.

(c) Exact time and location of release, including a description of the area involved.

(d) Containment procedures initiated.

(e) Summary of communications about the release Contractor has had with members of the press or State officials other than Owner (Contractor will coordinate all communications with Owner unless specifically agreed to the contrary by Owner).

(f) Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.

(g) Personnel injuries, if any, resulting from, or aggravated by, the release.

ARTICLE 4 CONTRACT ADMINISTRATION

§ 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 Public Improvement Contract. The Architect may provide contract administration services if so, designated in the Contract Documents, but the Owner employee designated in the Contract is the Contract Administrator if not otherwise stated. Nothing in the Contract Documents prohibits the Contract Administrator from requiring the Contractor to copy other consultants or contractors of the Owner, such as the Architect, on Applications for Payment or other communications or notices, or from consulting with or soliciting recommendations from such other persons in the performance of the Contract Administrator's duties.

§ 4.1.2 The Owner may designate the Architect, Owner's Representative, or other person the Contract Administrator during the course of performance of the Work if it so desires but will provide prior written notice to the Contractor if it so modifies the Contract Administrator.

§ 4.2 Administration of the Contract

§ 4.2.1 The Contract Administrator will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Contract Administrator issues the final Certificate for Payment. The Contract Administrator will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Contract Administrator will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Contract Administrator will not be required to make exhaustive or continuous on-site inspections to check the quality

or quantity of the Work. The Contract Administrator 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 site visits, the Owner anticipates that the role of the Contract Administrator will be to keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and to report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. However, the Contract Administrator's specific responsibilities to Owner are governed by the agreement (if any) between the Contract Administrator and the Owner, not the Contract Documents. The Contract Administrator will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Contract Administrator 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 Owner and Contractor must include the Owner's consultants, including the Architect, in all communications that relate to or affect the Architect's or other consultants' services or professional responsibilities. The Owner will promptly notify the Contract Administrator of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's or Contract Administrator's consultants (if applicable) will be through the Architect or the Contract Administrator, respectively. Communications by and with Subcontractors and suppliers must be through the Contractor. Communications by and with Separate Contractors must be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Contract Administrator's evaluations of the Contractor's Applications for

Payment, the Contract Administrator will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts. If the Contract Administrator is an entity other than the Architect, the Contract Administrator may consult with the Architect in reviewing and certifying the Applications for Payment.

§ 4.2.6 The Contract Administrator and the Owner each have authority to reject Work that does not conform to the Contract Documents. Whenever the Contract Administrator considers it necessary or advisable, the Contract Administrator 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 Contract Administrator nor a decision made in good faith either to exercise or not to exercise such authority will give rise to a duty or responsibility of the Contract Administrator to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Contract Administrator or 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 Contract Administrator or Architect's action will be taken in accordance with the submittal schedule approved in accordance with Section 3.10 of these General Conditions or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Contract Administrator or 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 Contract Administrator or Architect's review of the Contractor's submittals does not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Contract Administrator or Architect's review will not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Contract Administrator or Architect's approval of a specific

item will not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Contract Administrator will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work if provided in Section 7.4. The Contract Administrator will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

§ 4.2.10 The Owner will notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Architect or Contract Administrator's Project representatives.

§ 4.2.11 The Initial Decision Maker will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Initial Decision Maker'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 Owner 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 Owner will decide or interpret in good faith.

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

§ 4.2.14 The Owner will use reasonable efforts to cause the Contract Administrator and the Architect (if different from the Contract Administrator) to review and respond to requests for information about the Contract Documents. Responses to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Contract Administrator or Architect

will prepare and issue (or cause the preparation and issuance of) supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 Notwithstanding anything to the contrary in the Contract Documents, nothing in these General Conditions or in the Contract Documents (a) modifies, amends, impairs or limits the responsibilities of the Architect pursuant to the Owner's agreement with the Architect or the Contract Administrator pursuant to the Owner's agreement with the Contract Administrator, if applicable, or any rights or remedies of the Owner thereunder, or (b) provides Contractor with any rights or remedies under the Owner's agreement(s) with either such entity.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. 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 perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. For purposes of the Contract Documents, Contractor is responsible for Sub-subcontractor performance as fully as for Subcontractor performance, whether or not a reference to Subcontractors also expressly refers to Sub-subcontractors.

§ 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, will notify the Owner 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 may notify the Contractor whether the Owner (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period will constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor must propose another to whom the Owner has no reasonable objection.

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

§ 5.3 Sub contractual Relations

By appropriate written agreement, the Contractor must require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement must 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 thereof will not prejudice such rights, and will 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. Where Sub-subcontractors are utilized, the Contractor must require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor must 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:

- a. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- b. 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.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation will be equitably adjusted for increases in the Cost of the Work to be performed by the Subcontractor 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 will nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each Subcontract must specifically provide in writing that Owner will only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

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)" means 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 retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation, or otherwise as may be determined by the Owner.

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

§ 6.1.3 The Owner will provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who will cooperate with them. The Contractor will participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor will make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules will 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 will have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor will afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and will connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 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 will, prior to proceeding with that

portion of the Work, promptly notify the Contract Administrator and Architect of apparent delays, 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 Contract Administrator and Architect of apparent discrepancies, delays, or defects prior to proceeding with the Work will 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 will not be responsible for discrepancies, delays, or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor must 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. The Owner will be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and 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 No Change Order is effective unless it is approved by both the Owner and the Contractor. A Construction Change Directive or an order for a minor change in the Work may be issued at the Owner's discretion and may or may not be agreed to by the Contractor.

§ 7.1.3 Changes in the Work must be performed under applicable provisions of the Contract Documents. The Contractor must 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 signed by the (i) Owner, (ii) Contractor, and (iii) if requested by the Owner, the Architect and/or Contract Administrator, 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 Agreement on any Change Order constitutes a final settlement of all matters relating to the change in Work that is the subject of the Change Order, including but not limited to all direct and indirect costs and damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 Construction Change Directives

§ 7.3.1 A "Construction Change Directive" is a written order signed by the Owner (provided that the Owner may elect to delegate the authority to issue Construction Change Directives to third parties, such as a third-party Contract Administrator or the Architect, if provided for in its agreements with such parties), 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 will 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 will 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; or,
3. 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 will reasonably determine the adjustment on the basis of 7.3.3.2, if the adjustment relates to stated unit prices, or otherwise in accordance with Section 7.3.3.3. In such case, and also under Section 7.3.3.3, the Contractor must keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 are 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 Contract Administrator;
2. Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
5. 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 will promptly proceed with the change in the Work involved and advise the Contract Administrator 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.

