



**AIA**<sup>®</sup>

# Document A141™ – 2014

## Standard Form of Agreement Between Owner and Design-Builder

**AGREEMENT** made as of the      day of      in the year  
Notwithstanding the foregoing, this Agreement relates back to and is effective as of the  
Design-Builder's first provision of services or Work on the Project.  
*(In words, indicate day, month and year.)*

**BETWEEN** the Owner:

Oregon State University  
Attn: Debera Massahos  
644 SW 13<sup>th</sup> Street  
Corvallis, OR 97333

Phone: 541-737-4261  
Fax: 541-737-2170

and the Design-Builder:  
*(Name, legal status, address and other information)*

for the following Project:

Heckart Lodge = Graduate School, 2900 SW Jefferson Way, Corvallis, OR 97333

Heckart Lodge is a 12,250 gross square feet ("GSF") building, renovated within the last five years to house classrooms, academic testing and offices. This tenant improvement project will renovate floors 1 and 2, totaling 8,500 GSF, to accommodate offices, student collaborative space and a classroom for the Graduate School. The Work will include design and construction of:

- Security upgrades to existing reception area, providing lockable space for confidential files at night in a shared building;
- Overall opening up of space to provide more daylight to the core of the building;
- Expansion from one or two 24-seat classrooms to one 40-seat classroom;
- Combining classrooms to provide open office environments for staff;
- Build out of office suites to provide private offices for administrative leadership and confidential student conversations;
- HVAC modifications as necessary to rebalance classrooms to office use;
- Maintaining access to and ability to use and occupy the third floor for Disability Access Services ("DAS") testing during construction; and
- No anticipated work required to site, landscape, exterior façade or structural systems.

The Owner and Design-Builder agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1 and in Exhibit C: Owner's Criteria.

#### § 1.1.1 The Owner's program for the Project:

*(Paragraph deleted)*

See Space Program for the Project, attached as Exhibit G.

#### § 1.1.2 The Owner's design requirements for the Project and related documentation:

*(Paragraph deleted)*

See OSU Construction Standards: <http://fa.oregonstate.edu/cpd-standards>

See Conceptual Design Sketch for the Project, attached as Exhibit H.

#### § 1.1.3 The Project's physical characteristics:

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Heckart Lodge (the "Building") is a 12,250 GSF building, renovated within the last five years to house classrooms, academic testing and offices. This tenant improvement project will renovate floors 1 and 2, totaling 8,500 GSF, to accommodate offices, student collaborative space and a classroom for the Graduate School. The Work will include design and construction of:

- Security upgrades to existing reception area, providing lockable space for confidential files at night in a shared building;
- Overall opening up of space to provide more daylight to the core of the building;
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- Build out of office suites to provide private offices for administrative leadership and confidential student conversations;
- HVAC modifications as necessary to rebalance classrooms to office use;
- Maintaining access to and ability to use and occupy the third floor for Disability Access Services ("DAS") testing during construction; and
- No anticipated work required to site, landscape, exterior façade or structural systems.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

Not applicable.

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

Not applicable.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

*(Paragraph deleted)*

Design and construction cost, including but not limited to design fees, construction labor, supervision, materials, bonds, and insurance: \$1.76 million.

§ 1.1.7 The agreed-upon design and construction milestone dates:

.1 Design phase milestone dates:

Design Development: October 3- November 4, 2016

Construction Documents: November 7, 2016 - January 6, 2017

.2 Submission of Design-Builder Proposal:

January 20, 2017

.3 Construction commencement: January 30, 2017

.4 Substantial Completion date:

June 30, 2017

.5 Other milestone dates:

Final Completion shall be achieved no later than 30 days after the achievement of Substantial Completion

§ 1.1.7.1 ACTUAL DAMAGES

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The Design-Builder acknowledges and agrees that time is of the essence and that failure to timely perform and complete the services under this Agreement will result in significant costs, expenses, and damages to Owner, including, but not limited to, damages for loss of use and enjoyment, extended overhead and management costs, extra or extended services by Design-Builder or other contractors, claims by other design professionals, and possibly other types of costs, expenses and damages incurred by Owner. Design-Builder is responsible to Owner for all such costs, expenses and damages, including but not limited to, both economic and noneconomic losses, to the extent caused by Design-Builder or those for whom Design-Builder is responsible.

§ 1.1.8 The Design-Builder agrees to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:  
(List name, legal status, address and other information.)

- .1 Architect
- .2 Consultants
- .3 Contractors

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:  
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with all federal, state and local laws, codes, rules, regulations and ordinances, and lawful orders of public authorities applicable to the Work and the Contract ("Applicable Laws").

§ 1.1.10.1 If the Owner's Criteria conflicts with Applicable Laws, the Design-Builder shall promptly notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification specifically identifying the change in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 1.1.13 It is understood that the Design-Builder, before submitting an Offer, has made a careful examination of the Design-Build Documents, has become fully informed as to the quality and quantity and character of the Work required, and has made a careful examination of the location and conditions of the Work. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Design-Builder as a result of the Design-Builder's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

## § 1.2 Project Team

§ 1.2.1 The Owner identifies the following Owner's Authorized Representative in accordance with Section 7.1.1:

Project Manager: Libby Ramirez, Manager-Capital Programming  
Oregon State University

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Capital Planning and Development  
Oak Creek Building  
3015 SW Western Blvd.  
Corvallis, OR 97333

**§ 1.2.1.1 Authority of the Owner's Authorized Representative**

**§ 1.2.1.1.1** The Contract Officer designated by OSU has overall authority to administer the Contract and has been delegated OSU Contract signature authority. The Contract Officer has authority to make findings, determinations, and decisions with respect to the Contract and, when necessary or convenient, to modify, change or terminate the Contract.

**§ 1.2.1.1.2** The Owner's Authorized Representative designated by OSU, is authorized to perform the on-site administration of the Work. The Owner's Authorized Representative's onsite administration will include: deciding all questions that may arise as to the quality and acceptability of Materials furnished and Work performed and as to the rate of progress of the Work and all Work-related questions as to the Design-Builder's acceptable completion of the Work.

**§ 1.2.1.1.3** In extraordinary circumstances, the Owner's Authorized Representative, with the Approval of the Contract Officer, will have the authority to suspend the Work wholly or in part due to the Design-Builder's failure to carry out provisions of the Contract, for failure to carry out orders, for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason determined by the Contract Officer to be in OSU's interest, as provided under Section 13.1.

**§ 1.2.1.1.4** The Owner's Authorized Representative may, at reasonable times, inspect that part of the plant or place of business of the Design-Builder or Subcontractor that is related to the performance of the Work.

**§ 1.2.1.1.5** For the avoidance of doubt, only the OSU Vice President for Finance and Administration is authorized to execute Amendments, Change Orders, or unilateral Change Orders under this Contract that are legally binding on OSU. The OSU Vice President for Finance and Administration may provide to the Design-Builder in writing, the position titles of OSU delegated contract signatory authorities, authorized to execute Amendments, Change Orders or unilateral Change Orders under this Contract that are legally binding on OSU. OSU will include any specified dollar limitations.

**§ 1.2.2** The Design-Builder identifies the following representative in accordance with Section 3.1.3:  
(List name, address and other information.)

**§ 1.2.3** The following persons shall serve in the following roles for the Design-Builder:

- .1 Project Executive:
- .2 Senior Project Manager:
- .3 Project Manager:
- .4 Project Superintendent:

*(Paragraph deleted)*

Unless they leave the employ of the Design-Builder, the above-named persons shall serve in these positions throughout the duration of the Design-Builder's performance of the Contract except as approved otherwise in

writing in advance by the Owner. Persons named to replace those set out above shall be approved in writing in advance by the Owner. The Owner's approvals as required by this Section 1.2.5 shall not unreasonably be withheld.

**§ 1.2.4**

*(Paragraphs deleted)*

[Intentionally deleted.]

**§ 1.2.5** [Intentionally deleted.]

**§ 1.3 Binding Dispute Resolution**

For any Claim subject to, but not resolved by, the process set forth in Section 14.1, the method of binding dispute resolution shall be

*(Paragraphs deleted)*

Litigation as set forth in Section 14.2:

**§ 1.4 Definitions**

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of (1) this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement") and (2) other documents listed in this Agreement, both of which are subject to amendment by Modification issued after execution of this Agreement. A Modification is (1) a written amendment to the Agreement signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract.

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services necessary to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment, transportation, and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

**§ 1.4.4 The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

**§ 1.4.5 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 Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless specifically identified as having been incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is Oregon State University and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative, subject to the limitations on the authority of the Owner's authorized representative specified in Section 1.2.1.

**§ 1.4.8 Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

**§ 1.4.9 Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the State of Oregon. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the labor, services, construction, or furnishing materials and equipment, required in connection with the Work, directly or indirectly for the Design-Builder. The Contractor shall be lawfully licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

**§ 1.4.12 Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

**§ 1.4.13 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, set forth in the Design-Build Amendment for Substantial Completion of the Work.

**§ 1.4.14 Day.** The term "day" as used in the Design-Build Documents shall mean calendar day, including weekdays, weekends and holidays, unless otherwise specifically defined.

**§ 1.4.14.1 Business Day.** Business Day shall mean every day except Saturday, Sunday, and legal holidays recognized for employees of Oregon State University.

**§ 1.4.15 Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

**§ 1.4.16 Solicitation Document.** The Solicitation Document is the Instructions to Bidders or Offerors or a Request for Proposal or a Request for Quotes.

**§ 1.4.17 Plans.** Plans are the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

**§ 1.4.18 Specifications.** Specifications are any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. Specifications may be incorporated by reference or may be attached to the Contract.

#### **§ 1.5 Review By Others**

Review or approval by Owner or its agents of Design-Builder's design, means, methods, techniques, procedures or Submittals, or of any other aspect of Design-Builder's Work or services shall not relieve Design-Builder of its sole liability for any damages resulting from or arising out of defects or deficiencies in the Design-Builder's design, means, methods, techniques, procedures or submittals, or of any other aspect of Design-Builder's Work or services.

### **ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS**

#### **§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment**

**§ 2.1.1** Payments for Work performed prior to execution of the Design-Build Amendment shall be made monthly by Owner. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Paragraph deleted)*

The Owner shall pay the Design-Builder for Work performed before execution of the Design-Build Amendment the reasonable and actual costs incurred by the Design-Builder for design, Reimbursable Expenses, administration, labor, services, materials and equipment. The total of such costs is guaranteed by the Design-Builder not to exceed the maximum sum of \$ [Amount]. Such maximum sum is referred to as the Design Guaranteed Maximum Price. Costs incurred by Design-Builder which would cause the Design Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

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

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.2 but subject to the Design Guaranteed Maximum Price and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence, as detailed in Exhibit F;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of zero percent (0 %) of the expenses incurred.

(Paragraphs deleted)

§ 2.1.4 [Intentionally deleted.]

§ 2.1.4.2 [Intentionally deleted.]

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment and as provided in Article 9.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Design-Build Documents, Design-Builder shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.

§ 3.1.2 The Design-Builder shall comply with any applicable licensing requirements in the State of Oregon, and the Design-Builder shall be responsible for ensuring that the Architect, Contractors, and Consultants are in compliance with the applicable licensing requirements in the State of Oregon.

(Paragraphs deleted)

§ 3.1.3 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.4 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, reviews, tests, inspections or approvals of the Owner.



§ 3.1.4.1 The Design-Builder shall perform the Work in compliance with Applicable Laws. If the Design-Builder performs Work contrary to Applicable Laws, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.4.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any Applicable Laws. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any Applicable Laws, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification specifically identifying the change to the Owner's Criteria in accordance with Article 6.

§ 3.1.5 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5.1 The services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. The Design-Builder is an independent contractor and not an officer, employee, or agent of the Owner as those terms are used in ORS 30.265.

§ 3.1.6 **General Consultation.** No less than twice a month, the Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work. Design-Builder shall cause its representatives, and representatives of Architect, Consultants and Contractors at all tiers as designated by Owner, if any, to attend and participate in weekly progress meetings. Design-Builder shall prepare and distribute to all attendees minutes of such progress meetings for review and correction. Progress meetings may be utilized to review the Design-Builder's design and construction schedules, requests for information, or to address any delays, unusual conditions, or critical items which have affected or could affect the progress of the Work, and to consider any other matter or subject of relevance to the Work as determined by Owner.

§ 3.1.7 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect, Consultants and Contractors are performed for the benefit of the Owner. Each agreement with Architect, Consultants and Contractors at every tier shall provide that the Owner is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the Owner shall have the right, but not the obligation, to assert claims directly against the Architect, Consultants and Contractors for breach of contract, breach of express warranties, breach of implied warranties including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The Owner and Design-Builder acknowledge and agree that the purpose of this Section 3.1.7 is to enable the Owner at its discretion, in addition to the Design-Builder, to assert claims for damages and indemnification directly against Architect, Consultants and Contractors that are or may be responsible for breach of the contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project.

*(Paragraphs deleted)*

§ 3.1.8 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

### § 3.1.9 Progress Reports

§ 3.1.9.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. Twice a month, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;

- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design Guaranteed Maximum Price and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports;
- .12 Meeting Minutes; and
- .13 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.9.2 In addition, where the Contract Sum is the Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

*(Paragraphs deleted)*

**§ 3.1.10 Design-Builder's Schedules**

*(Paragraph deleted)*

§ 3.1.10.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall utilize the critical path method, shall be revised at appropriate intervals as required by the conditions of the Work and Project which shall be no less often than monthly, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.10.2 Acceptance of the Schedule by the Owner does not constitute agreement by the Owner as to the Design-Builder's sequencing, means, methods, or durations.

*(Paragraph deleted)*

§ 3.1.10.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10.4 For purposes of whether any Change Orders or Change Directives extend the contractual dates of Substantial Completion and Final Completion, any "float" or "slack" time for the whole or any part of the Work is owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to do so. The Design-Builder shall not be entitled to make and waives any claim based upon an alleged inability to complete the Project early.

*(Paragraph deleted)*

§ 3.1.10.5 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Design-Builder's schedule, the Owner shall have the right to order the Design-Builder to take corrective measures as necessary to restore the progress of the Work to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) furnishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Design-Builder pursuant to this Section 3.1.10.5 shall be paid by the Design-Builder.

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

§ 3.1.10.7 Within seven (7) days after the Design-Builder's receipt of the Owner's demand for a Recovery Schedule, the Design-Builder shall present the Recovery Schedule to the Owner. The Recovery Schedule shall represent the Design-Builder's best judgment as to how the Work should be made to comply with the Design-Builder's schedule

within the agreed Recovery Period. The Recovery Schedule shall be prepared to a similar level of detail as the Design-Builder's schedule.

#### **§ 3.1.11 Certifications**

Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with Applicable Laws governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

*(Paragraph deleted)*

#### **§ 3.1.12 Design-Builder's Submittals**

**§ 3.1.12.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.10.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to and waives any increase in Guaranteed Maximum Price or extension of Contract Time based on delay caused by Owner's review of Submittals. Owner reserves the right to finally approve the schedule and list of submittals.

*(Paragraphs deleted)*

**§ 3.1.12.2** By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

**§ 3.1.12.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

**§ 3.1.12.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents by Owner's review of any Submittals unless the Design-Builder has notified the Owner specifically in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.12.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.12.6** Any corrections or revisions to Submittals made by the Owner shall be deemed acceptable by the Contractor, without change in the Guaranteed Maximum Price or Contract Time, unless said changes constitute changes to the Design-Build Documents and the Design-Builder provides the Owner with contrary written notice before commencing any such changed Work. In the absence of such notice, the Design-Builder shall make all corrections requested by the Owner and provide a corrected Submittal without change in the Guaranteed Maximum Price or Contract Time.

**§ 3.1.12.7** The Design-Builder shall review for compliance with the Design-Build Documents, approve and submit to the Owner Submittals required by the Design-Build Documents 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. Submittals which are not

marked as reviewed for compliance with the Design-Build Documents and approved by the Design-Builder may be returned by the Owner without action.

### § 3.1.13 Warranty

The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents, will be free from defects and that all materials and equipment selected by Design-Builder, Architect, Consultants and Contractors will be suitable for the purposes indicated in the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Design-Builder shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Design-Builder shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement.

§ 3.1.13.1 Without limitation of any remedy of Owner, upon Substantial Completion of the Work or termination of the Contract, the Owner shall be entitled to enforce at its option any and all Contractor warranties relating to Work performed and materials and equipment furnished by such Contractors. The Design-Builder agrees to perform the Work in such manner so as to preserve any and all such Contractor warranties. The Design-Builder also shall collect, assemble in a binder, and submit to the Owner written Contractor warranties and related documents, including without limitation from Contractors at all tiers performing Work and furnishing materials, equipment, appliances and other components of the Project. All such written warranties shall extend to the Owner.

§ 3.1.13.2 Effective upon the written demand of the Owner or upon the insolvency, bankruptcy, dissolution or other incapacity of the Design-Builder, the Design-Builder assigns to the Owner all Contractors' warranties in materials and equipment and other portions or components of the Work.

### § 3.1.14 Royalties, Patents and Copyrights

§ 3.1.14.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.14.2 Without limiting the generality of Section 3.1.14.1, the Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers was specifically required by the Owner in Owner's Criteria, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

### § 3.1.15 Indemnification

#### § 3.1.15.1

*(Paragraphs deleted)*

To the fullest extent permitted by law, the Design-Builder shall indemnify, hold harmless, defend and reimburse the Owner and the members, partners, officers, directors, agents, employees and successors of any of them, from, for and against any and all suits, actions, awards, penalties, liabilities, claims, damages, losses and expenses, including but not limited to attorneys' fees and expert witness' fees, arising out of or resulting from performance of the Work, whether directly incurred or resulting from third-party claims, but only to the extent caused by (1) the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed or contracted by them or anyone for whose acts they may be liable; or (2) the failure of Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed or contracted by them or anyone for whose acts they may be liable to perform in accordance with the Contract. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.15.

§ 3.1.15.2 To the fullest extent permitted by law, the indemnification obligation under this Section 3.1.15 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### § 3.1.16 Contingent Assignment of Agreements

§ 3.1.16.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that assignment is effective only after termination of the Contract by the Owner for cause or convenience, pursuant to Sections 13.1.4, 13.2.2 or 13.2.3, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement, except that the assumption of obligations under the agreement does not release Design-Builder from liability for damages attributable to breaches of the agreement.

§ 3.1.16.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.16.3 Upon such assignment to the Owner under this Section 3.1.16, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement consistent with Section 3.1.16.2.

§ 3.1.16.4 Nothing in this Article or elsewhere in the Design-Build Documents shall be interpreted to (1) constitute an assignment of the Design-Builder's rights against the Owner to the Architect, Consultants, and Contractors or (2) make the Architect, Consultant or Contractor a third-party beneficiary of the Contract.

§ 3.1.16.5 Design-Builder shall ensure that no contractual arrangement between it and its subcontractors or suppliers of any tier or sub-tier shall prevent such assignment.

*(Paragraph deleted)*

§ 3.1.17 Design-Builder's Insurance The Design-Builder shall purchase and maintain insurance as set forth in Exhibit B.

#### § 3.1.18 Bonds

§ 3.1.18.1 Design-Builder shall purchase and maintain in effect at all times during the Contract a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price.

*(Paragraph deleted)*

§ 3.1.18.2 Bond forms furnished by the Owner and notarized by awarded Design-Builder's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Design-Build Documents.

§ 3.1.18.3 Before execution of the Contract, the Design-Builder shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The Design-Builder shall also include in every contract a provision requiring the Contractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the Contractor has filed a public works bond before permitting any Contractor to start Work.

§ 3.1.18.4 Design-Builder shall obtain new payment and performance bonds, or increase the amount of the performance and payment bonds previously provided in connection with this Design-Build Contract, so that each new bond, or with respect to increases in existing bonds, the sum of the amount of each existing bond and the increase in the amount of each such existing bond, shall equal or exceed the Guaranteed Maximum Price, prior to supplying any labor or materials for prosecution of the Work under this Design-Build Amendment.

**§ 3.1.18.5** In the event of a claim on Design-Builder's bonds, a notice of claim on bond as required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Design-Builder or Contractor at any place the Design-Builder or Contractor maintains an office or conducts business or at the residence of the Design-Builder or Contractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

To (here insert the name of the Design-Builder or Contractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Design-Builder or Contractor).

### **§ 3.2 Public Contracting Requirements**

**§ 3.2.1** The Design-Builder shall comply with OSU Standards 580-061-0030 and OSU Standard 580-061-0035 in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises.

#### **§3.2.2 Contractor Selection**

Unless otherwise provided under this Section 3.2, the selection of all Contractors and suppliers shall be made by competitive bid in connection with instructions to bidders or a proposal in connection with a request for proposals ("Offer" or "Offers") in a manner that will not encourage favoritism or substantially diminish competition. The process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

**§ 3.2.2.1** Design-Builder shall submit to the individual designated by Owner in Section 1.2.1 its proposed procurement documents for review and comment before they are issued for solicitation. Design-Builder shall consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, Design-Builder shall submit to the Owner an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by Owner. The competitive process used to award subcontracts by the Design-Builder may be monitored by the Owner's Authorized Representative; provided that such monitoring shall not excuse Design-Builder from compliance with the subcontracting requirements of this Contract. Design-Builder shall cooperate in all respects with Owner's monitoring. The Owner's Authorized Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and Design-Builder shall provide him or her with a summary or abstract of all Offers in form acceptable to the Owner's Authorized Representative, and copies of particular Offers if requested, prior to Design Builder's selection from bidders in connection with Instructions to Bidders or proposers in connection with a Request for Proposals ("Offerors"). Prior to opening Offers, the Design-Builder agrees to disclose in writing to Owner any financial interest it has in any such Contractor, supplier or other contracting party whenever such Contractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of Design-Builder.

**§ 3.2.2.2** The following minimum requirements apply to the subcontract solicitation process:

- .1 Solicitations will be advertised at least 10 Days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience. Design-Builder also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- .2 Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. Design-Builder shall time-stamp all Offers as received. Contractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board, and must not have been declared ineligible to work on a public contract.

- .3 If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by Design-Builder), prior written approval by Owner shall be required to accept an Offer.
- .4 Design-Builder may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that Design-Builder determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
- .5 Design-Builder shall comply, and require Contractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the Contract.
- .6 Owner may, at its sole discretion, require Design-Builder to re-solicit for Offers based on the same or modified documents.
- .7 Design-Builder shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- .8 The Design-Builder will document any and all discussions with, questions received from, or answers and responses given to, any Offeror prior to the receipt of Offers, and will ensure that any information provided by Design-Builder to any Offeror that might affect Offers submitted by other Offerors is shared with all Offerors prior to the Offer submittal date, and Owner shall be entitled to inspect such documentation on request.
- .9 Design-Builder shall determine the lowest Offer for each solicitation that meets Design-Builder's reasonable performance standards for the components of the Work at issue; provided that if Design-Builder determines it is unable to execute a suitable subcontract with such Offeror, Design-Builder may, with Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Section 3.2.2.3 below.