§ 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 will be effective immediately and will 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 will be actual net cost as confirmed by the Contract Administrator. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Contractor's Fee (as set forth in Article 5 of the Contract) will 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 Contract Administrator will make an interim determination for purposes of monthly payment for those costs and approve for payment the amount that the Contract Administrator determines, in the Contract Administrator's professional judgment, to be reasonably justified pursuant to the Contract Documents. The Contract Administrator's interim determination of cost will 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 concerning the adjustments in the Contract Sum and Contract Time pursuant to a Construction Change Directive, such agreement will be effective immediately upon the execution of both the Owner and Contractor of a corresponding 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 Owner may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Owner's order for minor changes must be in

writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor will notify the Contract Administrator and will not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the order for a minor change without prior notice to the Contract Administrator 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. The Owner may, in its discretion, delegate to third-parties (such as the Contract Administrator, if other than Owner, or the Architect) to authorize minor changes in Work, and if the Owner elects to so authorize such third-parties it will notify the Contractor in writing of such delegation and the terms and conditions thereof.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

§ 8.1.3 The date of Substantial Completion is the date determined by the Contract Administrator in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, 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 Contractor's control; (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 will be extended for such reasonable time as the Owner may determine; provided, however that notwithstanding anything to the contrary in this Section 8.3.1, adjustments for Contract Time will be permitted for a delay only to the extent the delay (a) is not caused or contributed to, or could not have been anticipated by, the Contractor, and (b) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that a delay will occur. All requests for an adjustment of Contract Time must be supported by CPM analysis showing the effect on the entire Project, including float. Partial demonstration of impact on particular operations only will not be acceptable to show the criticality of any event on the Project schedule as a whole. Any extension of the Contract Time will be net of any contingency, weather delay, or "float" time allowance included in the Contractor's construction schedule. If more than one event causes concurrent delays, and the cause of at least one of those events is a cause of delay that would not entitle the Contractor to an extension of time, then to the extent of such concurrency, the Contractor will not be entitled to an extension of time. Without in any way limiting Contractor's general waiver of consequential damages, Contractor specifically acknowledges and agrees that the Contractor will 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.

§ 8.3.2 Claims relating to time must be made in accordance with applicable provisions of Article 15.

§ 8.3.3 Notwithstanding any contrary language in the Contract Documents, an extension of Contract Time, to the extent permitted under subsection 8.3.1, is the Contractor's sole remedy for any: (1) delay in the commencement, prosecution or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity; or (4) other similar claims (herein "Delays") whether or not such Delays are foreseeable, unless a Delay is caused by an unreasonable act or omission of Owner or persons acting on Owner's behalf and only to the extent such acts continue after the Contractor notifies Owner in writing of the same. Contractor's written notice to Owner must be delivered as soon as possible and no later than seven (7) days from the beginning of the Delay. To the maximum extent allowed by law, Contractor is not entitled to any additional compensation or recovery of any damages in connection with any Delay, including without limitation consequential damages, lost opportunity costs, lost profits, impact damages or other similar remuneration. Owner's exercise of any of its rights or remedies under the Contract Documents (including without limitation ordering changes in the Work or directing suspension, rescheduling or correction of the Work) is not an unreasonable act and will not be deemed an unreasonable Delay. Third-party utilities (including without limitation electric, natural gas and communication companies and utilities) and governmental entities (including the City of Portland or City bureaus or agencies other than Prosper Portland) are not persons or entities acting on Owner's behalf and the parties agree that any Delays that result from the actions of such entities on the Project will not be deemed an unreasonable Delay.

§ 8.3.4 Contractor must take into account its expected downtimes due to typical weather conditions in Portland, Oregon at the time that the work is performed, equipment breakdowns, labor shortages, scheduling conflicts, material delivery delays, recognized holidays, or any other incidents or conditions that can be expected to occur on a project of this size and magnitude. The Contractor's failure to properly staff the job, failure to manage the work, or failure to allow for normal, seasonable weather delays will not entitle the Contractor to additional time. No extensions of Contract Time due to weather delays will be considered by the Owner unless the Owner is satisfied that the weather was significantly severe and unusual for long periods of time in which the work is performed and that the overall Project completion time was, in fact, truly

impacted by the severe and unusual weather. In the case of claims for extension of time because of severe or unusual weather, an extension of time will only be granted if the severe or unusual weather prevented the execution of an item of Work underway at the time that controls overall job progress, equivalent to an item on the critical path of a network progress schedule or a similar schedule.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a Change Order or Construction Change Directive so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices will be equitably adjusted.

§ 9.2 Schedule of Values

If a schedule of values is not attached to the Contract as an Exhibit thereto, and where the Contract is based on a stipulated (fixed) sum or Guaranteed Maximum Price, the Contractor must submit a schedule of values to the Contract Administrator before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values must be prepared in the form, and supported by the data to substantiate its accuracy, required by the Contract Administrator. The schedule of values, once approved by the Contract Administrator or attached to the Contract, will be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values must be submitted to the Owner for approval in the Owner's reasonable judgment, with a copy to the Contract Administrator (if not an employee of the Owner) and supported by such data to substantiate its accuracy as the Owner may require. If approved by the Owner, the updated schedule of values will be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor must

submit to the Contract Administrator, with a copy to the Architect if so indicated by the Owner or Contract Administrator, an itemized Application for Payment in the form approved by Owner prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application must be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Contract Administrator require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers and must reflect retainage as provided for in Article 16 of these General Conditions.

§ 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 but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment must 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.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments must be made on account of materials and equipment delivered and suitably stored at the 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 site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site must 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 must include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner must 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.

§ 9.3.4 Each Application for Payment will constitute a certification to the Owner that: (i) the construction of the Work to date has been performed in a good and workmanlike manner and otherwise in accordance with the Contract Documents; (ii) progress is such that the Work will reach Substantial Completion as scheduled in the Contract Documents, subject to extensions of Contract Time granted in accordance with the Contract Documents; (iii) to the best of Contractor's knowledge, the Owner is in compliance with all of its obligations under the Contract Documents except as have been previously disclosed in writing to the Owner; (iv) the Contractor has complied with the Contract Documents in all respects through the date of the Application for Payment; and (v) the work to which the Application for Payment applies is not covered by any previous Application for Payment.

§ 9.3.5 Each Application for Payment will include (a) conditional lien waivers from Contractor and all Sub-contractors and suppliers for the amount covered by the Application for Payment, and (b) unconditional lien waivers from Contractor and all Sub-contractors and suppliers for amounts covered by all preceding Applications for Payment.

§ 9.4 Progress Payments; Prompt Payment Obligation

§ 9.4.1 The Contract Administrator will promptly review and approve, approve in part and disapprove in part, or disapprove each Application for Payment. The Contract Administrator may delay this decision if, in the Contract Administrator's judgment, the Contractor has failed to provide adequate documentation or information to make such a determination, provided that the Contract Administrator will state with specificity what additional information or documentation is needed in exercising this right. Any disapproval or partial disapproval by the Contract Administrator requires a written explanation to the Contractor stating the reasons for such disapproval or partial disapproval. If the Contractor disagrees with a disapproval or partial disapproval, it may submit a Claim pursuant to Article 15 of these General Conditions.

§ 9.4.2 The Contract Administrator may, but is not required to, seek the Architect's review of Applications for Payment and may require that the Architect sign a Certificate of Payment confirming its

review and satisfaction with such conditions as may be agreed upon by the Owner and the Architect.

§ 9.4.3 Owner will, within thirty (30) days of an Application for Payment or fifteen (15) days of approval of the Application for Payment, whichever is earlier, or a portion thereof, disburse the amount requested in the Application for Payment or the portion thereof approved by the Contract Administrator, less applicable retainage in accordance with Section 16.1 of these General Conditions. If Owner fails to disburse such amount within the time period required in Section 9.4.3, then interest will accrue on the amount improperly withheld amount as set forth in ORS 279C.570(2).