**§ 3.2.2.3** Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require Design-Builder's agreement to establish and implement qualification and performance criteria for Offerors, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials, special packaging requirements for Contractor work, design-build work, or where an alternative contracting method can be demonstrated to clearly benefit Owner.

**§ 3.2.2.4** Design-Builder shall notify Owner in writing in advance before award of any proposed subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the subcontract at issue. Owner reserves the right to disapprove any proposed Contractors, suppliers and subcontract or supply contract awards, based on legal standards of responsibility.

**§ 3.2.2.5** Design-Builder's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

**§ 3.2.2.6 Subcontracting by Design-Builder**

**§ 3.2.2.6.1** Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the Design-Builder or its parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder (collectively "Affiliates") may submit an Offer in accordance with Section 3.2.2 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the Design-Builder or such Affiliate. If Design-Builder is selected to perform the work, the overhead and markup paid to Design-Builder shall be limited to its Design-Builder's Fee percentage, and the markups applicable to Change Order Work set forth in Section 6.3.3.1 shall not apply.

**§ 3.2.2.6.2** For those items for which the Design-Builder or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Section 3.2.2, and Owner notified in writing. All Offers for this work shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place.

**§ 3.2.2.6.3** If any related party (i.e., wholly-owned subsidiary, affiliate, or other entity having a common ownership or management with the Design-Builder) is selected pursuant to Section 3.2.2, Design-Builder shall require such related party to comply with the same contractual stipulations required of Design-Builder under this Agreement.

### § 3.2.2.7 Contractor Protests

Design-Builder, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Contractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner. Design-Builder shall be solely responsible for resolving the procurement protests of Contractors and suppliers. Design-Builder shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. Design-Builder shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this Section 3.2 are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

### § 3.2.3 Design-Builder Representations, Warranties, and Certifications

§ 3.2.3.1 Design-Builder represents and warrants to Owner that it is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted.

§ 3.2.3.2 Design-Builder represents and warrants to Owner that the Architect, Contractors, and Consultants have and will maintain all licenses required for their performance of the Work throughout the duration of the Work.

§ 3.2.3.3 Design-Builder warrants that execution and delivery of this Design-Build Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which Design-Builder is a party or by which Design-Builder may be bound.

## ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification specifically identifying the change to Owner's Criteria.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

### § 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:  
*(List additional information, if any, to be included in the Design-Builder's written report.)*



§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification specifically identifying the change to Owner's Criteria.

### § 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification specifically identifying the change to Owner's Criteria. The Preliminary Design shall be consistent with the Design-Build Documents, including but not limited to the Owner's Criteria.

### § 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Guaranteed Maximum Price, including a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price in such detail and with such substantiation as Owner may reasonably require;
- .3 Any proposed changes to the date the Design-Builder shall achieve Substantial Completion so long as such date is earlier than the date identified in Section 1.1.7;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires, which date shall be no earlier than 90 days after submission of the Design-Builder's Proposal to Owner.

§ 4.4.1.1 Upon the Owner's receipt of Design-Builder's Proposal, the Owner and Design-Builder agree to negotiate in good faith regarding the terms and conditions of the Design-Build Amendment, including but not limited to the amount of the Guaranteed Maximum Price. If the Owner and Design-Builder are unable to agree on the terms and conditions of the Design-Build Amendment, the Owner shall have the right to terminate this Agreement pursuant to Section 13.1.5.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree to the terms and conditions of the Design-Build Amendment, the Owner and Design-Builder shall execute the Design-Build Amendment in the form set forth on Exhibit A with the blanks and other information completed in the normal course.

## ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

### § 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents, including but not limited to Drawings and Specifications. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents, including but not limited to the Owner's Criteria, and shall include all items necessary for the proper execution and completion of the Work and reasonably inferable from the Design-Build Documents, including but not limited to the Owner's Criteria, as being necessary to produce the indicated results.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. Unless the Owner and Design-Builder execute a Modification specifically identifying the particular deviation and Owner's agreement with such deviation, the Design-Builder shall correct the deviation in accordance with Article 11. The Construction Documents shall not modify the Design-Build Documents, including but not limited to the Owner's Criteria. Execution of the Design-Build Amendment shall not constitute a Modification accepting a deviation unless the deviation is specifically identified as changing the Owner's Criteria and described as such in the Design-Build Amendment. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

### § 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to (1) execution of the Design-Build Amendment and (2) Owner's approval of the Construction Documents.

§ 5.2.2 If the Owner and Design-Builder agree in a Modification, construction may proceed prior to the execution of the Design-Build Amendment. However, such Modification shall not waive the Owner's right to reject the Design-Builder's Proposal or otherwise limit Owner's rights and remedies under this Contract.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, design and construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Design-Builder shall notify Owner in writing, before commencement of any portion of the Work, of any defect, deficiency, or incompatibility of any portion of the Project performed by others, including but not limited to Owner's consultants and separate contractors, which defect, deficiency, or incompatibility would in any manner affect the performance or quality of the Work. The failure to so notify Owner shall preclude Design-Builder from any claim, which otherwise may have been available under this Contract, for additional compensation, damages, or an extension of time relating to the affected Work. Contractor's commencement of its Work in any aspect or area where others have performed services or work shall constitute acceptance of the services or area and confirmation that Design-Builder can proceed with its Work.

§ 5.2.5 The Design-Builder shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Design-Build Documents, including but not limited to Owner's Criteria. The Design-Builder shall be responsible for evaluation, examination, inspection and quality surveillance of all Work performed by Architect, Consultants and Contractors. The Design-Builder shall determine when it is necessary to perform and shall perform, or arrange for the performance of, tests (in addition to those requested by the Owner or required by the Design-Build Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Design-Build Documents.

### § 5.3 Labor and Materials

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

§ 5.3.1.1 The Design-Builder's obligations under Section 5.3.1 shall include without limitation the obligation to pay the Architect, Consultants and Contractors and any other person or entity having mechanics', material suppliers', construction or similar lien rights or stop notices regarding the Project due to their performance of the Design-Builder's obligations under the Contract. Provided the Owner has fulfilled its payment obligations hereunder, the Design-Builder agrees to keep the Project and the Project site free and clear of any and all such lien claims or stop notices filed by any person or entity at any tier performing the Work or the Design-Builder's obligations under the Contract, excluding any lien filed by Design-Builder.

§ 5.3.1.2 In the event a claim of lien or stop notice is filed, whether due to nonpayment of the claimant or otherwise, and whether contested or not, the Design-Builder within ten (10) days after receipt of the Owner's demand and at the Design-Builder's expense shall cause the lien or stop notice to be removed by payment, compromise or the furnishing and perfection of a release bond or deposit pursuant to applicable law. If the Design-Builder fails to perform its obligation under the prior sentence, the Owner, without waiving or limiting its rights or remedies or those of any interested persons or entities, and at the Owner's sole discretion, may cause the lien or stop notice to be removed by paying the claimant directly, by paying the Design-Builder and claimant with a multiple-payee check or by furnishing and perfecting a lien release bond or deposit pursuant to applicable law; provided that in such instance the Owner shall be entitled to retain from any payments then due or which otherwise will become due to the Design-Builder, whether under the Contract or otherwise, an amount sufficient to hold the Owner harmless considering such payment or such furnishing and perfecting a release bond or deposit and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 5.3.1.3 Provided the Owner has fulfilled its payment obligations hereunder, and without limiting Design-Builder's other indemnity and related obligations under the Contract, Design-Builder agrees to indemnify, hold harmless, reimburse and defend (with counsel approved by the Owner) the Owner and any other person or entity with an interest in the Project or Project site from, for and against any and all liens, stop notices, actions, suits or proceedings relating to such liens, and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6. In addition, if Design-Builder desires to submit a substitute product or method for that Work in lieu of what has been specified, the Design-Builder shall provide written notice to the Owner setting forth the following information and documents:

- .1 a full explanation of the proposed substitution and a submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operation procedures and other like information necessary for a complete evaluation of the substitution;
- .2 reasons the substitution is advantageous and necessary, including but not limited to the benefits to the Owner and the Work in the event the substitution is accepted;
- .3 the adjustment, if any, in the Guaranteed Maximum Price, in the event the substitution is accepted;
- .4 the adjustment, if any, in the Contract Time and the Design-Builder's construction schedule in the event the substitution is accepted; and
- .5 an affidavit stating that (1) the proposed substitution meets all the requirements of the Design-Build Documents; (2) the Design-Builder will perform or cause to be performed the warranty and correction of Work obligations with respect to the proposed substitution that would have been performed for the specified product or method; (3) the Design-Builder waives all claims for additional costs related to the substitution other than those identified in .3 above; and (4) the Design-Builder will coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be completed in all respects.

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

**§ 5.3.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Design-Builder shall not permit at the site of the Work the use of alcohol or tobacco (including but not limited to smokeless tobacco), illegal use of drugs or other controlled substances, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, or their respective contractors. The Design-Builder agrees to take prompt and effective corrective action in the event of violations of these standards of conduct. Design-Builder shall certify to Owner that Design-Builder has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

**§ 5.3.4** The Design-Builder shall coordinate, supervise and otherwise administer the Work so as to maintain labor harmony between and among the trades performing the Work and so as to avoid lockouts, strikes and other labor-related events or circumstances which delay or otherwise impact the Work; provided that the Design-Builder's obligations under this Section 5.3.4 shall be limited to events and circumstances which occur substantially where the Work is performed or which result substantially from the actions of persons or entities performing the Work.

#### **§ 5.4 Taxes**

The Design-Builder shall pay sales, consumer, use and similar taxes, if any, required for the Work, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

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

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for any permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project, including but not limited to mechanical, plumbing, electrical and similar special permits, plan check fees, system development charges, road approach and right-of-way permits, air discharge permits and all other necessary permits, approvals, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 5.5.2** The Design-Builder shall comply with and give notices required by Applicable Laws, as more fully described in Section 16.4, applicable to performance of the Work.

**§ 5.5.3 Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall immediately provide notice to the Owner before conditions are disturbed. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Guaranteed Maximum Price or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

**§ 5.5.4** If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Guaranteed Maximum Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

#### **§ 5.6 Allowances**

**§ 5.6.1** The Design-Builder shall include in the Guaranteed Maximum Price all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or

entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

**§ 5.6.2** Unless otherwise provided in the Design-Build Documents,

- .1 when finally reconciled, allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Guaranteed Maximum Price but not in the allowances;
- .3 whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. OSU has prior approval rights on allowances, and may reject allowances. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2; and
- .4 Unless Owner requests otherwise, Design-Builder shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

**§ 5.6.3** The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

### **§ 5.7 Key Personnel, Contractors and Suppliers**

**§ 5.7.1** The Design-Builder shall not employ personnel, or contract with Contractors, including suppliers, to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

**§ 5.7.2** If the Design-Builder changes any of the Architect, Consultants, or Contractors identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new Architect, Consultants, or Contractors. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed Architect, Consultants, or Contractors or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.7.3** Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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

### **§ 5.8 Documents and Submittals at the Site**

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

### **§ 5.9 Use of Site**

The Design-Builder shall confine operations at the site to the laydown area, with OSU's prior written approval, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall provide

identification tags to Design-Builder's employees, subcontractors, and agents that identify those persons to the public as authorized Design-Builder workers.

#### **§ 5.10 Cutting and Patching**

**§ 5.10.1** Design-Builder shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or subcontractors shown upon, or reasonably implied by, the Design-Build Documents.

**§ 5.10.2** Design-Builder shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Design-Build Documents, then Design-Builder shall be responsible for restoring such surfaces to the condition specified in the Design-Build Documents.

**§ 5.10.3** The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with prior written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

#### **§ 5.11 Cleaning Up**

**§ 5.11.1** From time to time as may be prudent or ordered by the Owner, the Design-Builder shall, at its own expense, keep the premises and surrounding area free from accumulation of waste and excess materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove and properly dispose of all waste materials, rubbish, the Design-Builder's and Contractors' tools, construction equipment, machinery and surplus materials from and about the Project.

**§ 5.11.2** If the Design-Builder fails to clean up as provided in the Design-Build Documents within twenty-four (24) hours, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

#### **§ 5.12 Access to Work**

**§ 5.12.1** The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

**§ 5.12.2** The Design-Builder shall maintain Owner's access to the 3rd Floor of the Building, which will be occupied and in use during the course of Design-Builder's Work. The Design-Builder shall notify the Building occupants regarding Project safety criteria and programs, clearly post safe routes in and around the building, and notify building occupants of construction updates involving safety.

#### **§ 5.13 Construction by Owner or by Separate Contractors**

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

**§ 5.13.1.1** The Owner reserves the right to perform construction or operations or services related to the Project, and to furnish materials and equipment for the Project, with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

**§ 5.13.1.2** The cost of any materials or equipment to be provided by the Owner shall not be included in the Guaranteed Maximum Price. The cost of installing such materials or equipment shall be included in the Guaranteed Maximum Price to the extent the Design-Build Documents require the Design-Builder to install such materials or equipment as part of the Work. Handling and storage of any such materials or equipment supplied by the Owner and delivered to the site for installation by the Design-Builder shall be the responsibility of the Design-Builder.

**§ 5.13.1.3** The Design-Builder shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder. The Owner shall require its own forces and separate contractors to cooperate with the Design-Builder with respect to such coordination. Owner's own forces and separate contractors shall be subject to the Design-Builder's reasonable work and safety rules to the extent their work locations overlap. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. If the Design-Builder claims that any adjustment in the Guaranteed

Maximum Price is necessary because of revisions to the Design-Builder's schedule, the Design-Builder shall make a Claim as provided in Article 14. The construction schedules so established shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 [Intentionally deleted.]

#### § 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and Design-Builder shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

#### § 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, 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 will allocate the cost among those responsible.

### ARTICLE 6 CHANGES IN THE WORK

#### § 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.1.4 All Change Orders and Change Directives must be in writing. A Change Order or Change Directive will not be effective until its execution by both parties to this Contract, and all approvals required by public contracting laws have been obtained.

§ 6.1.5 Design-Builder shall submit any request for additional compensation (and additional Contract Time if Design-Builder was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of Owner's request for additional Work, adjustments to the Work, or deletions from the Work. If Design-Builder's request for additional compensation or adjustment of

Contract Time is not made within the thirty (30) Day time limit, Design-Builder's requests pertaining to that change in the Work shall be barred. The thirty (30) Day time limit for making requests shall not be extended for any reason, including without limitation Design-Builder's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner denies Design-Builder's request for additional compensation or adjustment of Contract Time, Design-Builder may proceed to file a Claim under Article 14. No other reimbursement, compensation, or payment will be made, except as provided in Section 6.1.5.1.

**§ 6.1.5.1** The thirty (30) Day time limit applies to claims of the Architect, Contractors, Consultants, suppliers, or manufacturers who may be affected by Owner's request for additions to, adjustments to or deletions from the Work and who request additional compensation or an extension of Contract Time to perform; Design-Builder has responsibility for contacting its Architect, Contractors, Consultants, suppliers, or manufacturers within the thirty (30) Day time limit, and including their requests with Design-Builder's requests. If the request involves Work to be completed by the Architect, Contractors, or Consultants, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Design-Builder in writing with full analysis and justification for the adjustments to compensation and Contract Time requested. The Design-Builder shall analyze and evaluate the merits of the requests submitted by Architect, Contractors, Consultants, suppliers, or manufacturers to Design-Builder prior to including those requests and Design-Builder's analysis and evaluation of those requests with Design-Builder's requests for adjustments to compensation or Contract Time that Design-Builder submits to the Owner. Failure of Architect, Contractors, Consultants, suppliers, or manufacturers or others to submit their requests to Design-Builder for inclusion with Design-Builder's requests submitted to Owner within the time period and by the means described in this Section 6.1.5.1 shall constitute a waiver of these claims. The Owner will not consider direct requests or claims from Architect, Contractors, Consultants, suppliers, or manufacturers or others not a party to this Contract. The consideration of such requests and claims under this Section 6.1.5.1 does not give any person, not a party to the Contract the right to bring a claim against Owner, whether in this claims process, in litigation, or in any dispute resolution process.

**§ 6.1.6** No request or Claim by the Design-Builder for additional costs or an adjustment of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Final payment application must be made by Design-Builder within the time required under Section 9.10.1.2.

**§ 6.1.7** It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Design-Builder is notified that numerous changes may be required and that there will be no compensation made, unless and only to the extent otherwise provided in the Design-Build Documents, to the Design-Builder directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

## **§ 6.2 Change Orders**

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design Guaranteed Maximum Price ; and
- .3 The extent of the adjustment, if any, in the Contract Time.

## **§ 6.3 Change Directives**

**§ 6.3.1** A Change Directive is a written order by the Owner to the Design-Builder directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design Guaranteed Maximum Price, or Contract Time. The Owner may by 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 Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design Guaranteed Maximum Price, and Contract Time being adjusted accordingly.

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



§ 6.3.3 If the Change Directive provides for an adjustment to the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, an adjustment in the Design Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation, subject to the limitations on Design-Builder's mark-up specified in Section 6.3.3.1;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost reimbursement for direct costs on the basis of Design-Builder's actual, reasonable, and allowable cost of labor, equipment, and material furnished on the Work performed, subject to the limitations on Design-Builder's mark-up specified in Section 6.3.3.1; or
- .4 As provided in Section 6.3.7.

§ 6.3.3.1 If the adjustment in the Guaranteed Maximum Price or Design Guaranteed Maximum Price is made pursuant to .1 or .3 above, the following mark-ups will be allowed as additional compensation:

- .1 Labor: 15%
- .2 Equipment: 10%
- .3 Materials: 10%

§ 6.3.3.2 When adjustments to or deletions from the Work under Section 6.3.3.1 are invoiced by an authorized Contractor at any level, each ascending tier subcontractor or contractor will be allowed a supplemental mark-up on each piece of subcontract Work covered by an Amendment as follows:

\$0.00 - \$5,000.00	10%, and then
Over \$5,000.00	5%

However, the maximum aggregate markup to be billed to Owner is not to exceed 10%.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with and diligently continue performance of the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design Guaranteed Maximum Price, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design Guaranteed Maximum Price, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design Guaranteed Maximum Price, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and cost savings of those performing the Work attributable to the change, including, in case of an increase, an amount for Design-Builder's Fee, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the  
(Paragraphs deleted)

Cost of the Work as defined in Exhibit A.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, in the Design Guaranteed Maximum Price, shall be actual net cost decrease, including, but not limited to, Design-Builder's direct costs and a percentage adjustment to Design-Builder's Fee. When both additions and credits covering related Work or substitutions are involved in a change, the Design-Builder's Fee shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 6.3.9 Upon final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. No payment will be made for Work performed under a Change Directive until the total cost of the Change Directive has been approved by the Owner and the Change Directive has been reduced to a Change Order.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the Design [Guaranteed Maximum Price](#) and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

#### § 6.4 Change Proposals

Within the time limits set out in this Section 6.4, after receipt of a Request For Change Order Proposal or a Change Directive, the Design-Builder shall submit to the Owner a written Change Order Proposal setting out any proposed adjustment in the Guaranteed Maximum Price or Contract Time, or both, to which the Design-Builder believes it (1) would be entitled as a result of the change in the Work proposed in the Request For Change Order Proposal or (2) is entitled as a result of the change in the Work directed by the Change Directive. Such Change Order Proposal may, at Owner's option, be in the form of a lump sum proposal or a unit price proposal, or a combination thereof, for a proposed increase in the Contract Sum, and in similar form for a proposed extension of the Contract Time, and otherwise shall be in such form and in such detail as the Owner may require. Such Change Order Proposal shall be submitted as soon as practicable after the Contractor's receipt of the Request For Change Order Proposal or the Change Directive, but in no event later than fourteen days after the Contractor's receipt of the Request For Change Order Proposal or the Change Directive.

### ARTICLE 7 OWNER'S RESPONSIBILITIES

#### § 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative ("Owner's Authorized Representative") who shall have authority to bind the Owner as detailed in Section 1.2.1.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall 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.

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

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 To the extent reasonably required for Design-Builder's performance of the Work, upon written request of the Design-Builder, the Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 [Intentionally deleted.]

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Contract or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to reasonably rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.5.1 Notwithstanding the provisions of Section 7.2.4, the Design-Builder shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Design-Builder shall coordinate with utility and other involved third party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 [Intentionally deleted.]

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as specified in ORS 352.038.

§ 7.2.11 The Design-Builder agrees that the Owner shall have no obligation to deliver copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract or on the Project, and that the Owner's failure to deliver copies of such notices to the Design-Builder shall have no effect on the obligations of the Design-Builder to hold harmless and indemnify the Owner for mechanics', material suppliers', design professionals', construction or similar liens as required by the Contract or applicable law. However, the Owner shall make a good faith attempt to deliver promptly to the Design-Builder copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract.

### § 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals by Owner is for limited purpose of check for general conformance with the design concept expressed in Owner's Criteria. The Owner's review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate

review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under the Contract. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any design, construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 7.3.2** Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

**§ 7.4** Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the design or construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

**§ 7.5** The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

**§ 7.6** The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 7.7** The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of Final Completion in accordance with Section 9.10.

#### **§ 7.8 Owner's Right to Stop Work**

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

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

If the Design-Builder defaults or neglects to carry out all or a portion of the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies, including but not limited to the Owner's attorneys fees, and related costs, disbursements and expenses. If Owner completes the repairs using Owner's own forces, Design-Builder shall pay Owner at the rate of one and one-half (1½) times the standard hourly rate of Owner's forces, plus related overhead and any direct non-salary costs. If Owner completes the repairs using another contractor, Design-Builder shall pay Owner the amount of Owner's direct costs billed by the other contractor for the work, plus the direct salary costs and related overhead and direct non-salary expenses of Owner's forces who are required to monitor that contractor's work. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity and shall not affect the Design-Builder's contractual duties under this Contract, including its warranty obligations.

## **ARTICLE 8 TIME**

### **§ 8.1 Progress and Completion**

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work. The Design-Builder shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. If required by the Design-Build Documents, Design-Builder shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.1.4 The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work, subject to the provisions of Article 6.

§ 8.1.5 The Owner shall not waive any rights under the Contract by permitting the Design-Builder to continue or complete in whole or in part the Work after the date of Substantial Completion and/or Final Completion.

## § 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an Unavoidable Delay, then the Contract Time may be extended by Change Order for such reasonable time as the Owner and Design-Builder may agree, and, if the Unavoidable Delay is of the kind described in .1 and .3 below, Design-Builder may also be entitled to additional compensation. If Owner and Design-Builder cannot so agree, Design-Builder may make a Claim for an extension of the Contract Time pursuant to Article 14. Unavoidable Delay expressly includes delays that are:

- .1 Caused by any actions of the Owner, including changes in the Work ordered by Owner, or any other employee or agent of the Owner, or by separate contractor employed by the Owner;
- .2 Caused by labor disputes not caused or contributed to by the Design-Builder, Architect, Consultants or Contractors;
- .3 Caused by force majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Design-Builder or its subcontractors.
- .4 Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Design-Builder, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
  - .1 Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
  - .2 daily rainfall equal to, or greater than, 0.75 inch at any time.

The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

**§ 8.2.2** In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section 8.2 for unavoidable delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section 5.5.3, Design-Builder shall submit a written notification of the delay to the Owner within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time extension or the additional compensation, or both, as applicable, resulting from the delay. In accordance with the requirements of Article 6, within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Design-Builder shall submit to the Owner, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner denies Design-Builder's request for additional compensation or adjustment of Contract Time, the Design-Builder may proceed to file a Claim under Article 14.

**§ 8.2.2.1** If Design-Builder does not timely submit the notices required under Section 8.2, then unless otherwise prohibited by law, Design-Builder's Claim shall be barred.

**§ 8.2.3** Claims relating to time shall be made in accordance with applicable provisions of Article 14.

**§ 8.2.4** This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

## **ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION**

### **§ 9.1 Contract Sum**

The Contract Sum is defined in the Design-Build Amendment.

### **§ 9.2 Schedule of Values**

The Design-Builder, at least ten (10) days prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Guaranteed Maximum Price to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require ("Schedule of Values"). The Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. If objected to by Owner, Design-Builder shall revise the Schedule of Values and resubmit the same for approval of Owner.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least forty-five days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers. Applications for Payment shall be based upon estimates of Work completed and the Schedule of Values and shall reflect retainage if provided for in the Design-Build Documents.

**§ 9.3.1.1** As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, but not yet included in Change Orders. No payment will be made for work performed under a Change Directive until the total cost of the Change Directive has been approved by the Owner and the Change Directive has been reduced to a Change Order.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay. Design-Builder shall submit receipts or other vouchers showing payments for materials and labor including payments to the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder. Design-Builder shall include in its application for payment a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received."

Signed: \_\_\_\_\_  
Dated: \_\_\_\_\_ "

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

- .1 Duly executed lien and claim waivers in the forms attached as Exhibit D, executed and acknowledged sworn statement from the Design-Builder showing the Architect, Consultants, Contractors and any other person or entity with whom the Design-Builder has entered into agreements with related to the Work, the amount of each such agreement the amount requested for payment to each such person or entity, and the amounts to be paid to and retained by the Design-Builder from such progress payment, together with similar sworn statements from all such persons and entities. The waiver and release forms submitted by the Design-Builder shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.
- .2 Duly executed lien and claim waivers in the forms attached as Exhibit D executed by the Architect, Consultants, Contractors and any other person or entity with whom the Design-Builder has entered into agreements with related to the Work. The lien and claim waiver forms submitted by such person or entities shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 shall be conditioned upon compliance by the Design-Builder with the following procedures:

- .1 The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- .2 The Design-Builder shall submit applications for payment showing the quantity and cost of the material stored.
- .3 The material shall be stored in a bonded warehouse and Owner shall be granted the right to access the material for the purpose of removal or inspection at any time.
- .4 The Design-Builder shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Design-Builder until it is installed. A certificate noting this coverage shall be issued to the Owner.
- .5 Payments shall be made for materials and equipment only. The submitted amount in the application for payment shall be reduced by the cost of transportation from the storage site to the project site and for the cost of an inspector to verify delivery and condition of the goods at the storage site. The cost of storage and inspection shall be borne solely by the Design-Builder.
- .6 Within sixty (60) Days of the application for payment, the Design-Builder shall submit evidence of payment covering the material and/or equipment stored and of payment for the storage site.
- .7 Payment for stored materials and/or equipment shall in no way indicate acceptance of the materials and/or equipment or waive any rights under this Contract for the rejection of the Work or materials and/or equipment not in conformance with the Design-Build Documents.

.8 All required documentation shall be submitted with the respective application for payment.

**§ 9.3.3** The Design-Builder warrants that title to all Work, including the Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which payment has been previously approved and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided services, labor, materials and equipment relating to the Work.

#### **§ 9.4 Review of Applications for Payment**

The Owner shall, within fifteen (15) days after receipt of the Design-Builder's Application for Payment for a progress payment, review the Application for Payment; determine if the Application for Payment is filled out incorrectly, if there is any defect or impropriety in any submitted invoice, or if there is a good faith dispute; and notify the Design-Builder in writing of the Owner's reasons for withholding approval of payment in whole or in part as provided in Section 9.5.1. Owner's review and approval of Design-Builder's Application for Payment is a condition precedent to Owner's obligation to pay Design-Builder. Owner's review and approval of Design-Builder's Application for Payment, or any progress payment based thereon, shall not be considered acceptance or approval of any Work or waiver of any defects therein.

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

**§ 9.5.1** The Owner may withhold its approval of Design-Builder's Application for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to approve payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly approve Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold approval of Design-Builder's Application for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of an approval of Design-Builder's Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of:

- .1 defective or nonconforming Work, including design and construction, not remedied;
- .2 third party claims, including but not limited to lien and bond claims, filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- .5 damage to the Work, 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 repeated or substantial failure to carry out the Work in accordance with the Design-Build Documents;
- .8 failure of the Design-Builder to submit updates of the schedule as required this Contract;
- .9 failure of the Design-Builder to provide satisfactions of claims of Architect, Consultants, Contractors or others;
- .10 failure of the Design-Builder to provide waivers and releases from Architect, Consultants, Contractors and others; or
- .11 assessment of liquidated damages, when withholding is made for offset purposes.

**§ 9.5.2** When the above reasons for withholding approval of payment are removed, approval will be made for amounts previously withheld.

**§ 9.5.3** [Intentionally deleted.]

#### **§ 9.6 Progress Payments**

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**§ 9.6.1** Upon receipt of an Application for Payment and review and approval of Design-Builder's Application for Payment, Owner shall make progress payments on the Contract monthly as Work progresses, in accordance with the requirements of this Section 9.6. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Design-Builder simple interest for overdue invoices at the rate of two-thirds of one percent per month on the progress payment, not including retainage, due the Design-Builder. Overdue invoices will be those that have not been paid within forty five (45) days from the latest of:

- .1 The date of the receipt of the accurate invoice;
- .2 The date Owner receives the correct application for payment if no invoice is received;
- .3 The date all goods and services have been received; or
- .4 The date a Claim is made certain by agreement of the parties or by operation of law.

**§ 9.6.1.1** 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 shall so notify the Design-Builder 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 Design-Builder within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this Section 9.6.1.1 unless interest is also paid. Payment of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Design-Builder. Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for such amounts which are correct and proper.

**§ 9.6.1.2** Owner's receipt of payroll certification pursuant to Section 16.8 of this Contract shall be a condition precedent to Owner's obligation to pay any progress payments or final payment otherwise due.

**§ 9.6.1.3** Prior to submission of any pay request for more than 75% of the Work, or a cumulative total of more than 75% of the Work, Design-Builder shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner. Owner's receipt of the O & M Manuals shall be a condition precedent to any payment thereafter due. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, telephone list and contact information for all consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner shall review and return one O & M Manual for any modifications or adjustments required.

#### **§ 9.6.2 Design-Builder's Payment to Contractors**

**§ 9.6.2.1** The Owner and the Design-Builder shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Contractors.

**§ 9.6.2.2** Should the Design-Builder withhold payment from Architect, Consultants, Contractors or others due to a bona fide dispute, the Design-Builder shall notify the Owner in writing. The Owner may then withhold such funds from the Design-Builder until the dispute is resolved; provided that this Section 9.6.2.2 shall not be construed or applied to prevent the Design-Builder from receiving payment from the Owner for Work when such Work is the subject of a good faith backcharge by the Design-Builder against the person or entity involved in the bona fide dispute.

**§ 9.6.3** The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

**§ 9.6.4** The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the

Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

**§ 9.6.5** Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

**§ 9.6.6** Owner's review and approval of Design-Builder's Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents or waiver of any defects therein.

**§ 9.6.7** Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Guaranteed Maximum Price, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

**§ 9.6.8** Upon reasonable evidence of the unjustified nonpayment of the Architect, Consultants, Contractors or others by Design-Builder, the Owner may, after giving reasonable notice and opportunity to cure to the Design-Builder, make payment of amounts due to such persons or entities by direct payments or by means of multiple-payee checks. Upon request of the Owner, the Design-Builder shall timely furnish to the Owner such information as the Owner reasonably will need to make such direct or multiple-payee check payments, including but not limited to the names and addresses of the persons or entities and the amounts due to each of them.

**§ 9.6.9 Retainage**

**§ 9.6.9.1** Retainage shall be withheld and released in accordance with the requirements set forth in OSU Standard 580-063-0045.

**§ 9.6.9.2** Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of retainage on or may eliminate retainage on any remaining monthly Contract payments after fifty (50) percent of the Work under the Contract is completed if, in the Owner's discretion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Design-Builder, which application shall include written approval of Design-Builder's surety; except that when the Work is ninety-seven and a half (97-1/2) percent completed the Owner may, at its discretion and without application by the Design-Builder, reduce the retained amount to one-hundred (100) percent of the value of the Work remaining to be done. Upon receipt of written application by the Design-Builder, Owner shall respond in writing within a reasonable time.

**§ 9.6.9.3** Contractor may request in writing:

- .1 to be paid amounts which would otherwise have been retained from progress payments where Design-Builder has deposited acceptable bonds and securities 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;
- .2 for construction projects over \$1,000,000, that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Design-Builder; or
- .3 that the Owner allow Design-Builder 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 therefrom shall be made subject to all claims in the manner and priority as set forth for retainage.

When the Owner has accepted the Design-Builder's election of option .1 or .2, Owner may recover from Design-Builder any additional costs incurred through such election by reducing Design-Builder's final payment. Where the Owner has agreed to Design-Builder's request for option .3, Design-Builder shall accept like bonds from Contractors and suppliers on the project from which Design-Builder has required retainages.

**§ 9.6.9.4** The retainage held by Owner shall be included in and paid to the Design-Builder as part of the final payment of the Contract Price.

**§ 9.6.9.5** Owner will reduce the amount of the retainage if the Design-Builder notifies the controller of the Owner that the Design-Builder has deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner, bonds and securities of equal value of a kind approved by the Owner and such bonds and securities have in fact been deposited.

**§ 9.6.9.6** Design-Builder agrees that if Design-Builder elects to reserve a retainage from any progress payment due to any Contractor or supplier, such retainage shall not exceed five percent of the payment except with the Owner's prior approval, and such retainage withheld from Contractors and suppliers shall be subject to the same terms and conditions stated in this Section 9.6.9 as apply to Owner's retainage from any progress payment due to Design-Builder.

#### **§ 9.7 Failure of Payment**

If the Owner does not approve Design-Builder's Application for Payment, through no fault of the Design-Builder, Architect, Consultants, or Contractors, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

#### **§ 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 which the Owner agrees to accept separately is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Design-Builder may request that a Punch List be prepared by the Owner with submission of the request for the Substantial Completion notice.

**§ 9.8.1.1** For Substantial Completion of the Work or designated portion thereof to be achieved, the Owner also must have received a temporary or final certificate of occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose. The requirement shall be deemed satisfied if all construction, submittals and other performance by the Design-Builder required for issuance of the certificate of occupancy and other approvals have been completed but the certificate and approvals have not been issued solely because of factors beyond the reasonable control of the Design-Builder.

**§ 9.8.2** When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder and Owner shall prepare a comprehensive list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract ("Punch List"). Failure to include an item on the Punch List does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.2.1 Design-Builder shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of Punch List work. At the end of the thirty-day period, or earlier if requested by the Design-Builder, Owner shall arrange for inspection of the Work. Should the work not be complete, and all corrections made, the costs for all subsequent reinspections shall be borne by the Design-Builder. If Design-Builder fails to complete the Punch List work within the thirty (30) Day period, Owner may perform such work and Design-Builder shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Design-Builder's obligations.

§ 9.8.3 Upon receipt of the Design-Builder's Punch List, the Owner shall make an observation to determine whether the Work or designated portion which the Owner agrees to accept separately is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's Punch List, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another observation by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, unless the Design-Build Documents otherwise provide for property insurance following Substantial Completion, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner and shall state the date of Substantial Completion, the responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Design-Builder shall finish all items on the Punch List accompanying the Certificate. The completion notice must be signed by the Design-Builder and the Owner to be valid. The Owner shall provide the final signature on the notice. The notice shall take effect on the date they are signed by the Owner.

### § 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 when such portion is identified in the Floor Plan Exhibit, attached as Exhibit I, or designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. Approval by the Design-Builder to partial occupancy or use shall not be unreasonably withheld.

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

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

### § 9.10 Final Completion and Final Payment

§ 9.10.1 When the Design-Builder believes that the Work or designated portion thereof has been finally completed, the Design-Builder shall submit to the Owner written notice that the Work is ready for final observation and upon receipt of a final Application for Payment, the Owner will promptly make such observation. When the Owner finds

the Work acceptable under the Design-Build Documents and the Contract fully performed (except for those obligations which, by their nature, extend beyond Final Completion), the Owner will, subject to Section 9.10.2, promptly issue a final approval of Payment. If the Work is not acceptable, Owner will notify Design-Builder within fifteen (15) Days of Design-Builder's request for final payment. The Owner shall pay to Design-Builder simple interest at the rate of two-thirds of one percent per month on the final payment due Design-Builder, interest to commence forty five (45) Days after the date which Owner receives Design-Builder's final approved application for payment and Work under the Contract has been completed and accepted and to run until the date when final payment is tendered to Design-Builder. If Owner does not within the time allowed notify the Design-Builder of Work yet to be performed to fulfill contractual obligations, the interest provided by this Section 9.10.1 shall commence to run forty five (45) Days after the end of the 15-Day period.

**§ 9.10.1.1** The term "Final Completion" as used in the Design-Build Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved, (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose and (3) the Design-Builder has performed all of its obligations under the Contract except for those obligations that, by their nature, extend beyond Final Completion.

**§ 9.10.1.2** Design-Builder agrees to submit its final payment application within ninety (90) Days after Substantial Completion, unless written extension is granted by Owner. Design-Builder shall not delay final payment application for any reason, including without limitation nonpayment of Architect, Contractors, Consultants, suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Design-Builder fails to submit its final payment application within ninety (90) Days after Substantial Completion, and Design-Builder has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or 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, (8) two (2) complete and approved sets of O & M Manuals in paper form and one (1) complete and approved set in electronic form to the Owner and Owner's receipt of the O & M Manuals shall be a condition precedent to Owner's obligation to make final payment, and (9) as-built Drawings in CAD format acceptable to the Owner and all other documents and items required by the Contract to be provided as a condition of achieving Final Completion. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release and waiver required by the Owner, the Design-Builder shall furnish a bond or other security satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.2.1** In addition to other documentation required by the Owner as a condition of final payment, the application for final payment shall be accompanied by final conditional waivers and releases of stop notices, mechanics', material suppliers', construction or similar liens and other claims, executed by the Design-Builder, Architect, Consultants and Contractors at all tiers. The forms of the waivers and releases shall be as set out in Exhibit D.

**§ 9.10.2.2** In addition to the other documentation required as a condition of final payment, Design-Builder shall:

- .1 schedule with the Owner training sessions for all equipment and systems as required by the Design-Build Documents. Design-Builder shall schedule training sessions at least two weeks in advance of the date of training to allow Owner to provide its personnel with adequate notice. The O & M Manual shall be used as a basis for training. In addition to any off-site training required by the Design-Build Documents, training shall include a formal session conducted at the Work site after the equipment and/or system is completely installed and operational in its normal operating environment.
- .2 notify the Owner that all environmental and pollution clean-up, remediation and closure have been completed in accordance with all Applicable Laws and pursuant to the authority of all agencies having jurisdiction, and Design-Builder shall provide Owner with any and all documentation related to the same, including but not limited to directives, orders, letters, certificates and permits related to or arising from such environmental pollution. The notice shall reaffirm the indemnification given under Section 10.3.
- .3 return to the Owner all property of Owner issued to Design-Builder during construction such as keys, security passes, site admittance badges, and all other pertinent items. Upon notice from Owner, Design-Builder shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Design-Builder to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Design-Builder's forces continue with the Work.

**§ 9.10.3** If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting Final Completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.3.1** If the Owner makes such payment in advance of Final Completion, the Owner shall retain an amount no less than one hundred fifty percent (150%) of the sum of the cost of the Work for the Design-Builder to finally complete the Work.

**§ 9.10.4** The making of final payment shall not constitute a waiver of Claims by the  
(Paragraphs deleted)  
Owner.

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

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

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

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and the entirety of the Work. In addition, Design-Builder shall be responsible for the security and protection (i) of its equipment, supplies and tools used in connection with the Work, and (ii) for all of the other property owned or leased by Design-Builder or any of its Contractors located at the Project site.

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

**§ 10.2.1** Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs, commensurate with industry best practices in connection with the performance Design-Builder's obligations under this Contract. Without limiting Design-Builder's obligation to indemnify Owner or any of its other obligations under the Contract, Design-Builder is solely responsible for the conduct, safety, and health of its employees, agents, Architect, Consultants, Contractors and others performing the Work or entering into the Work area, and any impact

they or their agents may have on the public arising out of this Contract. Design-Builder represents and warrants that information provided to Owner with regard to the safe conduct of its business, if requested by Owner, is accurate and complete. Failure by Owner to review any information provided by Design-Builder shall not relieve Design-Builder of its obligations under the Contract. Further, Design-Builder shall notify Owner immediately upon any change in such information. Design-Builder shall comply with all applicable federal, state, provincial and local safety laws and regulations. These requirements include, but are not limited to, posting and maintaining required material safety data sheets; labeling, handling, transporting, storing and disposing of any hazardous materials; training of all on site employees and Contractor employees regarding safe work practices, and mitigation of any hazards identified; inspection of work sites for any unsafe conditions and prompt correction of any such conditions identified. Contractor's failure to comply with this Section 10.2.1 constitutes a material breach of this Agreement, and without limitation to other remedies, subjects Design-Builder to all rights and remedies available to Owner under law and equity, including, but not limited to, immediate termination of this Agreement. The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on and those performing labor or services or furnishing equipment or materials at the Work site and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction;
- .4 other structures contiguous to the Work site and otherwise located at or contiguous to the premises, and trees, shrubs, lawns, walks, pavements, roadways and utilities serving such structures and premises;
- .5 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors; and
- .6 the contents and occupants of those portions of the Building in use during the course of Design-Builder's Work, as provided in Section 5.12, including ingress and egress to those portions of the building.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, Applicable Laws, bearing on safety of persons or property, or their protection from damage, injury or loss.

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

§ 10.2.3.1 If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated otherwise herein, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel and give the Owner reasonable prior notice.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except to the extent such damage or loss is attributable to negligent acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.15.

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

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

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

If either party suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, whether or not insured, or if any other incident occurs that may adversely affect the quality or progress of the Work, verbal and written notice shall be given to the other party immediately upon discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Design-Builder is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.

#### § 10.3 Hazardous Materials

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

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, 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 shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the



Design-Builder 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 Design-Builder, the Design-Builder 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 Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

*(Paragraphs deleted)*

#### **§ 10.4 Spill Responsibility**

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

**§ 10.4.2** Design-Builder shall 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 Design-Builder, at all times, shall:

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

**§ 10.4.3** The Design-Builder shall be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Design-Builder's (i) fault or (ii) failure to perform in accordance with the Design-Build Documents. Nothing in this Section 10.4 shall limit the Contractor's liability or responsibility under any other provision of the Design-Build Documents.

**§ 10.4.4** The Design-Builder shall report all reportable quantity releases described in this Section 10.4 to applicable federal, state, and local regulatory and emergency response agencies. Upon discovery, regardless of quantity, the Design-Builder must telephonically report all releases to the Owner. A written follow-up report shall be submitted to the Owner within 48 hours of the telephonic report. Such written report shall contain, at a minimum:

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

#### **§ 10.5 Emergencies**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's reasonable discretion, to prevent threatened damage, injury or loss.

### **ARTICLE 11 UNCOVERING AND CORRECTION OF WORK**

### § 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Guaranteed Maximum Price, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

### § 11.2 Correction of Work

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, and the Owner's attorneys' fees and related costs, and disbursements, which costs shall be at the Design-Builder's expense.

### § 11.2.2 After Substantial Completion

**§ 11.2.2.1** In addition to the Design-Builder's obligations under Section 3.1.13 and all other rights and remedies of Owner, 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 an applicable special warranty required by the Design-Build Documents, any of the Work is found to be defective or not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder. If the Design-Builder fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, or at any time in the event of warranty work consisting of emergency repairs, the Owner may correct it in accordance with Section 7.9. This Section 11.2.2 does not limit Design-Builder's obligation to correct latent defects, which will be remedied by the Contractor at any time they become apparent.

**§ 11.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion, including corrective Work performed by the Design-Builder pursuant to this Section 11.2, by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 11.2.2.3** [Intentionally deleted.]

**§ 11.2.3** The Design-Builder shall remove from the site portions of the Work that are defective or not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

**§ 11.2.4** The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is defective or not in accordance with the requirements of the Design-Build Documents.

**§ 11.2.5** Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents or applicable law. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time nor shall otherwise be deemed to limit the time within which the obligation to comply with the Design-Build Documents or applicable law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

### § 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is defective or not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and all other documents furnished by the Design-Builder, including those in electronic form ("Instruments of Service") to the extent prepared specifically for this Project shall become the property of Owner and all copyrights and other rights are hereby assigned to Owner. The Owner shall have all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the Owner's rights.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service to the extent not prepared specifically for this Project solely and exclusively in connection with the Project, including but not limited to the Project's further development by Owner and others retained by Owner for such purposes. Such license shall extend to those parties retained by Owner for such purposes, including but not limited to other design professionals.

§ 12.3.1 The Design-Builder shall obtain ownership rights, including but not limited to copyrights and licenses, from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service on other projects without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service on other projects under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

## ARTICLE 13 TERMINATION OR SUSPENSION

### § 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, to the extent the suspension is not attributable to the Design-Builder's failure to comply with the Contract, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design Guaranteed Maximum Price for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design Guaranteed Maximum Price for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 180 consecutive days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than fourteen (14) days' written notice and opportunity to cure should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement in whole or in part upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause whenever Owner determines that termination of the Agreement is in the best interest of the Owner or the public. After such notice, the Design-Builder shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Design-Builder received payments under Article 2.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall (1) the Design Guaranteed Maximum Price under this Section 13.1.6 be greater than the compensation set forth in Section 2.1 and (2) the Design-Builder be entitled to its fee or other payment, including but not limited to lost profits, on account of Work not performed.