§ 9.4.4 Notwithstanding the foregoing, in instances when an Application for Payment is filled out incorrectly, or when there is any defect or impropriety in any submitted application or when there is a good faith dispute, Owner must so notify the Contractor within fifteen (15) days stating the reason or reasons the application for payment is defective or improper or the reasons for the dispute. A defective or improper application for payment, if corrected by the Contractor within seven (7) days of being notified by the Owner, will not cause a payment to be made later than specified in this section unless interest is also paid. Accrual of interest as set forth in Section 9.4.3 above will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Contractor.

§ 9.5 Decisions to Withhold Payment

§ 9.5.1 The Contract Administrator may decline to approve an Application for Payment, in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Contract Administrator's opinion, the representations to the Owner by the Contractor contemplated by Section 9.3.4 are false or misleading in any material respect or otherwise cannot be made or if the conditions for payment are not satisfied. If the Contract Administrator is unable to approve payment in the amount of the Application, the Contract Administrator will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Contract Administrator cannot agree on a revised amount, the Contract Administrator will promptly approve payment for the amount for which the Contract Administrator determines the representations described in Section 9.3.4 are accurate in all material respects and for which the conditions for payment are satisfied. The

Contract Administrator may also withhold approval or, because of subsequently discovered evidence, may nullify the whole or a part of a previously issued approval of an Application for Payment, to such extent as may be necessary in the Contract Administrator'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 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 to make payments properly to 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. reasonable evidence that the Contractor or an entity for which the Contractor is responsible has violated one or more of the Policies;
8. failure to provide certified payroll reports or take other required steps in connection with Section 17.1 of these General Conditions in connection with prevailing wage obligations; or
9. failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 If the Contractor disagrees with a determination made by the Contract Administrator under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15. If the Owner is not the Contract Administrator, the Owner may also avail itself of the right to make a Claim in accordance with Article 15 if the Owner disagrees with a determination made by the third-party Contract Administrator under Section 9.5.1.

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

§ 9.5.4 If the Contract Administrator withholds approval for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to

the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner must notify the Contract Administrator, and the Contractor will reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Contract Administrator has approved payment, the Owner will make payment in the manner and within the time provided in the Contract Documents and will so notify the Contract Administrator (if the Contract Administrator is not the Owner).

§ 9.6.2 The Contractor must 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 must, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in the same manner.

§ 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 Contract Administrator 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 will have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Contract Administrator will 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 will be treated in a manner consistent with that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner will not constitute acceptance

or approval 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 will 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 will 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 The Contractor must defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner will notify the Contractor. If a notice of lien is filed, Contractor must promptly take all steps necessary to cause the lien to be released of record in accordance with ORS 87.076 - .088.

§ 9.7 Failure of Payment

§ 9.7.1 If the Contract Administrator does not approve a payment, through no fault of the Contractor, within fifteen days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount approved by the Contract Administrator or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Contract Administrator, stop the Work until payment of the amount owing has been received. The Contract Time will be extended appropriately, and the Contract Sum will 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 If the Contract Documents entitle Owner to reimbursement or payment from the Contractor then Contractor will promptly make such

reimbursement or payment upon Owner's demand. Despite any contrary language in the Contract Documents, if Contractor fails to promptly make any payment due the Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner has an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor; or (2) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 "Substantial Completion" is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 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 must prepare and submit to the Contract Administrator a comprehensive list of items to be completed or corrected prior to final payment (the "Punch List Items"). 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.

§ 9.8.3 Upon receipt of the Contractor's list, the Contract Administrator will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Contract Administrator'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 must, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Contract Administrator. In such case, the Contractor must then submit a request for another inspection by the Contract Administrator to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Contract Administrator will prepare (or cause to be prepared) a Certificate of Substantial Completion that will 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 must finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents will 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 must be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner will make payment of retainage applying to the Work or designated portion thereof. Such payment will be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 If the Contractor fails to achieve Substantial Completion as provided in Contract Documents, including Substantial Completion of any portion of the Work by the applicable date indicated in Section 3 of the Contract, liquidated damages may be assessed by the Owner as set forth in Section 15.5.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete. When the Contractor considers a portion substantially complete, the Contractor must prepare and submit a list to the Contract Administrator as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use will not be unreasonably withheld.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Contract Administrator will 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 will not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that all Punch List Items are complete and that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Contract Administrator will promptly make such inspection. When the Contract Administrator finds the Work acceptable under the Contract Documents and the Contract Documents fully performed (which may be based on a certification or recommendation by the Architect, if provided for in the Owner's agreement with the Architect), the Contract Administrator will notify the Owner that the final payment is due and payable. If provided for in the Owner's agreement with the Architect, the Contract Administrator may require a certification or representation from the Architect to the Owner 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 will become due until the Contractor submits to the Contract Administrator (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by 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, (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, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (7) the close-out documentation described in Section 9.10.6, (8) all documentation required pursuant to the Policies or other policies of Owner set forth in the Contract Documents (provided that final reports pursuant to the Policies may be provided up to 60 days following final payment if Contractor is not reasonably able to provide such reports at this time and Owner provides prior approval), and (9) any final certified payroll documentation required pursuant to Section

17.1 of these General Conditions in connection with prevailing wage obligations of the Contractor and all Subcontractors. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor must refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting Final Completion, and the Contract Administrator so confirms, the Owner will, upon application by the Contractor and certification by the Contract Administrator, 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 must be submitted by the Contractor to the Contract Administrator prior to certification of such payment. Such payment will be made under terms and conditions governing final payment, except that it will not constitute a waiver of Claims.

§ 9.10.4 The making of final payment will constitute a waiver of Claims by the Owner except those arising from:

1. liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
2. failure to comply with the requirements of the Contract Documents;
3. terms of special warranties required by the Contract Documents; or
4. audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, will constitute a waiver of claims by that payee, except for those previously made in accordance with the

terms of this Contract and identified as unsettled at the time of final payment.

§ 9.10.6 Miscellaneous Close-out Documentation. Contractor must:

1. Submit completed operations and maintenance manuals ("O&M Manuals") for review by the Owner and Contract Administrator, for any new work installed, prior to its final Application for Payment containing a complete set of all submittals, all product data required by the specifications, training information, phone list of consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties, and so forth. The Owner and Contract Administrator will review and request modifications if they determine they are needed. Prior to submission of final payment, Owner must have received approved sets of O&M Manuals.
2. Maintain during the progress of the Work record drawings indicating the current status of the Work as performed. Upon Substantial Completion of the Work, Contractor must prepare a final version of such record drawings and all as-built Plans, a survey showing x, y, z coordinates for all piles remaining on-site (if not required to be removed pursuant to the Contract Documents), Specifications, testing and inspection records, manufacturer and distributor/supplier warranties evidencing transfer to Owner, Change Orders, correspondence, and other documents related to the Work and submit them to the Contract Administrator. Such record documents must be provided before final payment is made.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

1. employees on the Work and other persons who may be affected thereby;
2. the Work and materials and equipment to

be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

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

§ 10.2.2 The Contractor must 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 must implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

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

§ 10.2.5 The Contractor must 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 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. 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 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. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 Injury or Damage to Person or Property.