## § 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

### § 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 180 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of a lawful order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not made a required payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 If a basis for termination described in Section 13.2.1.1 exists, the Design-Builder may, upon fourteen (14) days' written notice to the Owner, and if the Owner fails to cure such reason during the seven-day period, terminate the Contract and recover from the Owner payment for Work executed, reasonable overhead and profit on Work executed, and costs incurred by reason of such termination.

§ 13.2.1.3 [Intentionally deleted.]

§ 13.2.1.4 [Intentionally deleted.]

### § 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract in whole or in part pursuant to Section 13.2.2.2 if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 persistently or substantially refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, workers or proper materials or equipment;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 is in violation of Applicable Laws, either in the conduct of its business or in its performance of the Work;
- .5 persistently or substantially fails to carry out the Work pursuant to the Design-Build Documents;
- .6 persistently or substantially fails to comply with the current Design-Builder's schedule;

- .7 submits one or more Applications for Payment that the Design-Builder overstates the amount to be paid, by the Owner;
- .8 voluntarily or involuntarily seeks protection under the United States Bankruptcy Code and Design-Builder as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- .9 makes a general assignment for the benefit of Design-Builder's creditors;
- .10 causes a receiver to be appointed on account of Design-Builder's insolvency; or
- .11 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 If a basis for termination as described in Section 13.2.2.1 exists, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate the Contract in whole or in part and may:

- .1 Exclude the Design-Builder from the site and take possession of all or a portion of the materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of some or all of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.16; and
- .3 Finish the Work or portion thereof by whatever reasonable means and method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 In the event of termination of the Contract in whole or in part under Section 13.2.2.1, the compensation of the parties as to the terminated part of the Contract shall be determined as follows:

- .1 Add value of the Work performed as of the time of the termination, provided that this sum shall not exceed the Guaranteed Maximum Price for that Work as of the time of the termination. For purposes of this Section 13.2.2, the term "Terminated Contract Sum" shall mean the sum determined under this Item.
- .2 Determine the amount of all costs incurred by the Owner in completing the Work. For purposes of this Section 13.2.2, the term "Owner's Costs" shall mean the sum determined under this Item .2. The Owner's Costs shall include, but not be limited to, the cost of labor, services, materials, equipment, supervision and "general conditions" to complete the Work; the cost of any additional architectural, construction management, and Project administrative costs required to facilitate completion; any costs incurred in retaining another contractor or subcontractors; any additional interest or other fees paid by the Owner; any attorneys' fees and other legal expenses related to the termination of the Contract and transactions to arrange for the completion of the Work; and all other costs, damages and expenses incurred by the Owner by reason of the termination of the Contract, the completion of the Work and the Project, and delay in the completion of the Work and the Project.
- .3 Subtract the Terminated Contract Sum from the Guaranteed Maximum Price as of the time of the termination.
- .4 If the Owner's Costs exceed the amount determined under Item .3, then the Design-Builder shall pay the Owner the amount of the excess less the amount of the Terminated Contract Sum not previously paid, if any.
- .5 If the amount determined under Item .3 exceeds the Owner's Costs, then the Owner shall pay the Design-Builder the amount of the Terminated Contract Sum not paid, if any.

§ 13.2.2.4 In the event the Owner terminates the Contract for cause under this Section 13.2.2 and such termination subsequently is determined in a final arbitrated award or a final judgment to have been wrongful, the termination shall automatically be converted to and deemed a termination for the Owner's convenience pursuant to Section 13.2.4.

### § 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, with or without cause or prior notice, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. No adjustment shall be made to the extent

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

**§ 13.2.3.3** During the period of the suspension, Design-Builder is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

**§ 13.2.3.4** If the Work is recommenced after the suspension, the Design-Builder shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

**§ 13.2.3.5** Depending on the reason for suspension of the Work, the Design-Builder or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Design-Builder, the Owner may assess the Design-Builder actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Design-Builder may be due compensation which shall be defined using Article 6. If the suspension was required through no fault of the Design-Builder or the Owner, neither party shall owe the other for the impact.

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

**§ 13.2.4.1** The Owner may terminate this Agreement in whole or in part upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause whenever Owner determines that termination of the Agreement is in the best interest of the Owner or the public. After such notice, the Design-Builder shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contract received progress payments under Section 9.6.

**§ 13.2.4.2** Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

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

**§ 13.2.4.3** In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment as to the terminated part of the Contract pursuant to the provisions of Article 13, but otherwise shall be paid the total of (1) the cost of the Work incurred by the Design-Builder to the date of termination, (2) an amount for overhead and profit on the Cost of the Work, or if no such amount is set forth, a reasonable amount, (3) fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Design-Builder which the Owner elects to retain and which is not otherwise included in the cost of the Work under subitem (1), and (4) fair compensation for the Design-Builder's demobilization costs and other costs directly incurred relating to the termination which are not otherwise included in the cost of the Work under subitem (1). In no event, however, shall Design-Builder be entitled to payment of its fee or other payment, including but not limited to lost profits or consequential damages on this Project or any other project, on account of Work not performed.

**§ 13.2.5** If the Owner elects to suspend the Work or partially terminate Design-Builder, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work.

#### **§ 13.3 Action Upon Termination**

**§ 13.3.1** Upon receiving a notice of termination, and except as directed otherwise by the Owner, Design-Builder shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Design-Builder shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

§ 13.3.2 As directed by the Owner, Design-Builder shall, upon termination, transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

## ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

### § 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract, submitted in accordance with the requirements and within the time limits established for review of Claims in this Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

### § 14.1.2 Notice of Claims

§ 14.1.2.1 Claims by Design-Builder must be initiated by written notice to the Owner five (5) days after a denial of Design-Builder's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in this Contract. Within thirty (30) Days after the initial Claim, Design-Builder shall submit to the Owner a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section 14.1.2.2. Unless the Claim is made in accordance with these time requirements, it shall be waived by Contractor.

§ 14.1.2.2 The Detailed Notice of the Claim shall be submitted in writing by Design-Builder and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time adjustment requested for the Claim. If the Claim involves Work to be completed by subcontractors, the Design-Builder will analyze and evaluate the merits of the subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner. The Owner will not consider direct claims from subcontractors, suppliers, manufacturers, or others not a party to this Contract. Design-Builder agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

### § 14.1.3 Owner's Review of Claims

§ 14.1.3.1 The Owner will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Design-Builder; (2) inform the Design-Builder in writing of the time required for adequate review and response; (3) reject the Claim in whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

§ 14.1.3.2 The Owner's decision shall be final and binding on the Design-Builder unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Design-Builder must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

*(Paragraph deleted)*

### § 14.1.4 Mediation of Claims

§ 14.1.4.1 The decision of the Owner shall be final and binding unless the Design-Builder delivers to the Owner its request for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision. The mediation process will be considered to have commenced as of the date the Design-Builder delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

§ 14.1.4.2 In the event that a lawsuit must be filed within this sixty (60) Day period in order to preserve a cause of action, the parties agree that, notwithstanding the filing, they shall proceed diligently with the mediation to its

conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the plaintiff shall promptly cause to be entered by the Court a stipulated general judgment of dismissal with prejudice, or other appropriate order limiting the scope of litigation as provided in the settlement.

**§ 14.1.4.3** The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Design-Builder. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

**§ 14.1.5 Continuing Contract Performance.** Pending final resolution of a Claim, including the pendency of any mediation or litigation arising out of the claim, and except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

*(Paragraphs deleted)*

**§ 14.1.6 Claims for Additional Cost.** If the Design-Builder knows or has a reason to know before performing a particular portion of the Work that it will have a Claim for an increase in the Guaranteed Maximum Price for performing that portion of the Work, written notice as provided herein shall be given by the Design-Builder before proceeding to execute the particular portion of the Work that relates to the Claim. Otherwise, notice of a Claim for an increase in the Guaranteed Maximum Price shall be made as required by Section 14.1.2. Within a reasonable time after delivery of notice of the Claim, Design-Builder shall submit to Owner substantiating data and other information sufficient to permit evaluation of the Claim by Owner. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 14.1.7 Claims for Additional Time**

**§ 14.1.7.1** If the Design-Builder intends to make a Claim for an extension in the Contract Time, written notice as provided herein shall be given to the Owner. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time, and a schedule analysis based upon the approved Design-Builder's construction schedule, showing the impact of the cause or event on the critical path of the approved Design-Builder's construction schedule. No Claim under this Section 14.1.7 shall be valid unless so made. If a Claim for additional cost related to this Claim is to be asserted, it shall be made as provided in Section 14.1.6.

**§ 14.1.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of scheduled construction.

#### **§ 14.1.7 [Intentionally deleted.]**

### **§ 14.2 Litigation**

Any Claim between Owner and Design-Builder that arises from or relates to this Contract and that is not resolved through the claims review process in this Article 14 shall be brought and conducted solely and exclusively within the Circuit Court of Benton County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Article 14 be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. DESIGN-BUILDER, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 14.2.



§ 14.2.1 **Time Limit on Litigation.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the within the time period specified by applicable law.

§ 14.2.2 [Intentionally deleted.]

§ 14.2.2.1 [Intentionally deleted.]

§ 14.2.2.2 [Intentionally deleted.]

§ 14.2.3 [Intentionally deleted.]

§ 14.2.4 [Intentionally deleted.]

§ 14.2.5 [Intentionally deleted.]

§ 14.2.6 [Intentionally deleted.]

§ 14.2.6.1 [Intentionally deleted.]

§ 14.2.7 [Intentionally deleted.]

§ 14.2.8 [Intentionally deleted.]

§ 14.3 [Intentionally deleted.]

§ 14.3.1 [Intentionally deleted.]

§ 14.3.2 [Intentionally deleted.]

§ 14.3.3 [Intentionally deleted.]

§ 14.4 [Intentionally deleted.]

§ 14.4.1 [Intentionally deleted.]

§ 14.4.1.1 [Intentionally deleted.]

§ 14.4.2 [Intentionally deleted.]

§ 14.4.3 [Intentionally deleted.]

§ 14.4.4 [Intentionally deleted.]

§ 14.4.4.1 [Intentionally deleted.]

§ 14.4.4.2 [Intentionally deleted.]

§ 14.4.4.3 [Intentionally deleted.]

## ARTICLE 15 MISCELLANEOUS PROVISIONS

### § 15.1 Governing Law

This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

### § 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. The Design-Builder shall not assign its rights or obligations under the Contract in whole or in part without prior written consent of the Owner. No such written approval shall relieve Design-Builder of any obligations of this Contract, and

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any transferee shall be considered the agent of the Design-Builder and bound to perform in accordance with the Design-Build Documents. Design-Builder shall remain liable as between the original parties to the Contract as if no assignment had occurred. If Design-Builder attempts to make such an assignment without such consent, the Design-Builder shall nevertheless remain legally responsible for all obligations under the Contract and such assignment shall be void.

**§ 15.2.2** The Owner may, without consent of the Design-Builder, assign the Contract and the Design-Builder shall execute all consents reasonably required to facilitate such assignment.

**§ 15.2.3** If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.11, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Contract, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

### **§ 15.3 Written Notice**

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

### **§ 15.4 Rights and Remedies**

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

**§ 15.4.2** Except as otherwise provided in this Contract, no action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

### **§ 15.5 Tests and Inspections**

**§ 15.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by Applicable Laws. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

**§ 15.5.2** If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

**§ 15.5.3** If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

**§ 15.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

**§ 15.5.5** If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.5.7 As required by the Design-Build Documents, Work done or material used without required inspection or testing and/or without providing timely notice to the Owner may be ordered removed at the Design-Builder's expense.

### § 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

### § 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

### § 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build 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.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.8.3 The Design-Build Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Design-Build Documents, interpretations will be based on the following descending order of precedence:

- .1 The Agreement, as amended by Modifications;
- .2 Detailed Schedules of finishes, equipment and other items included in the Specifications;
- .3 Plans and Specifications (other than Division One and the Detailed Schedules to the Specifications);
- .4 Large-scale drawings on Plans;
- .5 Small-scale drawings on Plans;
- .6 Dimension numbers written on Plans which shall prevail and take precedence over dimensions scaled from Plans;
- .7 The Solicitation Document, and any addenda thereto.

Notwithstanding the above-listed interpretational procedures, in no event shall any limitations or disclaimers be allowed except to the extent expressly provided in this Agreement.

**§ 15.8.4** In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's interpretation in writing.

**§ 15.8.5** If the Design-Builder finds discrepancies in, or omissions from the Design-Build Documents, or if the Design-Builder is in doubt as to their meaning, the Design-Builder shall at once notify the Owner. Matters concerning an interpretation of requirements of the Design-Build Documents will be decided by the Owner. Responses to Design-Builder's requests for interpretation of Design-Build Documents will be made in writing by Owner within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner will be consistent with the intent of and reasonably inferable from the Design-Build Documents. Design-Builder shall not proceed without direction in writing from the Owner.

**§ 15.8.6** References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

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

#### **§ 15.9 Attorneys' Fees**

Should any arbitration or legal proceeding be commenced in connection with any Claim, dispute or other matter in question between the Owner and Design-Builder arising out of or relating to the Contract or the breach thereof, to obtain a construction of or to enforce any provision of the Contract, to rescind the Contract, or to enforce or collect any judgment or decree of any court relating to the Contract, the prevailing party shall be entitled to recover its attorneys' and expert witnesses' fees and related costs, disbursements and expenses incurred before and at trial, on review, on appeal or in bankruptcy court.

#### **§ 15.10 Entire Agreement.**

The Contract represents the entire and integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. Any proposed special terms or conditions proposed by Design-Builder, Architect, Consultants or Contractors (including, but not limited to, any limitations of liability or remedy or disclaimers of liability or remedy) whether in a warranty or otherwise shall expressly not be part of this Contract and shall not otherwise apply to the Project even if such terms and conditions are attached as an exhibit or otherwise. Any inconsistency between this Contract and any warranties or attachments shall be resolved in favor of this Contract, which means that, in the case of any limitations of liability or remedy or disclaimers of liability or remedy, no such limitations or disclaimers shall be allowed.

#### **§ 15.11 Severability**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

#### **§ 15.12 Survival of Obligations**

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination and are not expressly terminated by Owner at the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

### **ARTICLE 16 PUBLIC CONTRACTING PROVISIONS**

#### **§ 16.1 MWESB Report**

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Design-Builder shall submit a MWESB Report to the Owner identifying all Minority, Women and Emerging Small Business (MWESB) enterprises, as those terms are defined in ORS 200.005, receiving contracts throughout the course of the Work. An initial MWESB report is required within ten (10) Days of Design-Builder's execution of the Design-Build Amendment. MWESB Reports are required annually on June 30 of each year during the performance of the Work. Contracts (or Design-Build Amendments) first executed by Design-Builder within ninety (90) Days before June 30 of the year of execution by Design-Builder may at the discretion of Owner be exempt from submitting the annual MWESB Report otherwise due on that June 30. The final MWESB Report shall be filed with the application for final payment. The initial report shall include the total number of contracts and subcontracts awarded to MWESB enterprises and the dollar value of their respective contracts and subcontracts. The annual reports shall include the total number of contracts and subcontracts awarded to MWESB enterprises, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months. The final report shall include the total number of contracts and subcontracts awarded to MWESB enterprises and the dollar value of their respective contracts and subcontracts including all Contracts and Modifications incorporated during the course of the project. The reports shall only include enterprises certified with the State of Oregon as MWESB enterprises and shall include individual identification of each enterprise as a Minority business enterprise, a Women business enterprise, and/or an Emerging Small Business Enterprise, as applicable. **TIMELY RECEIPT OF MWESB REPORTS BY OWNER SHALL BE A CONDITION PRECEDENT TO OWNER'S OBLIGATION TO PAY ANY PROGRESS PAYMENTS OR FINAL PAYMENT OTHERWISE DUE.**

#### **§ 16.2 Retirement System Status and Taxes**

Design-Builder 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 this Contract. Design-Builder shall submit a certification of such compliance in accordance with ORS 305.385(6). Design-Builder will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the Design-Builder is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Design-Builder's federal or state tax obligations.

#### **§ 16.3 Government Employment Status**

**§ 16.3.1** If any portion of the Work is to be federally funded, Design-Builder represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Design-Builder from holding another contract with the Federal Government.

**§ 16.3.2** Design-Builder represents and warrants that Design-Builder is not an employee of the State of Oregon for purposes of performing Work under this Contract.

#### **§ 16.4 Compliance with Laws**

**§ 16.4.1** Design-Builder shall comply with Applicable Laws pertaining to the Work and the Contract. Failure to comply with such requirements shall constitute a material breach of Contract and shall be grounds for Contract termination for cause. Without limiting the generality of the foregoing, Design-Builder expressly agrees to comply with the following, as applicable: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A, as amended; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**§ 16.4.2** Design-Builder shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.

- .2 Design-Builder shall maintain, in current and valid form, all licenses and certificates required by Applicable Laws or this Contract when performing the Work.

**§ 16.4.3** Unless contrary to federal law, Design-Builder shall certify that it shall not accept a bid from Contractors to perform Work as described in ORS 701.005 under this Contract unless such Contractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Design-Builder.

**§ 16.4.4** Unless contrary to federal law, Design-Builder shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

**§ 16.4.5** The following notice is applicable to Design-Builders who perform excavation Work. **ATTENTION:** Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

**§ 16.4.6** Failure to comply with any or all of the requirements of this Section 16.4 shall be a material breach of Contract and constitute grounds for Contract termination for cause. Damages or costs resulting from such noncompliance shall be the responsibility of Design-Builder.

### **§ 16.5 Access to Records**

Design-Builder shall keep, at all times on the Work site, one record copy of the complete Design-Build Documents, including the plans, specifications, Change Orders, Change Directives and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner access thereto.

### **§ 16.6 Funds Available and Authorized**

If Owner fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by Owner's budget and Owner determines, in its assessment and ranking of the policy objectives explicit or implicit in Owner's budget, Owner may determine it is necessary to and may terminate the Contract.

### **§ 16.7 Minimum Wage Rates on Public Works**

Design-Builder shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Design-Build Documents. Pursuant to ORS 279C.838 and 279C.840, Design-Builder shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts. If the Work is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Design-Builder shall pay the higher of the applicable state or federal prevailing rate of wage. The prevailing rate of wage will be determined as of the first date that Design-Builder enters into an amendment for construction work subject to prevailing wage requirements.

### **§ 16.8 Payroll Certification and Fee Requirements**

**§ 16.8.1** In accordance with ORS 279C.845, the Design-Builder and every Contractor shall submit written certified statements to the Owner, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Design-Builder or the Contractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Design-Builder or the Contractor that the Design-Builder or Contractor has read the certified statement, that the Design-Builder or Contractor knows the contents of the certified statement, and, that to the Design-Builder's or Contractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Design-Builder or Contractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month. The Design-Builder and Contractors shall preserve the certified statements for a period of ten (10) years from the date of Final Completion.

**§ 16.8.2** Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Design-Builder on this public works project until the Design-Builder has filed the certified statements required by Section 16.8.1. The Owner shall pay to the Design-Builder the amount retained under this Section 16.8.2 within 14 days after the Design-Builder files the required certified statements, regardless of whether a Contractor has failed to file certified statements.

**§ 16.8.3** Pursuant to ORS 279C.845(8), the Design-Builder shall retain 25 percent of any amount earned by a first-tier Contractor on this public works project until the first-tier Contractor has filed with the Owner the certified statements required by Section 16.8.1. Before paying any amount retained under this Section 16.8.3, the Design-Builder shall verify that the first-tier Contractor has filed the certified statement. Within 14 days after the first-tier Contractor files the required certified statement the Design-Builder shall pay the first-tier Contractor any amount retained under this Section 16.8.3.

**§ 16.8.4** In accordance with statutory requirements and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

### **§ 16.9 Prompt Payment and Contract Conditions**

**§ 16.9.1** As a condition to Owner's performance hereunder, the Design-Builder shall:

- .1 Make payment promptly, as due, to all persons supplying to Design-Builder labor or materials for the prosecution of the Work provided for in this Contract.
- .2 Pay all contributions or amounts due the State Industrial Accident Fund from such Design-Builder or Contractor incurred in the performance of the Contract.
- .3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Design-Builder will not assign any claims that Design-Builder has against Owner, or assign any sums due by Owner, to Contractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Contractors 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.

**§ 16.9.2** As a condition to Owner's performance hereunder, if Design-Builder fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Design-Builder of a Contractor 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 Design-Builder under this Contract. Owner reserves the right to make payments directly or by multiple-payee check and Design-Builder hereby consents to such direct and multiple-payee check payments. Upon Owner's request, Design-Builder shall furnish to Owner the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons. Payment of claims in this manner shall not relieve the Design-Builder or the Design-Builder's surety from obligation with respect to any unpaid claims.

**§ 16.9.3** Design-Builder shall include in each subcontract for property or services entered into by the Design-Builder and a first-tier Contractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the Design-Builder to pay the first-tier Contractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the Design-Builder by the public contracting agency under such contract. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to lower-tier parties in a similar manner.

**§ 16.9.3.1** Design-Builder shall provide a first-tier Contractor with a standard form that the first-tier Contractor may use as an application for payment or as another method by which the Contractor may claim a payment due from the Design-Builder. Design-Builder shall use this the same form and regular administrative procedures for processing

payments during the entire term of the subcontract. Design-Builder may change the form or the regular administrative procedures the Design-Builder uses for processing payments if the Design-Builder notifies the Contractor in writing at least 45 days before the date on which the Design-Builder makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

**§ 16.9.4** All employers, including Design-Builder, that employ subject workers who work under this contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Design-Builder shall ensure that each of its Contractors complies with these requirements.

#### **§ 16.10 Payment for Medical Care**

As a condition to Owner's performance hereunder, Design-Builder shall 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 Design-Builder, all sums of which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder 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.

#### **§ 16.11 Hours of Labor**

As a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract 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, Design-Builder shall pay the employee at least time and a half pay:

- .1 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
- .2 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
- .3 For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Design-Builder shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

This Section 16.11 will not apply to Design-Builder's Work under this Contract to the extent Design-Builder is currently a party to a collective bargaining agreement with any labor organization.

This Section 16.11 shall not excuse Design-Builder from completion of the Work within the time required under this Contract.

#### **§ 16.12 Dual Payment Sources**

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

### **ARTICLE 17 CONTRACT EXHIBITS**

**§ 17.1** This Contract is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder as modified by Owner and Design-Builder, dated \_\_\_\_\_, 2016.
- .2 AIA Document A141™-2014, Exhibit A, draft form of Design-Build Amendment
- .3 Exhibit B, Insurance Requirements
- .4 Exhibit C, Owner's Criteria
- .5 Exhibit D, Forms of Waivers and Releases
- .6 Exhibit E: Forms of Payment and Performance Bonds
- .7 Exhibit F: Reimbursable Travel and Per Diem Expenses
- .8 Exhibit G: Space Plan for the Project
- .9 Exhibit H: Conceptual Design Sketch for the Project



- .10 Exhibit I: Floor Plan Exhibit
- .11 Exhibit J: Construction Equipment Cost Schedule

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
**DESIGN-BUILDER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

*(Table deleted)(Paragraphs deleted)*



# Additions and Deletions Report for AIA<sup>®</sup> Document A141<sup>™</sup> – 2014

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 09:48:22 on 07/29/2016.

## PAGE 1

Notwithstanding the foregoing, this Agreement relates back to and is effective as of the Design-Builder's first provision of services or Work on the Project.

...

~~(Name, legal status, address and other information)~~

Oregon State University  
Attn: Debera Massahos  
644 SW 13<sup>th</sup> Street  
Corvallis, OR 97333

Phone: 541-737-4261  
Fax: 541-737-2170

...

for the following Project:

Heckart Lodge – Graduate School, 2900 SW Jefferson Way, Corvallis, OR 97333

~~(Name, location and detailed description)~~Heckart Lodge is a 12,250 gross square feet ("GSF") building, renovated within the last five years to house classrooms, academic testing and offices. This tenant improvement project will renovate floors 1 and 2, totaling 8,500 GSF, to accommodate offices, student collaborative space and a classroom for the Graduate School. The Work will include design and construction of:

- Security upgrades to existing reception area, providing lockable space for confidential files at night in a shared building;
- Overall opening up of space to provide more daylight to the core of the building;
- Expansion from one or two 24-seat classrooms to one 40-seat classroom;
- Combining classrooms to provide open office environments for staff;
- Build out of office suites to provide private offices for administrative leadership and confidential student conversations;
- HVAC modifications as necessary to rebalance classrooms to office use;
- Maintaining access to and ability to use and occupy the third floor for Disability Access Services ("DAS") testing during construction; and
- No anticipated work required to site, landscape, exterior façade or structural systems.

## PAGE 2

### 16 SCOPE OF THE AGREEMENT PUBLIC CONTRACTING PROVISIONS

## TABLE OF EXHIBITS 17 CONTRACT EXHIBITS

...

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.  
(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.) Section 1.1 and in Exhibit C: Owner's Criteria.

...

*(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)*

See Space Program for the Project, attached as Exhibit G.

...

*(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)*

See OSU Construction Standards: <http://fa.oregonstate.edu/cpd-standards>

See Conceptual Design Sketch for the Project, attached as Exhibit H.

### PAGE 3

~~(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)~~

Heckart Lodge (the "Building") is a 12,250 GSF building, renovated within the last five years to house classrooms, academic testing and offices. This tenant improvement project will renovate floors 1 and 2, totaling 8,500 GSF, to accommodate offices, student collaborative space and a classroom for the Graduate School. The Work will include design and construction of:

- Security upgrades to existing reception area, providing lockable space for confidential files at night in a shared building;
- Overall opening up of space to provide more daylight to the core of the building;
- Expansion from one or two 24-seat classrooms to one 40-seat classroom;
- Combining classrooms to provide open office environments for staff;
- Build out of office suites to provide private offices for administrative leadership and confidential student conversations;
- HVAC modifications as necessary to rebalance classrooms to office use;
- Maintaining access to and ability to use and occupy the third floor for Disability Access Services ("DAS") testing during construction; and
- No anticipated work required to site, landscape, exterior façade or structural systems.

...

~~(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™ 2014, Exhibit C, Sustainable~~

Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Not applicable.

...

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Not applicable.

...

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Design and construction cost, including but not limited to design fees, construction labor, supervision, materials, bonds, and insurance: \$1.76 million.

§ 1.1.7 The Owner's agreed-upon design and construction milestone dates:

...

Design Development: October 3- November 4, 2016

Construction Documents: November 7, 2016 - January 6, 2017

...

January 20, 2017

.3 ~~Phased completion dates:~~

Construction commencement: January 30, 2017

...

June 30, 2017

...

Final Completion shall be achieved no later than 30 days after the achievement of Substantial Completion

#### **§ 1.1.7.1 ACTUAL DAMAGES**

The Design-Builder acknowledges and agrees that time is of the essence and that failure to timely perform and complete the services under this Agreement will result in significant costs, expenses, and damages to Owner, including, but not limited to, damages for loss of use and enjoyment, extended overhead and management costs, extra or extended services by Design-Builder or other contractors, claims by other design professionals, and possibly other types of costs, expenses and damages incurred by Owner. Design-Builder is responsible to Owner for all such costs, expenses and damages, including but not limited to, both economic and noneconomic losses, to the extent caused by Design-Builder or those for whom Design-Builder is responsible.

§ 1.1.8 ~~The Owner requires the Design-Builder~~ Design-Builder agrees to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

**PAGE 4**

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. ~~all federal,~~

state and local laws, codes, rules, regulations and ordinances, and lawful orders of public authorities applicable to the Work and the Contract ("Applicable Laws").

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall ~~Applicable Laws~~, the Design-Builder shall promptly notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification specifically identifying the change in accordance with Article 6.

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. ~~Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.~~

§ 1.1.13 It is understood that the Design-Builder, before submitting an Offer, has made a careful examination of the Design-Build Documents, has become fully informed as to the quality and quantity and character of the Work required, and has made a careful examination of the location and conditions of the Work. The Owner will in no case be responsible for any loss or for any unanticipated costs that may be suffered by the Design-Builder as a result of the Design-Builder's failure to acquire full information in advance in regard to all conditions pertaining to the Work. No oral agreement or conversation with any officer, agent, or personnel of the Owner either before or after the execution of this Contract, shall affect or modify any of the terms or obligations herein contained.

...

§ 1.2.1 The Owner identifies the following ~~representative~~ Owner's Authorized Representative in accordance with Section 7.1.1:

*(List name, address and other information.)*

Project Manager: Libby Ramirez, Manager-Capital Programming  
Oregon State University  
Capital Planning and Development  
Oak Creek Building  
3015 SW Western Blvd.  
Corvallis, OR 97333

**§ 1.2.1.1 Authority of the Owner's Authorized Representative**

§ 1.2.1.1.1 The Contract Officer designated by OSU has overall authority to administer the Contract and has been delegated OSU Contract signature authority. The Contract Officer has authority to make findings, determinations, and decisions with respect to the Contract and, when necessary or convenient, to modify, change or terminate the Contract.

§ 1.2.1.1.2 The Owner's Authorized Representative designated by OSU, is authorized to perform the on-site administration of the Work. The Owner's Authorized Representative's onsite administration will include: deciding all questions that may arise as to the quality and acceptability of Materials furnished and Work performed and as to the rate of progress of the Work and all Work-related questions as to the Design-Builder's acceptable completion of the Work.

§ 1.2.1.1.3 In extraordinary circumstances, the Owner's Authorized Representative, with the Approval of the Contract Officer, will have the authority to suspend the Work wholly or in part due to the Design-Builder's failure to carry out provisions of the Contract, for failure to carry out orders, for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason determined by the Contract Officer to be in OSU's interest, as provided under Section 13.1.

§ 1.2.1.1.4 The Owner's Authorized Representative may, at reasonable times, inspect that part of the plant or place of business of the Design-Builder or Subcontractor that is related to the performance of the Work.

§ 1.2.1.1.5 For the avoidance of doubt, only the OSU Vice President for Finance and Administration is authorized to execute Amendments, Change Orders, or unilateral Change Orders under this Contract that are legally binding on OSU. The OSU Vice President for Finance and Administration may provide to the Design-Builder in writing, the position titles of OSU delegated contract signatory authorities, authorized to execute Amendments, Change Orders or unilateral Change Orders under this Contract that are legally binding on OSU. OSU will include any specified dollar limitations.

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows: Design-Builder identifies the following representative in accordance with Section 3.1.3:

PAGE 5

§ 1.2.3 The Owner will retain the following consultants and separate contractors: following persons shall serve in the following roles for the Design-Builder:

.1 Project Executive: \_\_\_\_\_

.2 Senior Project Manager: \_\_\_\_\_

.3 Project Manager: \_\_\_\_\_

.4 Project Superintendent: \_\_\_\_\_

*(List discipline, scope of work, and, if known, identify by name and address.)*

Unless they leave the employ of the Design-Builder, the above-named persons shall serve in these positions throughout the duration of the Design-Builder's performance of the Contract except as approved otherwise in writing in advance by the Owner. Persons named to replace those set out above shall be approved in writing in advance by the Owner. The Owner's approvals as required by this Section 1.2.5 shall not unreasonably be withheld.

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

*(List name, address and other information.)*

[Intentionally deleted.]

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party. [Intentionally deleted.]

PAGE 6

For any Claim subject to, but not resolved by, ~~mediation pursuant to Section 14.3,~~ the process set forth in Section 14.1, the method of binding dispute resolution shall be ~~the following:~~

*(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)*

~~Arbitration pursuant to Section 14.4~~

~~Litigation in a court of competent jurisdiction~~

~~Other: (Specify)~~

Litigation as set forth in Section 14.2:

...

**§ 1.4.1 Design-Build Documents.** The Design-Build Documents consist of ~~this (1) this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications "Agreement"~~ and (2) other documents listed in this Agreement, both of which are subject to amendment by Modification issued after execution of this Agreement. A Modification is (1) a written amendment to the ~~Contract Agreement~~ signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

**§ 1.4.2 The Contract.** The Design-Build Documents form the Contract. ~~The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.~~

**§ 1.4.3 The Work.** The term "Work" means the design, construction and related services ~~required~~ necessary to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, ~~equipment~~ equipment, transportation, and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

...

**§ 1.4.6 Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless specifically identified as having been incorporated into a Modification.

**§ 1.4.7 Owner.** The Owner is ~~the person or entity identified as such in the Agreement~~ Oregon State University and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized ~~representative~~ representative, subject to the limitations on the authority of the Owner's authorized representative specified in Section 1.2.1.

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**§ 1.4.10 Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the ~~applicable jurisdiction~~ State of Oregon. The Architect is referred to throughout the Design-Build Documents as if singular in number.

**§ 1.4.11 Contractor.** A Contractor is a person or entity performing all or a portion of the labor, services, construction, or furnishing materials and equipment, required in connection with the Work, directly or indirectly for the Design-Builder. The Contractor shall be lawfully ~~licensed, if required in the jurisdiction where the Project is located.~~ licensed with the Construction Contractors Board in accordance with ORS 701.035 to 701.055. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

...

**§ 1.4.13 Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, ~~as set forth in the Design-Build Amendment for Substantial Completion of the Work.~~

**§ 1.4.14 Day.** The term "day" as used in the Design-Build Documents shall mean calendar ~~day unless otherwise specifically defined.~~ day, including weekdays, weekends and holidays, unless otherwise specifically defined.

**§ 1.4.14.1 Business Day.** Business Day shall mean every day except Saturday, Sunday, and legal holidays recognized for employees of Oregon State University.

...

**§ 1.4.16 Solicitation Document.** The Solicitation Document is the Instructions to Bidders or Offerors or a Request for Proposal or a Request for Quotes.

**§ 1.4.17 Plans.** Plans are the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

**§ 1.4.18 Specifications.** Specifications are any description of the physical or functional characteristics of the Work, or of the nature of a supply, service or construction item. Specifications may include a description of any requirement for inspecting, testing or preparing a supply, service or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the results or products to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. Specifications may be incorporated by reference or may be attached to the Contract.

### **§ 1.5 Review By Others**

Review or approval by Owner or its agents of Design-Builder's design, means, methods, techniques, procedures or Submittals, or of any other aspect of Design-Builder's Work or services shall not relieve Design-Builder of its sole liability for any damages resulting from or arising out of defects or deficiencies in the Design-Builder's design, means, methods, techniques, procedures or submittals, or of any other aspect of Design-Builder's Work or services.

...

**§ 2.1.1** ~~Unless otherwise agreed, payments~~ Payments for Work performed prior to ~~Execution~~ execution of the Design-Build Amendment shall be made ~~monthly~~ monthly by Owner. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

*(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)*

The Owner shall pay the Design-Builder for Work performed before execution of the Design-Build Amendment the reasonable and actual costs incurred by the Design-Builder for design, Reimbursable Expenses, administration, labor, services, materials and equipment. The total of such costs is guaranteed by the Design-Builder not to exceed the maximum sum of \$ [Amount]. Such maximum sum is referred to as the Design Guaranteed Maximum Price. Costs incurred by Design-Builder which would cause the Design Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

### **PAGE 8**

**§ 2.1.3.1** Reimbursable Expenses are in addition to compensation set forth in ~~Section 2.1.1 and 2.1.2 and~~ Section 2.1.2 but subject to the Design Guaranteed Maximum Price and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 ~~Transportation and authorized out-of-town travel and subsistence;~~ subsistence, as detailed in Exhibit F;

...

**§ 2.1.3.2** For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of ~~percent~~ (zero percent 0%) of the expenses incurred.



~~§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment~~

~~§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid ( ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder. (Insert rate of monthly or annual interest agreed upon.)~~

~~—%~~

~~§ 2.1.4 [Intentionally deleted.]~~

~~§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first. [Intentionally deleted.]~~

~~...~~

~~For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment. Amendment and as provided in Article 9.~~

~~...~~

~~§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located. All Work shall be performed in a professional manner and unless the means or methods of performing a task are specified elsewhere in the Design-Build Documents, Design-Builder shall employ methods that are generally accepted and used by the industry, in accordance with industry standards.~~

~~§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project. comply with any applicable licensing requirements in the State of Oregon, and the Design-Builder shall be responsible for ensuring that the Architect, Contractors, and Consultants are in compliance with the applicable licensing requirements in the State of Oregon.~~

~~§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.~~

~~§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.~~

~~§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.~~

~~§ 3.1.3 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.~~

~~§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work. perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, reviews, tests, inspections or approvals of the Owner.~~

§ 3.1.4.1 The Design-Builder shall perform the Work in compliance with Applicable Laws. If the Design-Builder performs Work contrary to Applicable Laws, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.4.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any Applicable Laws. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any Applicable Laws, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification specifically identifying the change to the Owner's Criteria in accordance with Article 6.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling. The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5.1 The services to be performed under this Contract are those of an independent contractor as defined in ORS 670.600. The Design-Builder is an independent contractor and not an officer, employee, or agent of the Owner as those terms are used in ORS 30.265.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder. **General Consultation.** No less than twice a month, the Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work. Design-Builder shall cause its representatives, and representatives of Architect, Consultants and Contractors at all tiers as designated by Owner, if any, to attend and participate in weekly progress meetings. Design-Builder shall prepare and distribute to all attendees minutes of such progress meetings for review and correction. Progress meetings may be utilized to review the Design-Builder's design and construction schedules, requests for information, or to address any delays, unusual conditions, or critical items which have affected or could affect the progress of the Work, and to consider any other matter or subject of relevance to the Work as determined by Owner.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Work. When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect, Consultants and Contractors are performed for the benefit of the Owner. Each agreement with Architect, Consultants and Contractors at every tier shall provide that the Owner is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the Owner shall have the right, but not the obligation, to assert claims directly against the Architect, Consultants and Contractors for breach of contract, breach of express warranties, breach of implied warranties including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The Owner and Design-Builder acknowledge and agree that the purpose of this Section 3.1.7 is to enable the Owner at its discretion, in addition to the Design-Builder, to assert claims for damages and indemnification directly against Architect, Consultants and Contractors that are or may be responsible for breach of the contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project.

### § 3.1.8 **Progress Reports**

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 — Work completed for the period;
- .2 — Project schedule status;
- .3 — Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 — Responses to requests for information to be provided by the Owner;

- ~~.5 Approved Change Orders and Change Directives;~~
- ~~.6 Pending Change Order and Change Directive status reports;~~
- ~~.7 Tests and inspection reports;~~
- ~~.8 Status report of Work rejected by the Owner;~~
- ~~.9 Status of Claims previously submitted in accordance with Article 14;~~
- ~~.10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;~~
- ~~.11 Current Project cash flow and forecast reports; and~~
- ~~.12 Additional information as agreed to by the Owner and Design-Builder.~~

~~§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:~~

- ~~.1 Design-Builder's work force report;~~
- ~~.2 Equipment utilization report; and~~
- ~~.3 Cost summary, comparing actual costs to updated cost estimates.~~

### ~~§ 3.1.9 Design-Builder's Schedules~~

~~§ 3.1.8 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.~~

### ~~§ 3.1.9 Progress Reports~~

~~§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. Design-Builder shall keep the Owner informed of the progress and quality of the Work. Twice a month, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:~~

- ~~.1 Work completed for the period;~~
- ~~.2 Project schedule status;~~
- ~~.3 Submittal schedule and status report, including a summary of outstanding Submittals;~~
- ~~.4 Responses to requests for information to be provided by the Owner;~~
- ~~.5 Approved Change Orders and Change Directives;~~
- ~~.6 Pending Change Order and Change Directive status reports;~~
- ~~.7 Tests and inspection reports;~~
- ~~.8 Status report of Work rejected by the Owner;~~
- ~~.9 Status of Claims previously submitted in accordance with Article 14;~~
- ~~.10 Cumulative total of the Cost of the Work to date including the Design Guaranteed Maximum Price and Reimbursable Expenses, if any;~~
- ~~.11 Current Project cash-flow and forecast reports;~~
- ~~.12 Meeting Minutes; and~~
- ~~.13 Additional information as agreed to by the Owner and Design-Builder.~~

~~§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner. In addition, where the Contract Sum is the Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:~~

- ~~.1 Design-Builder's work force report;~~
- ~~.2 Equipment utilization report; and~~
- ~~.3 Cost summary, comparing actual costs to updated cost estimates.~~

~~§ 3.1.10 Certifications. Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and~~

belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Build Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

#### **§ 3.1.11 Design-Builder's Submittals**

**§ 3.1.11.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

**§ 3.1.11.2** By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

**§ 3.1.11.3** The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

#### **§ 3.1.10 Design-Builder's Schedules**

**§ 3.1.11.4** The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

**§ 3.1.10.1** The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall utilize the critical path method, shall be revised at appropriate intervals as required by the conditions of the Work and Project which shall be no less often than monthly, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

**§ 3.1.10.2** Acceptance of the Schedule by the Owner does not constitute agreement by the Owner as to the Design-Builder's sequencing, means, methods, or durations.

**§ 3.1.11.5** All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

**§ 3.1.10.3** The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

**§ 3.1.10.4** For purposes of whether any Change Orders or Change Directives extend the contractual dates of Substantial Completion and Final Completion, any "float" or "slack" time for the whole or any part of the Work is owned by the Owner. Owner reserves the right to negotiate the float if it is deemed to be in Owner's best interest to

do so. The Design-Builder shall not be entitled to make and waives any claim based upon an alleged inability to complete the Project early.

**§ 3.1.12 Warranty.** The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.1.10.5** In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Design-Builder's schedule, the Owner shall have the right to order the Design-Builder to take corrective measures as necessary to restore the progress of the Work to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) furnishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Design-Builder pursuant to this Section 3.1.10.5 shall be paid by the Design-Builder.

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

**§ 3.1.13 Royalties, Patents and Copyrights**

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

**§ 3.1.11 Certifications**

Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with Applicable Laws governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

**§ 3.1.13.1** The Design-Builder shall pay all royalties and license fees.

**§ 3.1.12 Design-Builder's Submittals**

**§ 3.1.12.1** Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.10.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to and waives any increase in Guaranteed Maximum Price or extension of Contract Time based on delay caused by Owner's review of Submittals. Owner reserves the right to finally approve the schedule and list of submittals.

**§ 3.1.13.2** The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or

manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

#### § 3.1.14 Indemnification

§ 3.1.12.2 By providing Submittals the Design-Builder represents to the Owner that it 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 Design-Build Documents.

§ 3.1.12.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.12.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents by Owner's review of any Submittals unless the Design-Builder has notified the Owner specifically in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.12.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12.6 Any corrections or revisions to Submittals made by the Owner shall be deemed acceptable by the Contractor, without change in the Guaranteed Maximum Price or Contract Time, unless said changes constitute changes to the Design-Build Documents and the Design-Builder provides the Owner with contrary written notice before commencing any such changed Work. In the absence of such notice, the Design-Builder shall make all corrections requested by the Owner and provide a corrected Submittal without change in the Guaranteed Maximum Price or Contract Time.

§ 3.1.12.7 The Design-Builder shall review for compliance with the Design-Build Documents, approve and submit to the Owner Submittals required by the Design-Build Documents 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. Submittals which are not marked as reviewed for compliance with the Design-Build Documents and approved by the Design-Builder may be returned by the Owner without action.

#### § 3.1.13 Warranty

The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents, will be free from defects and that all materials and equipment selected by Design-Builder, Architect, Consultants and Contractors will be suitable for the purposes indicated in the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Design-Builder shall promptly remove from the premises and replace all defective materials and equipment as determined by the Owner, whether incorporated in the Work or not. Removal and replacement shall be without loss or expense to the Owner, and Design-Builder shall bear the cost of repairing all Work destroyed or damaged by such removal or replacement.

§ 3.1.13.1 Without limitation of any remedy of Owner, upon Substantial Completion of the Work or termination of the Contract, the Owner shall be entitled to enforce at its option any and all Contractor warranties relating to Work

performed and materials and equipment furnished by such Contractors. The Design-Builder agrees to perform the Work in such manner so as to preserve any and all such Contractor warranties. The Design-Builder also shall collect, assemble in a binder, and submit to the Owner written Contractor warranties and related documents, including without limitation from Contractors at all tiers performing Work and furnishing materials, equipment, appliances and other components of the Project. All such written warranties shall extend to the Owner.

§ 3.1.13.2 Effective upon the written demand of the Owner or upon the insolvency, bankruptcy, dissolution or other incapacity of the Design-Builder, the Design-Builder assigns to the Owner all Contractors' warranties in materials and equipment and other portions or components of the Work.