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, will be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice will provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances, including, without limitation, those set forth in Section 3.18.3 of these General Conditions. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents, the Contract Documents do not otherwise make Contractor responsible for the hazardous materials, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance (which may potentially include but are not limited to asbestos or polychlorinated biphenyl (PCB)), encountered on the site by the Contractor, the Contractor must, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Contract Administrator of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner will obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner will furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of

the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If the Contractor has an objection to a person or entity proposed by the Owner, the Owner will propose another to whom the Contractor has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area will resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time will be extended appropriately, and the Contract Sum will be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner will indemnify and hold harmless the Contractor, Subcontractors, and agents 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 if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner will not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner will be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner will, to the fullest extent permissible by law, reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor will act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency will 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 must 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 Contract or elsewhere in the Contract Documents. The Contractor must purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the state of Oregon.

§ 11.1.2 The Contractor must 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 must 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 must promptly furnish a copy of the bonds or must authorize a copy to be furnished.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Contractor must not let the insurance it is required to maintain pursuant to the Contract Documents lapse or terminate until Final Completion. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation of any insurance required by the Contract Documents, the

Contractor must provide notice to the Owner of such impending or actual cancellation. Upon receipt of notice from the Contractor, the Owner will, 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 will not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Verification of Coverage.

Contractor must furnish Prosper Portland with Certificates of Insurance including all required amendatory endorsements before work begins. However, failure of Owner to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Owner to identify a deficiency from evidence that is provided will not be construed as a waiver of the obligation of the Contractor to maintain the insurance required by this contract. Owner reserves the right to require complete, certified copies of all required insurance policies, including all required endorsements, at any time.

§ 11.3 Insurance Limits

The insurance required by this Article 11 must be written for at least the limits of liability specified in this Section or required by law, whichever is greatest.

§11.3.1 Workers' Compensation Statutory Limits

§11.3.2 Employer's Liability

11.3.2.1 Each Accident\$1,000,000

11.3.2.2 Each Bodily Injury/Disease \$1,000,000

11.3.2.3 Aggregate Bodily Injury/Disease \$1,000,000

§11.3.3 Commercial General Liability

11.3.3.1 Each Occurrence..... \$2,000,000

11.3.3.2 General Aggregate..... \$2,000,000

11.3.3.3 Product/Completed Operation... \$2,000,000

11.3.3.4 Personal & Advertising Injury\$2,000,000

11.3.3.5 Fire Damage Limit \$2,000,000

11.3.3.6 Medical Expense Limit..... \$2,000,000

§11.3.4 Automobile Liability

11.3.4.1 Combined Single Limit\$2,000,000

§11.3.5 Commercial Umbrella/Excess Coverage

11.3.5.1 Each Occurrence..... Min. \$2,000,000

§ 11.4 Term of Insurance.

Contractor's insurance must be maintained from the date of commencement of the Work until one (1) year after the date of Final Completion and at all times thereafter if Contractor or Subcontractors is/are repairing, correcting, removing or replacing defective, rejected or warranty Work. In the event any of the policies required herein are canceled or materially altered, the Contractor and its insurer must give thirty (30) days' written notice by certified mail to Owner.

§ 11.5 Additional Insured.

Prosper Portland, the City of Portland, and each of their officers, officials, employees, and volunteers (the "Additional Insured Entities") must be covered as additional insureds on the CGL policy with respect to liability arising out of the work or operations performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such work or operations. Additional insured coverage must be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form (1) CG 20 10 10 01 or (2) both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 forms, if later revisions are used). It is understood and agreed that such insurance provided to Additional Insured Entities by Contractor: (1) must be primary as to any other insurance covering or available to any of the Additional Insured Entities, (2) must be at least as broad in its coverage of Additional Insured Entities as it is in its coverage of Contractor, and (3) that such other insurance available to Additional Insured Entities must not be required to contribute to any liability or loss until and unless the appropriate limit of liability afforded hereunder is exhausted. The additional insured endorsement must be attached to Contractor's Comprehensive General Liability, Automobile Liability, and Excess Liability (if required) policies. Merely naming the Additional Insured Entities on the insurance certificate is not acceptable.

§ 11.6 Waiver of Subrogation.

Contractor's Worker's Compensation, Comprehensive General Liability, Automobile Liability, and Excess Liability (if required), any other policies as noted in the Contract Documents must contain a "Waiver of Subrogation" endorsement.

§ 11.7 No Responsibility for Materials or Labor.

Contractor acknowledges and agrees that Owner assumes no responsibility for materials and/or labor until subject improvements are installed, completed and accepted by the Owner. Contractor is

responsible for all of its property losses including, but not limited to, vandalism, malicious mischief, collapse, false work, temporary buildings and debris removal, except to the extent such property losses are caused by the negligent or other wrongful acts or omissions of Owner, their agents or employees, or their separate contractors.

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 Contract Administrator's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Contract Administrator, be uncovered for the Contract Administrator's examination and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

§ 12.1.2 If a portion of the Work has been covered that the Contract Administrator has not specifically requested to examine prior to its being covered, the Contract Administrator may request to see such Work and it must be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor will 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, will be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion
The Contractor must promptly correct Work rejected by the Contract Administrator 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 (which, if performed by a separate contractor(s) retained by Owner, will be limited to actual out-of-pocket costs and expenses paid by Owner to such third party or third parties), and compensation for the Contract Administrator's services and expenses made necessary thereby, will 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 and any warranties, covenants or

representations elsewhere in the Contract Documents, if, within one year after the date of Substantial Completion of the Work or designated portion thereof 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 must correct it promptly and at Contractor's expense after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner must 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, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work will 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 one-year period for correction of Work will not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2, except as provided herein.

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

§ 12.2.4 The Contractor will 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 not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 will be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year 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. Upon completion of any Work under or pursuant to this Section 12.2, the one-year correction period in connection with the Work requiring correction will be renewed and will recommence. The obligations under Section 12.2 will cover any repairs and replacement to any part of the Work or other property that is damaged by the defective Work

§ 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 will be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract will be governed by Oregon law without regard to conflict of laws principles.

§ 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, neither party to the Contract will assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party will 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 lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor must 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 will 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, Architect, or Contractor will constitute a waiver of a right or duty afforded them under the Contract, nor will 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 will be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor will make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and must bear all related costs of tests, inspections, and approvals. The Contractor must give the Contract Administrator timely notice of when and where tests and inspections are to be made so that the Contract Administrator may be present for such procedures. The Owner will bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner will directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, will be at the Contractor's expense.

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

§ 13.4.5 If the Contract Administrator is to observe tests, inspections, or approvals required by the Contract Documents, the Contract Administrator 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 must be made promptly to avoid unreasonable delay in the Work.

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 30 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 a Certificate for Payment has not been issued except as non-issuance of a Certificate for Payment is permitted by the Contract Documents, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents and such non-payment is a violation of 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 Contract Administrator, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 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, 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 Contract Administrator, 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. repeatedly 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. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
4. otherwise is guilty of any material breach of a provision of the Contract Documents.

§ 14.2.2 When the Owner determines that 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, fourteen days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

1. Exclude the Contractor from the 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 will furnish to the Contractor a detailed accounting of the actual out-of-pocket 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 will not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds Owner's actual, out-of-pocket costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess must be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor must pay the difference to the Owner. These obligations for payment survive termination of the Contract.