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

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, 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, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14. The Design-Builder shall pay all royalties and license fees.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts. Without limiting the generality of Section 3.1.14.1, the Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers was specifically required by the Owner in Owner's Criteria, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

#### **§ 3.1.15 Contingent Assignment of Agreements**

##### **§ 3.1.15 Indemnification**

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- 1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- 2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement. To the fullest extent permitted by law, the Design-Builder shall indemnify, hold harmless, defend and reimburse the Owner and the members, partners, officers, directors, agents, employees and successors of any of them, from, for and against any and all suits, actions, awards, penalties, liabilities, claims, damages, losses and expenses, including but not limited to attorneys' fees and expert witness' fees, arising out of or resulting from performance of the Work, whether directly incurred or resulting from third-party claims, but only to the extent caused by (1) the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed or contracted by them or anyone for whose acts they may be liable; or (2) the failure of Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed or contracted by them or anyone for whose acts they may be liable to perform in accordance with the Contract. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.15.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension. To the fullest extent permitted by law, the indemnification obligation under this Section 3.1.15 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

#### **§ 3.1.16 Contingent Assignment of Agreements**

§ 3.1.16.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that assignment is effective only after termination of the Contract by the Owner for cause or convenience, pursuant to Sections 13.1.4, 13.2.2 or 13.2.3, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement, except that the assumption of obligations under the agreement does not release Design-Builder from liability for damages attributable to breaches of the agreement.

§ 3.1.16.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.16.3 Upon such assignment to the Owner under this Section 3.1.16, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement consistent with Section 3.1.16.2.

§ 3.1.16.4 Nothing in this Article or elsewhere in the Design-Build Documents shall be interpreted to (1) constitute an assignment of the Design-Builder's rights against the Owner to the Architect, Consultants, and Contractors or (2) make the Architect, Consultant or Contractor a third-party beneficiary of the Contract.

§ 3.1.16.5 Design-Builder shall ensure that no contractual arrangement between it and its subcontractors or suppliers of any tier or sub-tier shall prevent such assignment.

~~§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.~~

§ 3.1.17 Design-Builder's Insurance The Design-Builder shall purchase and maintain insurance as set forth in Exhibit B.

#### **§ 3.1.18 Bonds**

§ 3.1.18.1 Design-Builder shall purchase and maintain in effect at all times during the Contract a performance bond in a sum equal to the Contract Price and a separate payment bond also in a sum equal to the Contract Price.

~~§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.~~

§ 3.1.18.2 Bond forms furnished by the Owner and notarized by awarded Design-Builder's surety company authorized to do business in Oregon are the only acceptable forms of performance and payment security, unless otherwise specified in the Design-Build Documents.

§ 3.1.18.3 Before execution of the Contract, the Design-Builder shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The Design-Builder shall also include in every contract a provision requiring the Contractor to have a public works bond filed with the Construction Contractors



Board before starting Work, unless otherwise exempt, and shall verify that the Contractor has filed a public works bond before permitting any Contractor to start Work.

§ 3.1.18.4 Design-Builder shall obtain new payment and performance bonds, or increase the amount of the performance and payment bonds previously provided in connection with this Design-Build Contract, so that each new bond, or with respect to increases in existing bonds, the sum of the amount of each existing bond and the increase in the amount of each such existing bond, shall equal or exceed the Guaranteed Maximum Price, prior to supplying any labor or materials for prosecution of the Work under this Design-Build Amendment.

§ 3.1.18.5 In the event of a claim on Design-Builder's bonds, a notice of claim on bond as required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Design-Builder or Contractor at any place the Design-Builder or Contractor maintains an office or conducts business or at the residence of the Design-Builder or Contractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

To (here insert the name of the Design-Builder or Contractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Design-Builder or Contractor).

### **§ 3.2 Public Contracting Requirements**

§ 3.2.1 The Design-Builder shall comply with OSU Standards 580-061-0030 and OSU Standard 580-061-0035 in all respects for the solicitation of Minority, Women and Emerging Small Business Enterprises.

#### **§3.2.2 Contractor Selection**

Unless otherwise provided under this Section 3.2, the selection of all Contractors and suppliers shall be made by competitive bid in connection with instructions to bidders or a proposal in connection with a request for proposals ("Offer" or "Offers") in a manner that will not encourage favoritism or substantially diminish competition. The process shall conform to the following procedures, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

§ 3.2.2.1 Design-Builder shall submit to the individual designated by Owner in Section 1.2.1 its proposed procurement documents for review and comment before they are issued for solicitation. Design-Builder shall consider and respond to all Owner comments regarding any proposed Offer packages. As Offers are received, Design-Builder shall submit to the Owner an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by Owner. The competitive process used to award subcontracts by the Design-Builder may be monitored by the Owner's Authorized Representative; provided that such monitoring shall not excuse Design-Builder from compliance with the subcontracting requirements of this Contract. Design-Builder shall cooperate in all respects with Owner's monitoring. The Owner's Authorized Representative shall be advised in advance of and be given the opportunity to be present at Offer openings, and Design-Builder shall provide him or her with a summary or abstract of all Offers in form acceptable to the Owner's Authorized Representative, and copies of particular Offers if requested, prior to Design Builder's selection from bidders in connection with Instructions to Bidders or proposers in connection with a Request for Proposals ("Offerors"). Prior to opening Offers, the Design-Builder agrees to disclose in writing to Owner any financial interest it has in any such Contractor, supplier or other contracting party whenever such Contractor, supplier or contracting party intends to compete on any Project work, directly or indirectly, including whether such party is an Affiliate of Design-Builder.

§ 3.2.2.2 The following minimum requirements apply to the subcontract solicitation process:

- .1 Solicitations will be advertised at least 10 Days prior to opening in the Daily Journal of Commerce and at least one other newspaper specifically targeted to reach the Minority, Women and Emerging Small Business audience. Design-Builder also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- .2 Unless specific other prior arrangement has been made with Owner, all Offers will be written, and submitted to a specific location at a specific time. Design-Builder shall time-stamp all Offers as received. Contractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board, and must not have been declared ineligible to work on a public contract.
- .3 If fewer than three (3) Offers are submitted in response to any solicitation (inclusive of any Offer submitted by Design-Builder), prior written approval by Owner shall be required to accept an Offer.
- .4 Design-Builder may develop and implement a prequalification process for particular solicitations, followed by selection of successful Offers among those Offerors that Design-Builder determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
- .5 Design-Builder shall comply, and require Contractor compliance with, State of Oregon Bureau of Labor & Industries prevailing wage rates as specified in the Contract.
- .6 Owner may, at its sole discretion, require Design-Builder to re-solicit for Offers based on the same or modified documents.
- .7 Design-Builder shall review all Offers and shall work with Offerors to clarify Offers, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.
- .8 The Design-Builder will document any and all discussions with, questions received from, or answers and responses given to, any Offeror prior to the receipt of Offers, and will ensure that any information provided by Design-Builder to any Offeror that might affect Offers submitted by other Offerors is shared with all Offerors prior to the Offer submittal date, and Owner shall be entitled to inspect such documentation on request.
- .9 Design-Builder shall determine the lowest Offer for each solicitation that meets Design-Builder's reasonable performance standards for the components of the Work at issue; provided that if Design-Builder determines it is unable to execute a suitable subcontract with such Offeror, Design-Builder may, with Owner's prior approval, execute a subcontract with the second-lowest Offeror pursuant to Section 3.2.2.3 below.

**§ 3.2.2.3** Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require Design-Builder's agreement to establish and implement qualification and performance criteria for Offerors, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials, special packaging requirements for Contractor work, design-build work, or where an alternative contracting method can be demonstrated to clearly benefit Owner.

**§ 3.2.2.4** Design-Builder shall notify Owner in writing in advance before award of any proposed subcontract, which notice shall include summaries in a form acceptable to Owner of all Offers received for the subcontract at issue. Owner reserves the right to disapprove any proposed Contractors, suppliers and subcontract or supply contract awards, based on legal standards of responsibility.

**§ 3.2.2.5** Design-Builder's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the subcontracting process in order to protect the Owner's interests.

**§ 3.2.2.6 Subcontracting by Design-Builder**

**§ 3.2.2.6.1** Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the Design-Builder or its parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder (collectively "Affiliates") may submit an Offer in accordance with Section 3.2.2 to do Work with its own forces, provided at least 50% of the labor by such work unit is performed by employees of the Design-Builder or such Affiliate. If Design-Builder is selected to perform the work, the overhead and markup paid to

Design-Builder shall be limited to its Design-Builder's Fee percentage, and the markups applicable to Change Order Work set forth in Section 6.3.3.1 shall not apply.

§ 3.2.2.6.2 For those items for which the Design-Builder or any of its subsidiaries intends to submit an Offer, such intent must be publicly announced with the solicitation for Offers required by Section 3.2.2, and Owner notified in writing. All Offers for this work shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place.

§ 3.2.2.6.3 If any related party (i.e., wholly-owned subsidiary, affiliate, or other entity having a common ownership or management with the Design-Builder) is selected pursuant to Section 3.2.2, Design-Builder shall require such related party to comply with the same contractual stipulations required of Design-Builder under this Agreement.

#### **§ 3.2.2.7 Contractor Protests**

Design-Builder, acting as an independent contractor, shall include in the competitive process to award all subcontracts, a protest process for Contractors and suppliers that are competing Offerors, which process shall be subject to approval by Owner. Design-Builder shall be solely responsible for resolving the procurement protests of Contractors and suppliers. Design-Builder shall indemnify, defend, protect and hold harmless Owner from and against any such procurement protests and resulting claims or litigation. Design-Builder shall act as an independent contractor, and not an agent of Owner, in connection with any procurement protest. The provisions of this Section 3.2 are solely for the benefit of Owner, and do not grant any rights or remedies (including third party beneficiary rights) to any Offeror or other protester, in connection with any procurement protest or claim.

#### **§ 3.2.3 Design-Builder Representations, Warranties, and Certifications**

§ 3.2.3.1 Design-Builder represents and warrants to Owner that it is qualified to do business as a licensed general contractor under the laws of the State of Oregon, and has all requisite corporate power and corporate authority to carry on its business as now being conducted.

§ 3.2.3.2 Design-Builder represents and warrants to Owner that the Architect, Contractors, and Consultants have and will maintain all licenses required for their performance of the Work throughout the duration of the Work.

§ 3.2.3.3 Design-Builder warrants that execution and delivery of this Design-Build Contract and the consummation of the transactions contemplated hereby will not conflict with or result in a material breach of any terms or provisions of, or constitute a material default under, any note, bond, mortgage, indenture, license, lease, contract, commitment, agreement or other instrument or obligation to which Design-Builder is a party or by which Design-Builder may be bound.

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§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a ~~Modification~~-Modification specifically identifying the change to Owner's Criteria.

#### **PAGE 17**

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a ~~Modification~~-Modification specifically identifying the change to Owner's Criteria.

...

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a ~~Modification~~-Modification specifically identifying the change to Owner's Criteria. The Preliminary Design shall be consistent with the Design-Build Documents, including but not limited to the Owner's Criteria.

- ...
- .2 The proposed ~~Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee,~~ Guaranteed Maximum Price, including a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the ~~Contract Sum;~~ Guaranteed Maximum Price in such detail and with such substantiation as Owner may reasonably require;
  - .3 ~~The proposed~~ Any proposed changes to the date the Design-Builder shall achieve Substantial Completion; Completion so long as such date is earlier than the date identified in Section 1.1.7;
- ...
- .6 The date on which the Design-Builder's Proposal ~~expires,~~ expires, which date shall be no earlier than 90 days after submission of the Design-Builder's Proposal to Owner.

§ 4.4.1.1 Upon the Owner's receipt of Design-Builder's Proposal, the Owner and Design-Builder agree to negotiate in good faith regarding the terms and conditions of the Design-Build Amendment, including but not limited to the amount of the Guaranteed Maximum Price. If the Owner and Design-Builder are unable to agree on the terms and conditions of the Design-Build Amendment, the Owner shall have the right to terminate this Agreement pursuant to Section 13.1.5.

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§ 4.4.3 If the Owner and Design-Builder agree ~~on a proposal,~~ to the terms and conditions of the Design-Build Amendment, the Owner and Design-Builder shall execute the Design-Build Amendment ~~setting forth the terms of their agreement.~~ in the form set forth on Exhibit A with the blanks and other information completed in the normal course.

...

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. ~~Documents,~~ Documents, including but not limited to Drawings and Specifications. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with ~~the Design-Build Documents;~~ the Design-Build Documents, including but not limited to the Owner's Criteria, and shall include all items necessary for the proper execution and completion of the Work and reasonably inferable from the Design-Build Documents, including but not limited to the Owner's Criteria, as being necessary to produce the indicated results.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's ~~information,~~ approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. Unless the Owner and Design-Builder execute a Modification specifically identifying the particular deviation and Owner's agreement with such deviation, the Design-Builder shall correct the deviation in accordance with Article 11. The Construction Documents shall not modify ~~the Design-Build Documents unless the Owner and Design-Builder execute a Modification;~~ the Design-Build Documents, including but not limited to the Owner's Criteria. Execution of the Design-Build Amendment shall not constitute a Modification accepting a deviation unless the deviation is specifically identified as changing the Owner's Criteria and described as such in the Design-Build Amendment. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

...

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to ~~execution of the Design-Build Amendment,~~ (1) execution of the Design-Build Amendment and (2) Owner's approval of the Construction Documents.

§ 5.2.2 If the Owner and Design-Builder agree in ~~writing~~, a Modification, construction may proceed prior to the execution of the Design-Build Amendment. However, such ~~authorization~~-Modification shall not waive the Owner's right to reject the Design-Builder's ~~Proposal~~-Proposal or otherwise limit Owner's rights and remedies under this Contract.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, design and construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Design-Builder shall notify Owner in writing, before commencement of any portion of the Work, of any defect, deficiency, or incompatibility of any portion of the Project performed by others, including but not limited to Owner's consultants and separate contractors, which defect, deficiency, or incompatibility would in any manner affect the performance or quality of the Work. The failure to so notify Owner shall preclude Design-Builder from any claim, which otherwise may have been available under this Contract, for additional compensation, damages, or an extension of time relating to the affected Work. Contractor's commencement of its Work in any aspect or area where others have performed services or work shall constitute acceptance of the services or area and confirmation that Design-Builder can proceed with its Work.

§ 5.2.5 The Design-Builder shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Design-Build Documents, including but not limited to Owner's Criteria. The Design-Builder shall be responsible for evaluation, examination, inspection and quality surveillance of all Work performed by Architect, Consultants and Contractors. The Design-Builder shall determine when it is necessary to perform and shall perform, or arrange for the performance of, tests (in addition to those requested by the Owner or required by the Design-Build Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Design-Build Documents.

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§ 5.3.1.1 The Design-Builder's obligations under Section 5.3.1 shall include without limitation the obligation to pay the Architect, Consultants and Contractors and any other person or entity having mechanics', material suppliers', construction or similar lien rights or stop notices regarding the Project due to their performance of the Design-Builder's obligations under the Contract. Provided the Owner has fulfilled its payment obligations hereunder, the Design-Builder agrees to keep the Project and the Project site free and clear of any and all such lien claims or stop notices filed by any person or entity at any tier performing the Work or the Design-Builder's obligations under the Contract, excluding any lien filed by Design-Builder.

§ 5.3.1.2 In the event a claim of lien or stop notice is filed, whether due to nonpayment of the claimant or otherwise, and whether contested or not, the Design-Builder within ten (10) days after receipt of the Owner's demand and at the Design-Builder's expense shall cause the lien or stop notice to be removed by payment, compromise or the furnishing and perfection of a release bond or deposit pursuant to applicable law. If the Design-Builder fails to perform its obligation under the prior sentence, the Owner, without waiving or limiting its rights or remedies or those of any interested persons or entities, and at the Owner's sole discretion, may cause the lien or stop notice to be removed by paying the claimant directly, by paying the Design-Builder and claimant with a multiple-payee check or by furnishing and perfecting a lien release bond or deposit pursuant to applicable law; provided that in such instance the Owner shall be entitled to retain from any payments then due or which otherwise will become due to the Design-Builder, whether under the Contract or otherwise, an amount sufficient to hold the Owner harmless considering such payment or such furnishing and perfecting a release bond or deposit and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 5.3.1.3 Provided the Owner has fulfilled its payment obligations hereunder, and without limiting Design-Builder's other indemnity and related obligations under the Contract, Design-Builder agrees to indemnify, hold harmless, reimburse and defend (with counsel approved by the Owner) the Owner and any other person or entity with an interest in the Project or Project site from, for and against any and all liens, stop notices, actions, suits or

proceedings relating to such liens, and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

**§ 5.3.2** When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6. In addition, if Design-Builder desires to submit a substitute product or method for that Work in lieu of what has been specified, the Design-Builder shall provide written notice to the Owner setting forth the following information and documents:

- .1 a full explanation of the proposed substitution and a submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operation procedures and other like information necessary for a complete evaluation of the substitution;
- .2 reasons the substitution is advantageous and necessary, including but not limited to the benefits to the Owner and the Work in the event the substitution is accepted;
- .3 the adjustment, if any, in the Guaranteed Maximum Price, in the event the substitution is accepted;
- .4 the adjustment, if any, in the Contract Time and the Design-Builder's construction schedule in the event the substitution is accepted; and
- .5 an affidavit stating that (1) the proposed substitution meets all the requirements of the Design-Build Documents; (2) the Design-Builder will perform or cause to be performed the warranty and correction of Work obligations with respect to the proposed substitution that would have been performed for the specified product or method; (3) the Design-Builder waives all claims for additional costs related to the substitution other than those identified in .3 above; and (4) the Design-Builder will coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be completed in all respects.

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

**§ 5.3.3** The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Design-Builder shall not permit at the site of the Work the use of alcohol or tobacco (including but not limited to smokeless tobacco), illegal use of drugs or other controlled substances, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, or their respective contractors. The Design-Builder agrees to take prompt and effective corrective action in the event of violations of these standards of conduct. Design-Builder shall certify to Owner that Design-Builder has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

**§ 5.3.4** The Design-Builder shall coordinate, supervise and otherwise administer the Work so as to maintain labor harmony between and among the trades performing the Work and so as to avoid lockouts, strikes and other labor-related events or circumstances which delay or otherwise impact the Work; provided that the Design-Builder's obligations under this Section 5.3.4 shall be limited to events and circumstances which occur substantially where the Work is performed or which result substantially from the actions of persons or entities performing the Work.

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The Design-Builder shall pay sales, consumer, use and similar taxes, ~~for the Work provided by the Design-Builder,~~ if any, required for the Work, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

...

**§ 5.5.1** Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for ~~the building permit as well as any other~~ permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the ~~Project.~~ Project, including but not limited to mechanical, plumbing, electrical and similar special permits, plan check fees, system development charges, road approach and right-of-way permits, air discharge permits and all other necessary permits, approvals, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 5.5.2 The Design-Builder shall comply with and give notices required by ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities,~~ Applicable Laws, as more fully described in Section 16.4, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall ~~promptly~~ immediately provide notice to the Owner before conditions are ~~disturbed and in no event later than 21 days after first observance of the conditions, disturbed.~~ The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the ~~Contract Sum~~ Guaranteed Maximum Price or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the ~~Contract Sum~~ Guaranteed Maximum Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

...

§ 5.6.1 The Design-Builder shall include in the ~~Contract Sum~~ Guaranteed Maximum Price all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

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- .1 when finally reconciled, allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the ~~Contract Sum~~ Guaranteed Maximum Price but not in the allowances; ~~and~~
- .3 whenever costs are more than or less than allowances, the ~~Contract Sum~~ Guaranteed Maximum Price shall be adjusted accordingly by Change Order. OSU has prior approval rights on allowances, and may reject allowances. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under ~~Section 5.6.2.2,~~ Section 5.6.2.2; and
- .4 Unless Owner requests otherwise, Design-Builder shall provide to Owner a proposed fixed price for any allowance work prior to its performance.

...

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with ~~Contractors or suppliers~~ Contractors, including suppliers, to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

~~§ 5.7.2~~ If the Design-Builder changes any of the ~~personnel, Contractors or suppliers~~ Architect, Consultants, or Contractors identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new ~~personnel, Contractor or supplier~~ Architect, Consultants, or Contractors. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed ~~personnel, Contractor or supplier~~ Architect, Consultants, or Contractors or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

...

~~§ 5.7.3.1~~ If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the ~~Contract Sum~~ Guaranteed Maximum Price and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the ~~Contract Sum~~ Guaranteed Maximum Price or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

...

The Design-Builder shall confine operations at the site to ~~areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents~~, the laydown area, with OSU's prior written approval, and shall not unreasonably encumber the site with materials or equipment. The Design-Builder shall provide identification tags to Design-Builder's employees, subcontractors, and agents that identify those persons to the public as authorized Design-Builder workers.

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~~The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.~~ § 5.10.1 Design-Builder shall be responsible for coordinating all cutting, fitting, or patching of the Work to make its several parts come together properly and fit to receive or be received by work of other contractors or subcontractors shown upon, or reasonably implied by, the Design-Build Documents.

§ 5.10.2 Design-Builder shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Design-Build Documents, then Design-Builder shall be responsible for restoring such surfaces to the condition specified in the Design-Build Documents.

§ 5.10.3 The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with prior written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

...

~~§ 5.11.1 The Design-Builder shall~~ From time to time as may be prudent or ordered by the Owner, the Design-Builder shall, at its own expense, keep the premises and surrounding area free from accumulation of waste and excess materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove and properly dispose of all waste materials, rubbish, the Design-Builder's and Contractors' tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, Documents within twenty-four (24) hours, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.



...

~~The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.~~  
§ 5.12.1 The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.12.2 The Design-Builder shall maintain Owner's access to the 3rd Floor of the Building, which will be occupied and in use during the course of Design-Builder's Work. The Design-Builder shall notify the Building occupants regarding Project safety criteria and programs, clearly post safe routes in and around the building, and notify building occupants of construction updates involving safety.

...

~~§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project or services related to the Project, and to furnish materials and equipment for the Project, with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract.~~  
§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project or services related to the Project, and to furnish materials and equipment for the Project, with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

~~§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner. The cost of any materials or equipment to be provided by the Owner shall not be included in the Guaranteed Maximum Price. The cost of installing such materials or equipment shall be included in the Guaranteed Maximum Price to the extent the Design-Build Documents require the Design-Builder to install such materials or equipment as part of the Work. Handling and storage of any such materials or equipment supplied by the Owner and delivered to the site for installation by the Design-Builder shall be the responsibility of the Design-Builder.~~

~~§ 5.13.1.3 The Owner-Design-Builder shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them.~~  
§ 5.13.1.3 The Owner-Design-Builder shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Owner shall require its own forces and separate contractors to cooperate with the Design-Builder with respect to such coordination. Owner's own forces and separate contractors shall be subject to the Design-Builder's reasonable work and safety rules to the extent their work locations overlap. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. ~~The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules.~~ If the Design-Builder claims that any adjustment in the Guaranteed Maximum Price is necessary because of revisions to the Design-Builder's schedule, the Design-Builder shall make a Claim as provided in Article 14. The construction schedules so established shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

~~§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.~~  
§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract. [Intentionally deleted.]