§ 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 will 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 will include profit. No adjustment will 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 must:

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 will pay the Contractor for Work properly executed; reasonable costs incurred by reason of the termination, including reasonable costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the 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 will 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

The Owner and Contractor must 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 Contract and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive 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, must be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Contract Administrator. Claims by either party under this Section 15.1.3.1 must be initiated within 14 days after occurrence of the event giving rise to such

Claim or within 14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, except where another provision of the Contract Documents may provide a shorter period.

§ 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, must be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 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 will proceed diligently with performance of the Contract and the Owner will continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time must be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Contract Administrator will approve, reject, or approve and reject in part Applications for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 must 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.

§ 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 must be given. The Contractor's Claim must 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 If adverse weather conditions are the basis for a Claim for additional time, such Claim must be consistent with the requirements contained in Article 8 of these General Conditions, and documented by data substantiating that weather conditions were abnormal for the period of time,

could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for indirect, special, punitive and consequential damages arising out of or relating to this Contract. This mutual waiver includes but is not limited to:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 will be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those 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 or arising under Sections 10.3, 10.4, and 11.5, will be referred to the Initial Decision Maker for initial decision. A manager or director-level employee of Owner, as designated by Owner, will serve as the Initial Decision Maker. Except for those Claims excluded by this Section 15.2.1, an initial decision will be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party,

(2) reject the Claim in whole or in part, (3) recommend approval of the Claim to Owner, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but will not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

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

§ 15.2.5 The Initial Decision Maker will evaluate claims by written decision and notify parties of any recommended changes to Contract Sum or Contract Time or both.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

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

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, will be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties will endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, will be administered by the Arbitration Service of Portland, Inc. in accordance with its procedural rules in effect on the date of the Contract. A request for mediation must 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 will proceed in advance of binding dispute resolution proceedings, which will be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration 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 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties will share the mediator's fee and any filing fees equally. The mediation must be held in Portland, Oregon, unless another location is

mutually agreed upon. Agreements reached in mediation will be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Contract, any Claim, dispute, or other matter in question arising out of or related to this Contract subject to, but not resolved by, mediation will be subject to arbitration which, unless the parties mutually agree otherwise, will be administered by the Arbitration Service of Portland, Inc. in accordance with its procedural rules in effect on the date of the Contract. The Arbitration will be conducted in Portland, Oregon, unless another location is mutually agreed upon. A demand for arbitration must be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

§ 15.4.2 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Contract, will be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The parties must share the arbitration fee and any filing fees equally, but otherwise bear their own costs and fees, including attorney fees. The arbitration will be held in Portland, Oregon, unless another location is mutually agreed upon in writing. The award rendered by the arbitrator(s) will be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.4 Either party, at its sole discretion, may consolidate an arbitration conducted under this Contract with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.5 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents or has consented in writing to such joinder. Consent to arbitration involving an additional person or entity will not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

§ 15.4.7 The Contractor must prepare or modify all Project-related documents that the Contractor has prepared or will prepare in accordance with this Contract, including contracts between the Contractor and its suppliers or subcontractors, to strictly conform to Sections 15.3 and 15.4 and subject those contracts or documents to the same terms and conditions governing mediation and arbitration between the Contractor and the Owner.

§ 15.5 Liquidated Damages.

§ 15.5.1 The Owner may assess liquidated damages against the Contractor by providing a written notice to Contractor in accordance with this Agreement of the basis for such liquidated damages. The Owner may, if it elects to do so, (a) offset payments otherwise owed to the Contractor hereunder by the amount of applicable liquidated damages, or (b) demand that the Contractor remit payment of liquidated damages in a lump sum or on a schedule set forth by the Owner.

§ 15.5.2 The amounts of liquidated damages that may be assessed by the for failure to Substantially

Complete the Work, or any portion of the Work, by the date(s) indicated in Section 3 of the Contract, \$1,000.00 for each day after the date which Substantial Completion of the Work or the portion of the Work should have occurred.

§ 15.5.3 The Contractor acknowledges and agrees with Owner that if the Substantial Completion Deadline of the Project is not met, the Owner will incur significant damages that are difficult or impossible to determine, including, without limitation, delay in its anticipated use of the site, and damage to exposed portions of the Project site caused by inclement weather. The Contractor and Owner agree that the amounts set forth in this Section as liquidated damages is reasonable in comparison to the anticipated actual damages for delay that the parties anticipate as of the time this Agreement is executed, and that these amounts are not intended to be a penalty or forfeiture.

ARTICLE 16 RETAINAGE ON PUBLIC WORKS

§ 16.1 Retainage, Generally.

§ 16.1.1 Retainage will be withheld and released in accordance with ORS 279C.550 to 279C.570 and as further described in the Contract Documents.

§ 16.1.2 Owner may reserve as retainage from any progress payment an amount not to exceed five percent (5%) of the payment, subject to Section 16.2 if applicable. As Work progresses, Owner may reduce the amount of the retainage and may eliminate retainage on any remaining monthly payments after fifty percent (50%) of the Work under the Contract is completed if, in the Owner's opinion, such Work is progressing satisfactorily. Elimination or reduction of retainage will be allowed only upon written application by the Contractor, which application must include written approval of Contractor's surety; except that when the Work is ninety-seven and one half percent (97.5%) completed the Owner may, at its discretion and without application by the Contractor, reduce the retained amount to one hundred percent (100%) of the value of the Work remaining to be done. Upon receipt of written application by the Contractor, Owner will respond in writing within a reasonable time.

§ 16.1.3 The following provisions govern the use of bonds, securities, or other instruments in lieu of withholding of retainage:

1. In accordance with the provisions of ORS 279C.560 and further set forth under Owner's LCRB

Rules, unless the Owner finds in writing that accepting a bond, security or other instrument described below in this section poses an extraordinary risk that is not typically associated with the bond, security or instrument, the Owner will approve the Contractor's written request:

a. To be paid amounts which would otherwise have been retained from progress payments where Contractor has deposited acceptable bonds, securities or other instruments of equal value with Owner or in a custodial account or other mutually-agreed account satisfactory to Owner, with an approved bank or trust company to be held in lieu of the cash retainage for the benefit of Owner. Interest or earnings on the bonds, securities or other instruments will accrue to the Contractor. The Contractor must execute and provide such documentation and instructions respecting the bonds, securities and other instruments as the Owner may require to protect its interests. To be permissible the bonds, securities and other instruments must be of a character approved by a director-level employee of the Owner, including but not limited to those of types enumerated in ORS 279C.560(6)(a) – (f).

b. Upon request of the Contractor the retainage may be deposited in an interest-bearing account, in a form acceptable to Owner, in a bank, savings bank, trust company or savings association for the benefit of Owner, with interest from such account accruing to the Contractor; or

c. That the Contractor be allowed, with the approval of the Owner, to deposit a surety bond for the benefit of Owner, in a form acceptable to Owner, in lieu of all or a portion of funds retained, or to be retained. Such bond and any proceeds there from will be made subject to all claims and liens in the manner and priority as set forth for retainage under ORS 279C.550 to ORS 279C.625.

d. Where the Owner has accepted the Contractor's election of any of the options above, Owner may recover from Contractor any additional costs incurred through such election by reducing Contractor's final payment. Where the Owner has agreed to Contractor's request to deposit a surety bond, Contractor must accept like bonds from Subcontractors and suppliers on the project from which Contractor has required retainage.