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§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and Design-Builder shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

...

**§ 5.14.4** The Design-Builder shall promptly remedy damage the Design-Builder ~~wrongfully~~ causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

...

**§ 6.1.4** All Change Orders and Change Directives must be in writing. A Change Order or Change Directive will not be effective until its execution by both parties to this Contract, and all approvals required by public contracting laws have been obtained.

**§ 6.1.5** Design-Builder shall submit any request for additional compensation (and additional Contract Time if Design-Builder was authorized to start Work before an adjustment of Contract Time was approved) as soon as possible but no later than thirty (30) Days after receipt of Owner's request for additional Work, adjustments to the Work, or deletions from the Work. If Design-Builder's request for additional compensation or adjustment of Contract Time is not made within the thirty (30) Day time limit, Design-Builder's requests pertaining to that change in the Work shall be barred. The thirty (30) Day time limit for making requests shall not be extended for any reason, including without limitation Design-Builder's claimed inability to determine the amount of additional compensation or adjustment of Contract Time, unless an extension is granted in writing by Owner. If the Owner denies Design-Builder's request for additional compensation or adjustment of Contract Time, Design-Builder may proceed to file a Claim under Article 14. No other reimbursement, compensation, or payment will be made, except as provided in Section 6.1.5.1.

**§ 6.1.5.1** The thirty (30) Day time limit applies to claims of the Architect, Contractors, Consultants, suppliers, or manufacturers who may be affected by Owner's request for additions to, adjustments to or deletions from the Work and who request additional compensation or an extension of Contract Time to perform; Design-Builder has responsibility for contacting its Architect, Contractors, Consultants, suppliers, or manufacturers within the thirty (30) Day time limit, and including their requests with Design-Builder's requests. If the request involves Work to be completed by the Architect, Contractors, or Consultants, or materials to be furnished by suppliers or manufacturers, such requests shall be submitted to the Design-Builder in writing with full analysis and justification for the adjustments to compensation and Contract Time requested. The Design-Builder shall analyze and evaluate the merits of the requests submitted by Architect, Contractors, Consultants, suppliers, or manufacturers to Design-Builder prior to including those requests and Design-Builder's analysis and evaluation of those requests with Design-Builder's requests for adjustments to compensation or Contract Time that Design-Builder submits to the Owner. Failure of Architect, Contractors, Consultants, suppliers, or manufacturers or others to submit their requests to Design-Builder for inclusion with Design-Builder's requests submitted to Owner within the time period and by the means described in this Section 6.1.5.1 shall constitute a waiver of these claims. The Owner will not consider direct requests or claims from Architect, Contractors, Consultants, suppliers, or manufacturers or others not a party to this Contract. The consideration of such requests and claims under this Section 6.1.5.1 does not give any person, not a party to the Contract the right to bring a claim against Owner, whether in this claims process, in litigation, or in any dispute resolution process.

**§ 6.1.6** No request or Claim by the Design-Builder for additional costs or an adjustment of Contract Time shall be allowed if made after receipt of final payment application under this Contract. Final payment application must be made by Design-Builder within the time required under Section 9.10.1.2.

**§ 6.1.7** It is understood that changes in the Work are inherent in construction of this type. The number of changes, the scope of those changes, and the effect they have on the progress of the original Work cannot be defined at this time. The Design-Builder is notified that numerous changes may be required and that there will be no compensation made, unless and only to the extent otherwise provided in the Design-Build Documents, to the Design-Builder directly related to the number of changes. Each change will be evaluated for extension of Contract Time and increase or decrease in compensation based on its own merit.

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- .2 The amount of the adjustment, if any, in the ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the ~~Design-Builder's compensation;~~ Design Guaranteed Maximum Price; and

...  
**§ 6.3.1** A Change Directive is a written order ~~signed~~ by the Owner to the Design-Builder directing a change in the Work prior to agreement on adjustment, if any, in the ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the ~~Design-Builder's compensation;~~ Design Guaranteed Maximum Price, or Contract Time. The Owner may by 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~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the ~~Design-Builder's compensation;~~ Design Guaranteed Maximum Price, and Contract Time being adjusted accordingly.

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**§ 6.3.3** If the Change Directive provides for an adjustment to the ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, an adjustment in the ~~Design-Builder's compensation;~~ Design Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit ~~evaluation;~~ evaluation, subject to the limitations on Design-Builder's mark-up specified in Section 6.3.3.1;
- ...  
.3 ~~Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;~~ reimbursement for direct costs on the basis of Design-Builder's actual, reasonable, and allowable cost of labor, equipment, and material furnished on the Work performed, subject to the limitations on Design-Builder's mark-up specified in Section 6.3.3.1; or  
.4 As provided in Section 6.3.7.

**§ 6.3.3.1** If the adjustment in the Guaranteed Maximum Price or Design Guaranteed Maximum Price is made pursuant to .1 or .3 above, the following mark-ups will be allowed as additional compensation:

- .1 Labor: 15%  
.2 Equipment: 10%  
.3 Materials: 10%

**§ 6.3.3.2** When adjustments to or deletions from the Work under Section 6.3.3.1 are invoiced by an authorized Contractor at any level, each ascending tier subcontractor or contractor will be allowed a supplemental mark-up on each piece of subcontract Work covered by an Amendment as follows:

<u>\$0.00 - \$5,000.00</u>	<u>10%, and then</u>
<u>Over \$5,000.00</u>	<u>5%</u>

However, the maximum aggregate markup to be billed to Owner is not to exceed 10%.

...

**§ 6.3.5** Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with and diligently continue performance of the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the ~~Design-Builder's compensation;~~ Design Guaranteed Maximum Price, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the ~~Design-Builder's compensation,~~ Design Guaranteed Maximum Price, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the method for adjustment in the ~~Design-Builder's compensation,~~ Design Guaranteed Maximum Price, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and cost savings of those performing the Work attributable to the change, including, in case of an increase, an amount for ~~overhead and profit as set forth in the Agreement,~~ Design-Builder's Fee, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- ~~.1~~ — Additional costs of professional services;
- ~~.2~~ — Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- ~~.3~~ — Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- ~~.4~~ — Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- ~~.5~~ — Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and Cost of the Work as defined in Exhibit A.
- ~~.6~~ — Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, in the ~~Design-Builder's compensation,~~ shall be actual net cost. ~~Design Guaranteed Maximum Price,~~ shall be actual net cost decrease, including, but not limited to, Design-Builder's direct costs and a percentage adjustment to Design-Builder's Fee. When both additions and credits covering related Work or substitutions are involved in a change, the ~~allowance for overhead and profit~~ Design-Builder's Fee shall be figured on the basis of net ~~increase, increase or decrease,~~ if any, with respect to that change.

§ 6.3.9 ~~Pending~~ Upon final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. ~~The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14. No payment will be made for Work performed under a Change Directive until the total cost of the Change Directive has been approved by the Owner and the Change Directive has been reduced to a Change Order.~~

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the ~~Contract Sum~~ Guaranteed Maximum Price or, if prior to execution of the Design-Build Amendment, the adjustment in the ~~Design-Builder's compensation~~ Design Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

## § 6.4 Change Proposals

Within the time limits set out in this Section 6.4, after receipt of a Request For Change Order Proposal or a Change Directive, the Design-Builder shall submit to the Owner a written Change Order Proposal setting out any proposed adjustment in the Guaranteed Maximum Price or Contract Time, or both, to which the Design-Builder believes it (1) would be entitled as a result of the change in the Work proposed in the Request For Change Order Proposal or (2) is entitled as a result of the change in the Work directed by the Change Directive. Such Change Order Proposal may, at Owner's option, be in the form of a lump sum proposal or a unit price proposal, or a combination thereof, for a proposed increase in the Contract Sum, and in similar form for a proposed extension of the Contract Time, and

otherwise shall be in such form and in such detail as the Owner may require. Such Change Order Proposal shall be submitted as soon as practicable after the Contractor's receipt of the Request For Change Order Proposal or the Change Directive, but in no event later than fourteen days after the Contractor's receipt of the Request For Change Order Proposal or the Change Directive.

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~~§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. ("Owner's Authorized Representative") who shall have authority to bind the Owner as detailed in Section 1.2.1.~~

...

~~§ 7.2.2 The To the extent reasonably required for Design-Builder's performance of the Work, upon written request of the Design-Builder, the Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. systems. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.~~

~~§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project. [Intentionally deleted.]~~

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§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement Contract or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to reasonably rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.5.1 Notwithstanding the provisions of Section 7.2.4, the Design-Builder shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Design-Builder shall coordinate with utility and other involved third party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

...

~~§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder. [Intentionally deleted.]~~

...

§ 7.2.10 The Owner shall purchase and maintain insurance as ~~set forth in Exhibit B-~~specified in ORS 352.038.

§ 7.2.11 The Design-Builder agrees that the Owner shall have no obligation to deliver copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract or on the Project, and that the Owner's failure to deliver copies of such notices to the Design-Builder shall have no effect on the obligations of the Design-Builder to hold harmless and indemnify the Owner for mechanics', material suppliers', design professionals', construction or similar liens as required by the Contract or applicable law. However, the Owner shall make a good faith attempt to deliver promptly to the Design-Builder copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract.

...

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals by Owner is for limited purpose of check for general conformance with the design concept expressed in Owner's Criteria. The Owner's review of 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; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents-Design-Builder. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under ~~Sections 3.1.11, 3.1.12, and 5.2.3. the~~ Contract. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any design, construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the design or construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

...

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of ~~final completion~~-Final Completion in accordance with Section 9.10.

...

If the Design-Builder defaults or neglects to carry out all or a portion of the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such ~~deficiencies-~~deficiencies, including but not limited to the Owner's attorneys fees, and related costs, disbursements and expenses. If Owner completes the repairs using Owner's own forces, Design-Builder shall pay Owner at the rate of one and one-half (1½) times the standard hourly rate of Owner's forces, plus related overhead and any direct non-salary costs. If Owner completes the repairs using another contractor, Design-Builder shall pay Owner the amount of Owner's direct costs billed by the other contractor for the work, plus the direct salary costs and related overhead and direct non-salary expenses of Owner's forces who are required to monitor that contractor's work. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or

any other person or entity and shall not affect the Design-Builder's contractual duties under this Contract, including its warranty obligations.

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§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work. The Design-Builder shall at all times carry on the Work diligently, without delay and punctually fulfill all requirements herein. If required by the Design-Build Documents, Design-Builder shall commence Work on the site within fifteen (15) Days of Notice to Proceed, unless directed otherwise.

...

§ 8.1.4 The Owner shall have the right to accelerate the completion date of the Work, which may require the use of overtime. Such accelerated Work schedule shall be an acceleration in performance of Work, subject to the provisions of Article 6.

§ 8.1.5 The Owner shall not waive any rights under the Contract by permitting the Design-Builder to continue or complete in whole or in part the Work after the date of Substantial Completion and/or Final Completion.

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an ~~aet or~~ neglect of the Owner or of a consultant or Unavoidable Delay, then the Contract Time may be extended by Change Order for such reasonable time as the Owner and Design-Builder may agree, and, if the Unavoidable Delay is of the kind described in .1 and .3 below, Design-Builder may also be entitled to additional compensation. If Owner and Design-Builder cannot so agree, Design-Builder may make a Claim for an extension of the Contract Time pursuant to Article 14. Unavoidable Delay expressly includes delays that are:

- .1 Caused by any actions of the Owner, including changes in the Work ordered by Owner, or any other employee or agent of the Owner, or by separate contractor employed by the Owner; ~~or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.~~
- .2 Caused by labor disputes not caused or contributed to by the Design-Builder, Architect, Consultants or Contractors;
- .3 Caused by force majeure acts, events or occurrences that could not have been avoided by the exercise of care, prudence, foresight, and diligence on the part of the Design-Builder or its subcontractors.
- .4 Caused by adverse weather conditions. Any adverse weather conditions must be substantiated by documentary evidence that weather conditions were abnormal for the specific time period claimed, could not have been anticipated by the Design-Builder, and adversely impacted the project in a manner that could not be avoided by rescheduling the Work or by implementing measures to protect against the weather so that the Work could proceed. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. The parties agree that rainfall greater than the following levels cannot be reasonably anticipated:
  - .1 Daily rainfall equal to, or greater than, 0.50 inch during a month when the monthly rainfall exceeds the normal monthly average by twenty-five percent (25 %) or more.
  - .2 daily rainfall equal to, or greater than, 0.75 inch at any time.

~~§ 8.2.2~~ Claims relating to time shall be made in accordance with applicable provisions of Article 14. The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the project site shall be considered the official agency of record for weather information.

§ 8.2.2 In the event of any requests for additional compensation or additional Contract Time, or both, as applicable, arising under this Section 8.2 for unavoidable delays, other than requests for additional compensation or additional Contract Time for differing site conditions for which a review process is established under Section 5.5.3, Design-Builder shall submit a written notification of the delay to the Owner within two (2) Days of the occurrence of the cause of the delay. This written notification shall state the cause of the potential delay, the project components impacted by the delay, and the anticipated additional Contract Time extension or the additional compensation, or both, as applicable, resulting from the delay. In accordance with the requirements of Article 6, within seven (7) Days after the cause of the delay has been mitigated, or in no case more than thirty (30) Days after the initial written notification, the Design-Builder shall submit to the Owner, a complete and detailed request for additional compensation or additional Contract Time, or both, as applicable, resulting from the delay. If the Owner denies Design-Builder's request for additional compensation or adjustment of Contract Time, the Design-Builder may proceed to file a Claim under Article 14.

§ 8.2.2.1 If Design-Builder does not timely submit the notices required under Section 8.2, then unless otherwise prohibited by law, Design-Builder's Claim shall be barred.

~~§ 8.2.3~~ This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents. Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.4 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

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The Contract Sum is ~~stated~~ defined in the Design-Build Amendment.

...

~~Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, The Design-Builder, at least ten (10) days prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum-Guaranteed Maximum Price to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, require ("Schedule of Values"). The Schedule of Values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. If objected to by Owner, Design-Builder shall revise the Schedule of Values and resubmit the same for approval of Owner.~~

...

§ 9.3.1 At least ~~ten~~ forty-five days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material ~~suppliers,~~ suppliers. Applications for Payment shall be based upon estimates of Work completed and the Schedule of Values and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, ~~or by interim determinations of the Owner,~~ but not yet included in Change Orders. No payment will be made for work performed under a Change Directive until the total cost of the Change Directive has been approved by the Owner and the Change Directive has been reduced to a Change Order.



**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay. Design-Builder shall submit receipts or other vouchers showing payments for materials and labor including payments to the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder. Design-Builder shall include in its application for payment a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values which shall aggregate to the payment application total, and shall include, on the face of each copy thereof, a certificate in substantially the following form:

"I, the undersigned, hereby certify that the above bill is true and correct, and the payment therefore, has not been received."

Signed: \_\_\_\_\_  
Dated: \_\_\_\_\_ "

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

- .1 Duly executed lien and claim waivers in the forms attached as Exhibit D, executed and acknowledged sworn statement from the Design-Builder showing the Architect, Consultants, Contractors and any other person or entity with whom the Design-Builder has entered into agreements with related to the Work, the amount of each such agreement the amount requested for payment to each such person or entity, and the amounts to be paid to and retained by the Design-Builder from such progress payment, together with similar sworn statements from all such persons and entities. The waiver and release forms submitted by the Design-Builder shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.
- .2 Duly executed lien and claim waivers in the forms attached as Exhibit D executed by the Architect, Consultants, Contractors and any other person or entity with whom the Design-Builder has entered into agreements with related to the Work. The lien and claim waiver forms submitted by such person or entities shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.

**§ 9.3.2** Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as 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 shall be conditioned upon compliance by the Design-Builder with ~~procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the~~ the following procedures:

- .1 The request for stored material shall be submitted at least thirty (30) Days in advance of the application for payment on which it appears. Applications for payment shall be entertained for major equipment, components or expenditures only.
- .2 The Design-Builder shall submit applications for payment showing the quantity and cost of the material stored.
- .3 The material shall be stored in a bonded warehouse and Owner shall be granted the right to access the material for the purpose of removal or inspection at any time.

- .4 The Design-Builder shall name the Owner as co-insured on the insurance policy covering the full value of the property while in the care and custody of the Design-Builder until it is installed. A certificate noting this coverage shall be issued to the Owner.
- .5 Payments shall be made for materials and equipment only. The submitted amount in the application for payment shall be reduced by the cost of transportation from the storage site to the project site and for the cost of an inspector to verify delivery and condition of the goods at the storage site. The cost of storage and inspection shall be borne solely by the Design-Builder.
- .6 Within sixty (60) Days of the application for payment, the Design-Builder shall submit evidence of payment covering the material and/or equipment stored and of payment for the storage site.
- .7 Payment for stored materials and/or equipment shall in no way indicate acceptance of the materials and/or equipment or waive any rights under this Contract for the rejection of the Work or materials and/or equipment not in conformance with the Design-Build Documents.
- .8 All required documentation shall be submitted with the respective application for payment.

**§ 9.3.3** The Design-Builder warrants that title to all Work, ~~other than including the~~ Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which ~~Certificates for Payment have been previously issued~~ payment has been previously approved and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided services, labor, materials and equipment relating to the Work.

**§ 9.4 Certificates for Payment** **§ 9.4 Review of Applications for Payment**

The Owner shall, within ~~seven~~ fifteen (15) days after receipt of the Design-Builder's Application for Payment, ~~issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, for~~ Payment for a progress payment, review the Application for Payment; determine if the Application for Payment is filled out incorrectly, if there is any defect or impropriety in any submitted invoice, or if there is a good faith dispute; and notify the Design-Builder in writing of the Owner's reasons for withholding certification approval of payment in whole or in part as provided in Section 9.5.1. ~~Section 9.5.1.~~ Owner's review and approval of Design-Builder's Application for Payment is a condition precedent to Owner's obligation to pay Design-Builder. Owner's review and approval of Design-Builder's Application for Payment, or any progress payment based thereon, shall not be considered acceptance or approval of any Work or waiver of any defects therein.

**§ 9.5 Decisions to Withhold Certification** **§ 9.5 Decisions to Withhold Approval**

**§ 9.5.1** The Owner may withhold a ~~Certificate~~ its approval of Design-Builder's Application for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to ~~certify~~ approve payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly ~~issue a Certificate for~~ approve Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a ~~Certificate approval of Design-Builder's Application for Payment~~ or, because of subsequently discovered evidence, may nullify the whole or a part of a ~~Certificate of an approval of Design-Builder's Application for Payment~~ previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because ~~of~~ of:

- .1 defective or nonconforming Work, including design and construction, not remedied;
- .2 third party ~~claims~~ claims, including but not limited to lien and bond claims, filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;

- ~~.4~~ reasonable evidence that the Work cannot be completed for the unpaid balance of the ~~Contract Sum~~; Guaranteed Maximum Price;
- ~~.5~~ damage to the Work, 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;~~or~~
- ~~.7~~ repeated or substantial failure to carry out the Work in accordance with the Design-Build ~~Documents~~; Documents;
- ~~.8~~ failure of the Design-Builder to submit updates of the schedule as required this Contract;
- ~~.9~~ failure of the Design-Builder to provide satisfactions of claims of Architect, Consultants, Contractors or others;
- ~~.10~~ failure of the Design-Builder to provide waivers and releases from Architect, Consultants, Contractors and others; or
- ~~.11~~ assessment of liquidated damages, when withholding is made for offset purposes.

§ 9.5.2 When the above reasons for withholding ~~certification approval of payment~~ are removed, ~~certification approval~~ will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. [Intentionally deleted.]

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§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents. Upon receipt of an Application for Payment and review and approval of Design-Builder's Application for Payment, Owner shall make progress payments on the Contract monthly as Work progresses, in accordance with the requirements of this Section 9.6. A progress payment shall not be considered acceptance or approval of any Work or waiver of any defects therein. Owner shall pay to Design-Builder simple interest for overdue invoices at the rate of two-thirds of one percent per month on the progress payment, not including retainage, due the Design-Builder. Overdue invoices will be those that have not been paid within forty five (45) days from the latest of:

- ~~§ 9.6.2~~ The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner. .1 The date of the receipt of the accurate invoice;
- .2 The date Owner receives the correct application for payment if no invoice is received;
  - .3 The date all goods and services have been received; or
  - .4 The date a Claim is made certain by agreement of the parties or by operation of law.

§ 9.6.1.1 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 shall so notify the Design-Builder 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 Design-Builder within seven (7) Days of being notified by the Owner, shall not cause a payment to be made later than specified in this Section 9.6.1.1 unless interest is also paid. Payment of interest will be postponed when payment on the principal is delayed because of disagreement between the Owner and the Design-Builder. Owner reserves the right, instead of requiring the Contractor to correct or resubmit a defective or improper application for payment, to reject the defective or improper portion of the application for payment and pay the remainder of the application for such amounts which are correct and proper.

§ 9.6.1.2 Owner's receipt of payroll certification pursuant to Section 16.8 of this Contract shall be a condition precedent to Owner's obligation to pay any progress payments or final payment otherwise due.

§ 9.6.1.3 Prior to submission of any pay request for more than 75% of the Work, or a cumulative total of more than 75% of the Work, Design-Builder shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner. Owner's receipt of the O & M Manuals shall be a condition precedent to any payment thereafter due. The O & M Manuals shall contain a complete set of all submittals, all product data as required by the specifications, training information, telephone list and contact information for all consultants, manufacturers, installer and suppliers, manufacturer's printed data, record and shop drawings, schematic diagrams of systems, appropriate equipment indices, warranties and bonds. The Owner shall review and return one O & M Manual for any modifications or adjustments required.

#### **§ 9.6.2 Design-Builder's Payment to Contractors**

§ 9.6.2.1 The Owner and the Design-Builder shall agree upon a mutually acceptable procedure for review and approval of payments and retainage for Contractors.

§ 9.6.2.2 Should the Design-Builder withhold payment from Architect, Consultants, Contractors or others due to a bona fide dispute, the Design-Builder shall notify the Owner in writing. The Owner may then withhold such funds from the Design-Builder until the dispute is resolved; provided that this Section 9.6.2.2 shall not be construed or applied to prevent the Design-Builder from receiving payment from the Owner for Work when such Work is the subject of a good faith backcharge by the Design-Builder against the person or entity involved in the bona fide dispute.