2. Contractor must notify the Contract Administrator at least ten (10) days prior to the first Application for Payment if retainage is to be held in an interest-bearing account. The retainage held by Owner and any accrued interest will be included in and paid to the Contractor as part of the final payment of the Contract Sum. The Owner will pay to

Contractor interest at the rate of one and one-half percent (1.5%) per month on the final payment due Contractor, interest to commence thirty (30) days after the Work under the Contract has been completed and accepted and to run until the date Contractor must notify Owner in writing when the Contractor considers the Work complete and Owner will, within fifteen (15) days after receiving the written notice, either accept the Work, reject it in whole or in part (including notifying the Contractor of any Punch List Items requiring completion or correction). If Owner does not within the time allowed notify the Contractor of Work yet to be performed to fulfill contractual obligations, the interest provided by this subsection will commence to run thirty (30) days after the end of the fifteen (15) day period.

3. In accordance with the provisions of ORS 279C.560, if the Owner accepts bonds, securities or other instruments deposited as provided in this Section 16.1 the Owner will reduce the moneys held as retainage in an amount equal to the value of the bonds, securities and other instruments and pay the amount of the reduction to the Contractor in accordance with ORS 279C.570.

4. Contractor agrees that if Contractor elects to reserve a retainage from any progress payment due to any Subcontractor or supplier, such retainage will not exceed five percent (5%) of the payment (subject to Section 16.2 if applicable), and such retainage withheld from Subcontractors and suppliers will be subject to the same terms and conditions stated in Article 16 as apply to Owner's retainage from any progress payment due to Contractor. Provided, however, if in accordance with the provisions of ORS 279C.560 the Contractor has deposited bonds, securities or other instruments or has elected to have the Owner deposit accumulated retainage in an interest-bearing account, the Contractor will comply with the provisions of ORS 701.435 respecting the deposit of bonds, securities or other instruments by Subcontractors and suppliers and the sharing of interest earnings with Subcontractors and suppliers.

5. Without limiting any other rights regarding withholding of payment or retainage it may have elsewhere in the Contract Documents, the Owner reserves the right to deduct from the final release of retainage all costs for outstanding defective work and/or failure to comply with Contract and permit requirements.

§ 16.2 Withholding on Claimed Liens, Punch List Items

Notwithstanding anything in the contrary in Section 16.1, to the extent permissible by law:

§16.2.1 the Owner may withhold 125% of the amount of the claimed lien of any Subcontractor, Sub-subcontractor, or supplier that refuses to provide a conditional or unconditional lien waiver as required pursuant to the Contract Documents unless the Contractor posts a bond in accordance with ORS § 87.076 and obtains a written contract of surety satisfactory to the Owner with respect to the refusing Subcontractor, Sub-subcontractor or supplier.

§16.2.2 the Owner may withhold 150% of the amount of any Punch List Items from the final payment of the Contract Sum following Substantial Completion, which will be held until the Punch List Items have been completed and other conditions for final payment in the Contract Documents have been satisfied.

Contractor and Owner agree that amounts withheld pursuant to this Section 16.2 do not constitute "retainage" or "retention" for purposes of ORS 279C.

ARTICLE 17 GENERAL PUBLIC WORKS REQUIREMENTS

§ 17.1 Prevailing Wage.

§17.1.1 IF the Contract Sum is in the amount of \$50,000 or greater, the Project is a "public work" as defined by ORS 279C.800, et seq., and Contractor and all Subcontractors and Sub-subcontractors are subject to the prevailing wage rate provisions in ORS 279C.800 through 279C.870. The applicable State prevailing wage rates to be paid are available at BOLI's website at <https://www.oregon.gov/boli/employers/pages/prevailing-wage.aspx>, and the applicable date for determining the wage rate is the Prevailing Wage Date set forth in the Contract Documents. The Owner may be required to pay a fee to the Commissioner of the Bureau of Labor and Industries as provided in ORS 279C.825(1) and pursuant to the administrative rules of the Commissioner. All required original initial paperwork must be received prior to issuance of a Notice to Proceed and all required original monthly (or if Davis-Bacon applies, weekly) certified payroll statements must be submitted by the first of the following month (or week, if Davis-Bacon applies) to the attention of the Owner (or, if the Contract Administrator is an employee of the Owner, the Contract

Administrator). Each worker in each trade or occupation employed in the performance of the Work either by the Contractor, Subcontractor, Sub-subcontractor to do any part of the Work, must be paid not less than the applicable prevailing rate of wage as included in the Contract Documents, and the Contractor must assure this requirement is included in all Subcontracts. Owner and Contractor will withhold payment as prescribed by ORS 279C.800 through 279C.870 if certified payroll statements are not filed in the time and manner prescribed under ORS 279C.800 through 279C.870.

§17.1.2 If the Contract indicates that the Project is subject to the Davis-Bacon Act, the prevailing wage rate is the greater of the applicable Federal and State prevailing wage rates, and Contractor will submit weekly payroll reports as opposed to monthly.

§ 17.2 Prompt Payment and Contract Conditions

§ 17.2.1 Pursuant to ORS 279C.505 the Contractor must:

1. Promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, to all persons supplying to Contractor labor, equipment or materials for the prosecution of the Work.
2. Pay all contributions or amounts due the State Industrial Accident Fund from such persons incurred in the performance of the Work.
3. Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Contractor will not assign any claims that Contractor has against Owner, or assign any sums due by Owner, to Subcontractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Subcontractors or other persons a claim or standing to make a claim against the Owner.
4. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

§ 17.2.2 Pursuant to ORS 279C.515 Contractor agrees:

1. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor, a Subcontractor, or a Sub-subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Contractor under the Contract Documents. Payment

of claims in this manner will not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

2. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public contract for a public improvement within thirty (30) days after receipt of payment from Owner or a contractor, the contractor or first-tier Subcontractor will owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(3) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent (9%) per annum. The amount of interest may not be waived.

3. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. Every contract related to this Contract must contain a similar clause.

§ 17.2.3 Pursuant to ORS 279C.580, Contractor must include in each subcontract for property or services entered into by the Contractor and a first-tier Subcontractor, including a material supplier, for the purpose of performing a construction contract:

1. A payment clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten (10) days out of such amounts as are paid to the Contractor by Owner under the Contract;
2. An interest penalty clause that obligates the Contractor if payment is not made within thirty (30) days after receipt of payment from Owner, to pay to the first-tier Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract pursuant to subsection 17.2.3.1. Contractor or first-tier Subcontractor will not be obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty will be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made; and will be computed at the rate specified in ORS 279C.515(2).

3. A clause that requires each Subcontractor to include, in each of their contracts with lower-tier Subcontractors or suppliers, provisions to the effect that the first-tier Subcontractor must pay its lower-tier Subcontractors and suppliers in accordance with the provisions of paragraphs 17.2.3.1 and .2, above and requiring each of their Subcontractors and suppliers to include such clauses in their subcontracts and supply contracts.

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

§ 17.3 Hours of Labor

§ 17.3.1 Contractor must comply with ORS 279C.520, as amended from time to time and incorporated herein by this reference.

§ 17.3.2 Pursuant to ORS 279C.520, no person will be employed to perform work under the Contract Documents for more than ten (10) hours in any one day or forty (40) hours in any one week, except in cases of necessity, emergency or where public policy absolutely requires it. In such instances, Contractor must pay the employee at least time and a half pay: (i) for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive days, Monday through Friday; or (ii) For all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive days, Monday through Friday; and (iii) For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

§ 17.3.3 This Section 17.3 will not apply to Contractor's Work under this Contract if Contractor is currently a party to a collective bargaining agreement with any labor organization.

§ 17.3.4 This 17.3 will not excuse Contractor from completion of the Work within the time required under this Contract.

§ 17.3.5 Contractor must obtain prior approval from Owner prior to the overtime Work being performed. Unless otherwise agreed to in writing by the Owner,

all premium and overtime costs are the sole responsibility of the Contractor.

§ 17.4 Payment for Medical Care

Pursuant to ORS 279C.530 Contractor must promptly, as due, make payment to any person, 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, all sums of which the Contractor agrees to pay for such services and all moneys and sums which the Contractor has collected or deducted from the wages of personnel pursuant to any law, contract or agreement for the purpose of providing or paying for such services.

§ 17.5 Performance and Payment Bonds; Public Works Bond

§ 17.5.1 Contractor must obtain payment and performance bonds in accordance with the Contract.

§ 17.5.2 Contractor and all Subcontractors and Sub-subcontractors, prior to starting any Work on the Project, are required to file with the Construction Contractors Board a "public works bond" in the amount of \$30,000 with a corporate surety authorized to do business in the state of Oregon, unless exempt under the provisions of ORS 279.836. It is the Contractor's responsibility to (a) include in each subcontract a provision requiring the Subcontractor to have a public works bond filed with the Construction Contractors Board before commencement of work on this Project, unless otherwise exempt and (b) verify that all Subcontractors and Sub-subcontractors have filed the public works bond prior to commencement of Work on the Project.

§ 17.6 Independent Contractor Status.

§ 17.6.1 The service or services to be performed under the Contract Documents are those of an independent contractor as defined in ORS 670.600. Contractor represents and warrants that it is not an officer, employee or agent of the Owner.

§ 17.6.2 Contractor represents and warrants that it is not a contributing member of the Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under the Contract Documents. Contractor will not be eligible for any benefits from payments under the Contract Documents of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement

System, except as a self-employed individual (if applicable). Unless the Contractor is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Contractor's federal or state tax obligations.

§ 17.6.3 If this payment is to be charged against federal funds, Contractor represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Contractor from holding another contract with the Federal Government.

§ 17.6.4 Contractor represents and warrants that Contractor is not an employee of the City of Portland or Owner for purposes of performing Work under this Contract.

§ 17.7 OMITTED.

§ 17.8 Compliance with Laws.

§ 17.8.1 Without limiting Contractor's obligation to comply with applicable laws and regulations as set forth in Section 3.7 of these General Conditions, Contractor must comply with ORS 279C.505, 279C.510, 279C.515, 279C.520, and 279C.530, which are incorporated herein by reference.

§ 17.8.2 Licensing; Debarment. Contractor must ensure, in accordance with applicable law, that as of the time a Subcontractor bids on the Work, that:

1. Subcontractors are licensed by the Construction Contractors' Board.
2. Each landscape contractor, if any, holds a valid landscape contractor's license pursuant to ORS 671.560.
3. Contractor and each Subcontractor holds a valid license for, and is otherwise duly authorized to perform, the Work for which they are responsible, including without limitation any special licensing requirements relating to asbestos, heating oil, lead based paint, or otherwise, and authority to transact under Oregon law.
4. The Subcontractor has not been debarred by the City of Portland or any agency thereof (including the Owner), the State of Oregon, the Federal government, or any other jurisdiction with authority over the Work. Contractor also certifies to and covenants with the Owner that Contractor is not now, and will not during the term of these Contract Documents become, debarred by the City of Portland or any agency thereof, the State of Oregon, the Federal government, or any other jurisdiction with authority over the Work.

§ 17.8.3 Notice to Excavation Contractors. The following notice is applicable to contractors who perform excavation Work. ATTENTION: Law requires you to follow rules adopted by the Oregon Utility Notification Center. These rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. Copies of the rules may be obtained by calling the center at (503) 232-1987.

§ 17.9 OMITTED

§ 17.10 Required Contract Provisions for Public Improvement Contracts. The required contract provisions set forth in OAR 137-049-0200(1)(c) are hereby incorporated into the Contract Documents by reference and are binding on Contractor and (if applicable) Owner as if fully set forth herein. Contractor hereby makes such certifications to Owner as are set forth in OAR 137-049-0200(1)(c).

§ 17.11 Ordinances or Regulations Relating to Environmental Pollution / Natural Resources

In compliance with ORS 279C.525, this Section contain lists of federal, state and local agencies of which the Owner has knowledge that have enacted ordinances or regulations relating to environmental pollution and the preservation of natural resources that may affect the performance of the Contract Documents:

§ 17.11.1 Federal Agencies

- | | |
|-----|---|
| (a) | Agriculture, Department of |
| (b) | Forest Service Soil Conservation Service |
| (c) | Coast Guard |
| (d) | Defense, Department of |
| (e) | Army Corps of Engineers |
| (f) | Energy, Department of |
| (g) | Federal Energy Regulatory Commission |
| (h) | Environmental Protection Agency |
| (i) | Health and Human Services |
| (j) | Department of Housing and Urban Development |
| (k) | Department of Solar Energy and Energy Conservation Bank |
| (l) | Interior, Department of |
| (m) | Bureau of Land Management |
| (n) | Bureau of Indian Affairs |
| (o) | Bureau of Mines |
| (p) | Bureau of Reclamation |
| (q) | Geological Survey Minerals Management Service |

- (r) U.S. Fish and Wildlife Service
- (s) Labor, Department of
- (t) Mine Safety and Health
Administration
- (u) Occupation Safety and Health
Administration
- (v) Transportation, Department of
- (w) Federal Highway Administration
- (x) Water Resources Council

§ 17.11.2 State Agencies

- (a) Administrative Services,
Department of
- (b) Agriculture, Department of
- (c) Soil and Water Conservation
Commission
- (d) Columbia River Gorge Commission
- (e) Energy, Department of
- (f) Environmental Quality, Department
of
- (g) Fish and Wildlife, Department of
- (h) Forestry, Department of
- (i) Geology and Mineral Industries,
Department of
- (j) Human Resources, Department of
- (k) Consumer and Business Services,
Department of
- (l) Land Conservation and
Development Commission
- (m) Parks and Recreation, Department
of
- (n) State Lands, Division of
- (o) Water Resources Department of

§ 17.11.3 Local Agencies

- (a) City Council
- (b) County Courts
- (c) County Commissioners, Board of
- (d) Design Commissions
- (e) Historical Preservation Commission
- (f) Planning Commissions

[End of General Conditions]

EXHIBIT B

Bonds

Exhibit B-1: Payment

Bond Exhibit B-2:

Performance Bond

Exhibit B-3: Statutory Public Works Bond

EXHIBIT B-1

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: That, WHEREAS, Prosper Portland, on _____, _____, has awarded to _____, hereinafter designated as “Principal”, a Contract for construction of Merkato Ethiopian Market Tenant Improvements, the terms and provisions of which contract are incorporated herein by reference, and;

WHEREAS, said Principal is required to furnish a bond in connection with this said Contract, providing that if said Principal, or any of his or its subcontractors, shall fail to pay for any materials, provisions, provender or other supplies or teams used in, upon, for, or about the performance of the work contracted to be done, or any other work or labor done thereon of any kind, the Surety of this body will pay the same to extend hereinafter set forth;

NOW, THEREFORE, we the Principal and _____, as Surety, are held and firmly bound unto Prosper Portland, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, being one hundred percent (100%) of the Contract amount for the payment of which sum well and truly to be made, we bond ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

NOW, THEREFORE, if the above bounden Principal and all of his subcontractors shall promptly make payment to all persons supplying labor and material or amounts due in the prosecution of the work provided for in said Contract, and any and all duly authorized modifications of said Contract that may hereafter be made, then this obligation shall be void; otherwise, this obligation shall remain in full force and virtue; and if the bounden Principal or any of his subcontractors fail to promptly pay any of the persons or amounts due with respect to work or labor performed by any such claimant, the Surety will pay for the same, in an amount not exceeding the sum specified in this bond, and also in case suit brought upon this bond, a reasonable attorney’s fee, to be fixed by the court; and this bond shall inure to the benefit of any persons so as to give a right of action to such persons or their assigns in any suit brought upon this bond.

The bond shall inure to the benefit of any/all persons, companies, and corporations entitled to file claims, so as to give a right of action to them or their assigns in any suit brought upon this bond.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the Contract, or to the work to be performed thereunder, or the Specifications accompanying the same shall in any wise affect its obligations on this bond; and it does hereby waive notice of any such change, extension of time, alteration, or addition to the terms of the Contract, or to the work or to the Specifications.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this _____ day of _____, _____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Principal

Attorney-in-Fact, Surety

Local Office Agency Name

Agent Name

Agent Address

Agent Phone Number

EXHIBIT B-2

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: That, WHEREAS, Prosper Portland, on _____, has awarded to _____ hereinafter designated as the "Principal", a Contract for construction of Merkato Ethiopian Market Tenant Improvements the terms and provisions of which Contract are incorporated herein by reference, and;

WHEREAS, said Principal is required under the terms of said Contract to furnish a bond for the faithful performance of said Contract;

NOW, THEREFORE, we, the Principal and _____, as Surety, are held and firmly bound unto Prosper Portland, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, being one hundred percent (100%) of the Contract amount for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, that if the above bound Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and faithfully perform the covenants, conditions, and agreements in the said Contract and any alterations made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to their true intent and meaning, and shall indemnify and save harmless Prosper Portland, its officers and agents, as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the said Contract, the above obligation to the amount of _____ Dollars (\$ _____), shall hold good for a period of one (1) year after the completion and acceptance of the said work, during which time if the above bounden Principal, his or its heirs, executors, administrators, successors or assigns shall fail to make full, complete and satisfactory repair and replacements or totally protect the said Prosper Portland from loss or damage made evident during said period of one (1) year from the date of acceptance of said work, and resulting from or caused by defective materials or faulty workmanship in the prosecution of the work done, the above obligation in the said sum of _____ Dollars, (\$ _____), shall remain in full force and virtue; otherwise the above obligation shall be void.

And the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration of addition to the terms of the Contract or to the work to be performed thereunder or the Specifications accompanying the same shall in any wise affect its obligations on this bond; and it does hereby waive notice of any such change, extension of time alteration or addition to the terms of the Contract, or to the work, or to the Specifications.

In the event Prosper Portland or its successors or assigns, shall be the prevailing party in an action brought upon this bond, then in addition to the penal sum hereinabove specified, we agree to pay to Prosper Portland, or its successors or assigns, a reasonable sum on account of attorney's fees in such action, which sum shall be fixed by the court.

IN WITNESS WHEREOF, the above bounden parties have executed this instrument under their seals this _____ day of _____, _____, the name and corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

Principal

Attorney-in-Fact, Surety

Local Office Agency Name

Agent Name

Agent Address

Agent Phone Number

EXHIBIT B-3



STATE OF OREGON

Surety bond #: _____ CCB # (if applicable): _____

We, _____, as principal, and _____, a corporation qualified and authorized to do business in the State of Oregon, as surety, are held and firmly bound unto the State of Oregon for the use and benefit of the Oregon Bureau of Labor and Industries (BOLI) in the sum of thirty thousand dollars (\$30,000) lawful money of the United States of America to be paid as provided in ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, for which payment well and truly to be made, we bind ourselves, our heirs, personal representatives, successors and assigns, jointly and severally, firmly by this agreement.

WHEREAS, the above-named principal wishes to be eligible to work on public works project(s) subject to the provisions of ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and is, therefore, required to obtain and file a statutory public works bond in the penal sum of \$30,000 with good and sufficient surety as required pursuant to the provisions of section 2, chapter 360, Oregon Laws 2005, conditioned as herein set forth.

NOW, THEREFORE, the conditions of the foregoing obligations are that if said principal with regard to all work done by the principal as a contractor or subcontractor on public works project(s), shall pay all claims ordered by BOLI against the principal to workers performing labor upon public works projects for unpaid wages determined to be due, in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, and OAR Chapter 839, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of wage claims ordered by BOLI to workers performing labor upon public works projects in accordance with ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims which may arise hereunder shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date it is executed by both the principal and surety and shall continuously remain in effect until depleted by claims paid under ORS chapter 279C, as amended by Oregon Laws 2005, chapter 360, unless the surety sooner cancels the bond. This bond may be cancelled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal, the Construction Contractors Board, and BOLI. Cancellation shall not limit the responsibility of the surety for the payment of claims ordered by BOLI relating to work performed during the work period of a contract entered into before cancellation of this bond.

IN WITNESS WHEREOF, the principal and surety execute this agreement. The surety fully authorizes its representatives in the State of Oregon to enter into this obligation.

SIGNED, SEALED AND DATED this _____ day of _____, 20 _____

Principal by:

Company Name (Seal) _____
Name

Signature

Title

Address

City
State
Zip

EXHIBIT C – PREVAILING WAGE RATES

Contractor must comply with ORS 279C.800 through 279C.870, concerning payment of not less than prevailing wage rates; each worker in each trade or occupation employed in the performance of the Work under these Contract Documents, either by Contractor, Subcontractor, or other person doing or contracting to do the whole or any part of the Work, must be paid not less than the applicable prevailing wage rates for state and federal wages, whichever is higher.

By this reference, the Oregon Bureau of Labor and Industries Prevailing Wage Rates are in effect for this contract. They can also be found online at <https://www.oregon.gov/boli/employers/Pages/prevailing-wage-rates.aspx>. More specifically, they include the information in the table below.

<i>Prevailing Wage Rates for Public Works Contracts in Oregon</i>	<i>Effective January 5, 2026</i>
<i>Prevailing Wage Rates Apprenticeship Rates</i>	<i>Effective April 5, 2026</i>
<i>Prevailing Wage Rates Amendment</i>	<i>Effective April 5, 2026</i>
<i>Prevailing Wage Rates Amendment</i>	<i>Effective February 6, 2026</i>
<i>Definitions of Covered Occupations for Public Works Contracts in Oregon</i>	<i>Effective October 5, 2024</i>