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§ 9.6.6 A Certificate of Owner's review and approval of Design-Builder's Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents, Documents or waiver of any defects therein.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the ~~Contract Sum~~, Guaranteed Maximum Price, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.6.8 Upon reasonable evidence of the unjustified nonpayment of the Architect, Consultants, Contractors or others by Design-Builder, the Owner may, after giving reasonable notice and opportunity to cure to the Design-Builder, make payment of amounts due to such persons or entities by direct payments or by means of multiple-payee checks. Upon request of the Owner, the Design-Builder shall timely furnish to the Owner such information as the Owner reasonably will need to make such direct or multiple-payee check payments, including but not limited to the names and addresses of the persons or entities and the amounts due to each of them.

#### **§ 9.6.9 Retainage**

§ 9.6.9.1 Retainage shall be withheld and released in accordance with the requirements set forth in OSU Standard 580-063-0045.

§9.6.9.2 Owner may reserve as retainage from any progress payment an amount not to exceed five percent of the payment. As Work progresses, Owner may reduce the amount of retainage on or may eliminate retainage on any remaining monthly Contract payments after fifty (50) percent of the Work under the Contract is completed if, in the Owner's discretion, such Work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by the Design-Builder, which application shall include written approval of Design-Builder's surety; except that when the Work is ninety-seven and a half (97-1/2) percent completed the Owner may, at its discretion and without application by the Design-Builder, reduce the retained amount to one-hundred (100) percent of the value of the Work remaining to be done. Upon receipt of written application by the Design-Builder, Owner shall respond in writing within a reasonable time.

§ 9.6.9.3 Contractor may request in writing:

- .1 to be paid amounts which would otherwise have been retained from progress payments where Design-Builder has deposited acceptable bonds and securities 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;
- .2 for construction projects over \$1,000,000, that retainage be deposited in an interest bearing account, established through the State Treasurer for state agencies, in a bank, savings bank, trust company or savings association for the benefit of Owner, with earnings from such account accruing to the Design-Builder; or
- .3 that the Owner allow Design-Builder 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 therefrom shall be made subject to all claims in the manner and priority as set forth for retainage.

When the Owner has accepted the Design-Builder's election of option .1 or .2, Owner may recover from Design-Builder any additional costs incurred through such election by reducing Design-Builder's final payment. Where the Owner has agreed to Design-Builder's request for option .3, Design-Builder shall accept like bonds from Contractors and suppliers on the project from which Design-Builder has required retainages.

§ 9.6.9.4 The retainage held by Owner shall be included in and paid to the Design-Builder as part of the final payment of the Contract Price.

§ 9.6.9.5 Owner will reduce the amount of the retainage if the Design-Builder notifies the controller of the Owner that the Design-Builder has deposited in an escrow account with a bank or trust company, in a manner authorized by the Owner, bonds and securities of equal value of a kind approved by the Owner and such bonds and securities have in fact been deposited.

§ 9.6.9.6 Design-Builder agrees that if Design-Builder elects to reserve a retainage from any progress payment due to any Contractor or supplier, such retainage shall not exceed five percent of the payment except with the Owner's prior approval, and such retainage withheld from Contractors and suppliers shall be subject to the same terms and conditions stated in this Section 9.6.9 as apply to Owner's retainage from any progress payment due to Design-Builder.

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If the Owner does not ~~issue a Certificate~~ approve Design-Builder's Application for Payment, through no fault of the Design-Builder, Architect, Consultants, or Contractors, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the ~~Contract Sum~~ Guaranteed Maximum Price shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof which the Owner agrees to accept separately is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. Substantial Completion of a facility with operating systems (e.g., mechanical, electrical, HVAC) shall be that degree of completion that has provided a minimum of thirty (30) continuous Days of successful, trouble-free operation, which period shall begin after all performance and acceptance testing has been successfully demonstrated to the Owner. All equipment contained in the Work, plus all other components necessary to enable the Owner to operate the facility in the manner that was intended, shall be complete on the Substantial Completion date. The Design-Builder may request that a Punch List be prepared by the Owner with submission of the request for the Substantial Completion notice.

§ 9.8.1.1 For Substantial Completion of the Work or designated portion thereof to be achieved, the Owner also must have received a temporary or final certificate of occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose. The requirement shall be deemed satisfied if all construction, submittals and other performance by the Design-Builder required for issuance of the certificate of occupancy and other approvals have been completed but the certificate and approvals have not been issued solely because of factors beyond the reasonable control of the Design-Builder.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment, and Owner shall prepare a comprehensive list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract ("Punch List"). Failure to include an item on such list the Punch List does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.2.1 Design-Builder shall be allowed a period of no longer than thirty (30) Days after Substantial Completion for completion of Punch List work. At the end of the thirty-day period, or earlier if requested by the Design-Builder, Owner shall arrange for inspection of the Work. Should the work not be complete, and all corrections made, the costs for all subsequent reinspections shall be borne by the Design-Builder. If Design-Builder fails to complete the Punch List work within the thirty (30) Day period, Owner may perform such work and Design-Builder shall reimburse Owner all costs of the same within ten (10) Days after demand without affecting Design-Builder's obligations.

§ 9.8.3 Upon receipt of the Design-Builder's list, Punch List, the Owner shall make an inspection-observation to determine whether the Work or designated portion thereof which the Owner agrees to accept separately is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, Punch List, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection observation by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, unless the Design-Build Documents otherwise provide for property insurance following Substantial Completion, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; Completion and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner ~~for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents and shall state the date of Substantial Completion, the responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and the time within which the Design-Builder shall finish all items on the Punch List accompanying the Certificate. The completion notice must be signed by the Design-Builder and the Owner to be valid. The Owner shall provide the final signature on the notice. The notice shall take effect on the date they are signed by the Owner.~~

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§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is identified in the Floor Plan Exhibit, attached as Exhibit I, or designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance 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, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to Approval by the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

...

§ 9.10.1 ~~Upon receipt of the Design-Builder's~~ When the Design-Builder believes that the Work or designated portion thereof has been finally completed, the Design-Builder shall submit to the Owner written notice that the Work is ready for final inspection and acceptance observation and upon receipt of a final Application for Payment, the Owner will promptly make such inspection-observation. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment. performed (except for those obligations which, by their nature, extend beyond Final Completion), the Owner will, subject to Section 9.10.2, promptly issue a final approval of Payment. If the Work is not acceptable, Owner will notify Design-Builder within fifteen (15) Days of Design-Builder's request for final payment. The Owner shall pay to Design-Builder simple interest at the rate of two-thirds of one percent per month on the final payment due Design-Builder, interest to commence forty five (45) Days after the date which Owner receives Design-Builder's final approved application for payment and Work under the Contract has been completed and accepted and to run until the date when final payment is tendered to Design-Builder. If Owner does not within the time allowed notify the Design-Builder of Work yet to be performed to fulfill contractual obligations, the interest provided by this Section 9.10.1 shall commence to run forty five (45) Days after the end of the 15-Day period.

§ 9.10.1.1 The term "Final Completion" as used in the Design-Build Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved, (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose and (3) the Design-Builder has performed all of its obligations under the Contract except for those obligations that, by their nature, extend beyond Final Completion.

§ 9.10.1.2 Design-Builder agrees to submit its final payment application within ninety (90) Days after Substantial Completion, unless written extension is granted by Owner. Design-Builder shall not delay final payment application for any reason, including without limitation nonpayment of Architect, Contractors, Consultants,

suppliers, manufacturers or others not a party to this Contract, or lack of resolution of a dispute with Owner or any other person of matters arising out of or relating to the Contract. If Design-Builder fails to submit its final payment application within ninety (90) Days after Substantial Completion, and Design-Builder has not obtained written extension by Owner, all requests or Claims for additional costs or an extension of Contract Time shall be waived.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, ~~effect and will not be canceled or allowed to expire until at least thirty (30) Days' prior written notice has been given to the Owner,~~ (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, ~~and~~ (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or 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,~~ by the Owner, (8) two (2) complete and approved sets of O & M Manuals in paper form and one (1) complete and approved set in electronic form to the Owner and Owner's receipt of the O & M Manuals shall be a condition precedent to Owner's obligation to make final payment, and (9) as-built Drawings in CAD format acceptable to the Owner and all other documents and items required by the Contract to be provided as a condition of achieving Final Completion. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release ~~or and~~ waiver required by the Owner, the Design-Builder ~~may shall~~ furnish a bond or other security satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

**§ 9.10.2.1** In addition to other documentation required by the Owner as a condition of final payment, the application for final payment shall be accompanied by final conditional waivers and releases of stop notices, mechanics', material suppliers', construction or similar liens and other claims, executed by the Design-Builder, Architect, Consultants and Contractors at all tiers. The forms of the waivers and releases shall be as set out in Exhibit D.

**§ 9.10.2.2** In addition to the other documentation required as a condition of final payment, Design-Builder shall:

- .1 schedule with the Owner training sessions for all equipment and systems as required by the Design-Build Documents. Design-Builder shall schedule training sessions at least two weeks in advance of the date of training to allow Owner to provide its personnel with adequate notice. The O & M Manual shall be used as a basis for training. In addition to any off-site training required by the Design-Build Documents, training shall include a formal session conducted at the Work site after the equipment and/or system is completely installed and operational in its normal operating environment.
- .2 notify the Owner that all environmental and pollution clean-up, remediation and closure have been completed in accordance with all Applicable Laws and pursuant to the authority of all agencies having jurisdiction, and Design-Builder shall provide Owner with any and all documentation related to the same, including but not limited to directives, orders, letters, certificates and permits related to or arising from such environmental pollution. The notice shall reaffirm the indemnification given under Section 10.3.
- .3 return to the Owner all property of Owner issued to Design-Builder during construction such as keys, security passes, site admittance badges, and all other pertinent items. Upon notice from Owner, Design-Builder shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Design-Builder to the Owner. The utility transfer date shall not be before Substantial Completion and may not be until Final Completion, if the Owner does not take beneficial use of the facility and the Design-Builder's forces continue with the Work.



**§ 9.10.3** If, after Substantial Completion of the Work, ~~final completion~~ Final Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting ~~final completion~~, Final Completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

**§ 9.10.3.1** If the Owner makes such payment in advance of Final Completion, the Owner shall retain an amount no less than one hundred fifty percent (150%) of the sum of the cost of the Work for the Design-Builder to finally complete the Work.

**§ 9.10.4** The making of final payment shall not constitute a waiver of Claims by the ~~Owner~~ Owner ~~except those arising from~~

- ~~.1~~ liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- ~~.2~~ failure of the Work to comply with the requirements of the Design-Build Documents; or
- ~~.3~~ terms of special warranties required by the Design-Build Documents. Owner.

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

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The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the ~~Contract~~ Contract and the entirety of the Work. In addition, Design-Builder shall be responsible for the security and protection (i) of its equipment, supplies and tools used in connection with the Work, and (ii) for all of the other property owned or leased by Design-Builder or any of its Contractors located at the Project site.

...

**§ 10.2.1** Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs, commensurate with industry best practices in connection with the performance Design-Builder's obligations under this Contract. Without limiting Design-Builder's obligation to indemnify Owner or any of its other obligations under the Contract, Design-Builder is solely responsible for the conduct, safety, and health of its employees, agents, Architect, Consultants, Contractors and others performing the Work or entering into the Work area, and any impact they or their agents may have on the public arising out of this Contract. Design-Builder represents and warrants that information provided to Owner with regard to the safe conduct of its business, if requested by Owner, is accurate and complete. Failure by Owner to review any information provided by Design-Builder shall not relieve Design-Builder of its obligations under the Contract. Further, Design-Builder shall notify Owner immediately upon any change in such information. Design-Builder shall comply with all applicable federal, state, provincial and local safety laws and regulations. These requirements include, but are not limited to, posting and maintaining required material safety data sheets; labeling, handling, transporting, storing and disposing of any hazardous materials; training of all on site employees and Contractor employees regarding safe work practices, and mitigation of any hazards identified; inspection of work sites for any unsafe conditions and prompt correction of any such conditions identified. Contractor's failure to comply with this Section 10.2.1 constitutes a material breach of this Agreement, and without limitation to other remedies, subjects Design-Builder to all rights and remedies available to Owner under law and equity, including, but not limited to, immediate termination of this Agreement. The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on and those performing labor or services or furnishing equipment or materials at the Work site and other persons who may be affected thereby;

- .2 the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement ~~in the course of construction.~~ in the course of construction;
- .4 other structures contiguous to the Work site and otherwise located at or contiguous to the premises, and trees, shrubs, lawns, walks, pavements, roadways and utilities serving such structures and premises;
- .5 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors; and
- .6 the contents and occupants of those portions of the Building in use during the course of Design-Builder's Work, as provided in Section 5.12, including ingress and egress to those portions of the building.

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

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

§ 10.2.3.1 If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated otherwise herein, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ 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 Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified ~~personnel.~~ personnel and give the Owner reasonable prior notice.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except to the extent such damage or loss is attributable to negligent acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. ~~liable.~~ The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under ~~Section 3.1.14.~~ Section 3.1.15.

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§ 10.2.8 ~~Injury or Damage to Person or Property. If the Owner or Design-Builder Property~~  
If either party suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, whether or not insured, or if any other incident occurs that may adversely affect the quality or progress of the Work, verbal and written notice shall be given to the other party within a reasonable time not exceeding 21 days after immediately upon discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 The Design-Builder is responsible to protect and maintain the Work during the course of construction and to mitigate any adverse impacts to the project, including those caused by authorized changes, which may affect cost, schedule, or quality.

...

**§ 10.3.2** Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder 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 Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the ~~Contract Sum~~ Guaranteed Maximum Price shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

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**§ 10.4 Emergencies**

~~In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.~~

**§ 10.4 Spill Responsibility**

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

§ 10.4.2 Design-Builder shall 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 Design-Builder, at all times, shall:

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

§ 10.4.3 The Design-Builder shall be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Design-Builder's (i) fault or (ii) failure to perform in accordance with the Design-Build Documents. Nothing in this Section 10.4 shall limit the Contractor's liability or responsibility under any other provision of the Design-Build Documents.

§ 10.4.4 The Design-Builder shall report all reportable quantity releases described in this Section 10.4 to applicable federal, state, and local regulatory and emergency response agencies. Upon discovery, regardless of quantity, the Design-Builder must telephonically report all releases to the Owner. A written follow-up report shall be submitted to the Owner within 48 hours of the telephonic report. Such written report shall contain, at a minimum:

- .1 Description of items released (identity, quantity, manifest number, and all other documentation required by law).
- .2 Whether amount of items released is EPA/DOE reportable and, if so, when it was reported.

- .3 Exact time and location of release, including a description of the area involved.
- .4 Containment procedures initiated.
- .5 Summary of communications about the release the Design-Builder has had with members of the press or state officials other than the Owner.
- .6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- .7 Personal injuries, if any, resulting from, or aggravated by, the release.

**§ 10.5 Emergencies**

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's reasonable discretion, to prevent threatened damage, injury or loss.

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The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and ~~Contract Sum, Guaranteed Maximum Price,~~ as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

...

**§ 11.2.1 Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, ~~and~~ compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, and the Owner's attorneys' fees and related costs, and disbursements, which costs shall be at the Design-Builder's expense.

...

**§ 11.2.2.1** In addition to the Design-Builder's obligations under ~~Section 3.1.12, Section 3.1.13 and all other rights and remedies of Owner,~~ 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 an applicable special warranty required by the Design-Build Documents, any of the Work is found ~~not~~ to be defective or not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the ~~Design-Builder and to make a claim for breach of warranty.~~ Design-Builder. If the Design-Builder fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, or at any time in the event of warranty work consisting of emergency repairs, the Owner may correct it in accordance with Section 7.9. This Section 11.2.2 does not limit Design-Builder's obligation to correct latent defects, which will be remedied by the Contractor at any time they become apparent.

**§ 11.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after ~~Substantial Completion~~ Substantial Completion, including corrective Work performed by the Design-Builder pursuant to this Section 11.2, by the period of time between Substantial Completion and the actual completion of that portion of the Work.

~~§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2. [Intentionally deleted.]~~

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are defective or not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is defective or not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build ~~Documents~~ Documents or applicable law. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time nor shall otherwise be deemed to limit the time within which the obligation to comply with the Design-Build Documents or applicable law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

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If the Owner prefers to accept Work that is defective or not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the ~~Contract Sum~~ Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

...

§ 12.1 Drawings, specifications, and all other documents furnished by the Design-Builder, including those in electronic form, ~~are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain form~~ ("Instruments of Service") to the extent prepared specifically for this Project shall become the property of Owner and all copyrights and other rights are hereby be assigned to Owner. The Owner shall have all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them. Owner's rights.

...

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service ~~solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.~~ to the extent not prepared specifically for this Project solely and exclusively in connection with the Project, including but not limited to the Project's further development by Owner and others retained by Owner for such purposes. Such license shall extend to those parties retained by Owner for such purposes, including but not limited to other design professionals.

§ 12.3.1 The Design-Builder shall obtain ~~non-exclusive licenses~~ ownership rights, including but not limited to copyrights and licenses, from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. ~~The Design-Builder's licenses from the Architect and its~~

Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service on other projects without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service on other projects under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

...

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, to the extent the suspension is not attributable to the Design-Builder's failure to comply with the Contract, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The ~~Design-Builder's compensation~~ Design Guaranteed Maximum Price for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The ~~Design-Builder's compensation~~ Design Guaranteed Maximum Price for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than ~~90 cumulative~~ 180 consecutive days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than ~~seven~~ fourteen (14) days' written notice and opportunity to cure should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement in whole or in part upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without ~~cause~~ cause whenever Owner determines that termination of the Agreement is in the best interest of the Owner or the public. After such notice, the Design-Builder shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Design-Builder received payments under Article 2.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall ~~the Design-Builder's compensation~~ (1) the Design Guaranteed Maximum Price under this Section 13.1.6 be greater than

the compensation set forth in ~~Section 2.1~~ Section 2.1 and (2) the Design-Builder be entitled to its fee or other payment, including but not limited to lost profits, on account of Work not performed.

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§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of ~~30~~ 180 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of ~~an a~~ lawful order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not ~~issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment~~ made a required payment within the time stated in the Design-Build Documents; or
- .4 ~~The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7-Documents.~~

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, ~~repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 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.~~ If a basis for termination described in Section 13.2.1.1 exists, the Design-Builder may, upon fourteen (14) days' written notice to the Owner, and if the Owner fails to cure such reason during the seven-day period, terminate the Contract and recover from the Owner payment for Work executed, reasonable overhead and profit on Work executed, and costs incurred by reason of such termination.

§ 13.2.1.3 ~~If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages. [Intentionally deleted.]~~

§ 13.2.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3. [Intentionally deleted.]~~

...

§ 13.2.2.1 The Owner may terminate the Contract in whole or in part pursuant to Section 13.2.2.2 if the Design-Builder

...

- .2 ~~repeatedly~~ persistently or substantially refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, ~~or~~ workers or proper ~~materials;~~ materials or equipment;

...

- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; is in violation of Applicable Laws, either in the conduct of its business or in its performance of the Work;

- .5 persistently or substantially fails to carry out the Work pursuant to the Design-Build Documents;
- .6 persistently or substantially fails to comply with the current Design-Builder's schedule;
- .7 submits one or more Applications for Payment that the Design-Builder overstates the amount to be paid, by the Owner;
- .8 voluntarily or involuntarily seeks protection under the United States Bankruptcy Code and Design-Builder as debtor-in-possession or the Trustee for the estate fails to assume the Contract within a reasonable time;
- .9 makes a general assignment for the benefit of Design-Builder's creditors;
- .10 causes a receiver to be appointed on account of Design-Builder's insolvency; or
- .5—.11 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 ~~When any of the above reasons exist, the~~ If a basis for termination as described in Section 13.2.2.1 exists, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety, the Contract in whole or in part and may:

- .1 Exclude the Design-Builder from the site and take possession of all or a portion of the materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of some or all of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; Section 3.1.16; and
- .3 Finish the Work or portion thereof by whatever reasonable means and method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 ~~When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished. In the event of termination of the Contract in whole or in part under Section 13.2.2.1, the compensation of the parties as to the terminated part of the Contract shall be determined as follows:~~

- .1 Add value of the Work performed as of the time of the termination, provided that this sum shall not exceed the Guaranteed Maximum Price for that Work as of the time of the termination. For purposes of this Section 13.2.2, the term "Terminated Contract Sum" shall mean the sum determined under this Item.
- .2 Determine the amount of all costs incurred by the Owner in completing the Work. For purposes of this Section 13.2.2, the term "Owner's Costs" shall mean the sum determined under this Item .2. The Owner's Costs shall include, but not be limited to, the cost of labor, services, materials, equipment, supervision and "general conditions" to complete the Work; the cost of any additional architectural, construction management, and Project administrative costs required to facilitate completion; any costs incurred in retaining another contractor or subcontractors; any additional interest or other fees paid by the Owner; any attorneys' fees and other legal expenses related to the termination of the Contract and transactions to arrange for the completion of the Work; and all other costs, damages and expenses incurred by the Owner by reason of the termination of the Contract, the completion of the Work and the Project, and delay in the completion of the Work and the Project.
- .3 Subtract the Terminated Contract Sum from the Guaranteed Maximum Price as of the time of the termination.
- .4 If the Owner's Costs exceed the amount determined under Item .3, then the Design-Builder shall pay the Owner the amount of the excess less the amount of the Terminated Contract Sum not previously paid, if any.
- .5 If the amount determined under Item .3 exceeds the Owner's Costs, then the Owner shall pay the Design-Builder the amount of the Terminated Contract Sum not paid, if any.

§ 13.2.2.4 ~~If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract. In the event the Owner terminates the Contract for cause under this Section 13.2.2 and such termination subsequently is determined in a final arbitrated award or a final judgment to have been wrongful, the termination shall automatically be converted to and deemed a termination for the Owner's convenience pursuant to Section 13.2.4.~~



§ 13.2.3.1 The Owner may, ~~without cause,~~with or without cause or prior notice, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 ~~The Contract Sum-Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit.~~No adjustment shall be made to the extent

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.3.3 During the period of the suspension, Design-Builder is responsible to continue maintenance at the project just as if the Work were in progress. This includes, but is not limited to, protection of completed Work, maintenance of access, protection of stored materials, temporary facilities, and clean-up.

§ 13.2.3.4 If the Work is recommenced after the suspension, the Design-Builder shall replace or renew any Work damaged during the suspension, remove any materials or facilities used as part of temporary maintenance, and complete the project in every respect as though its prosecution had been continuous and without suspension.

§ 13.2.3.5 Depending on the reason for suspension of the Work, the Design-Builder or the Owner may be due compensation by the other party. If the suspension was required due to acts or omissions of Design-Builder, the Owner may assess the Design-Builder actual costs of the suspension in terms of administration, remedial work by the Owner's forces or another contractor to correct the problem associated with the suspension, rent of temporary facilities, and other actual costs related to the suspension. If the suspension was caused by acts or omissions of the Owner, the Design-Builder may be due compensation which shall be defined using Article 6. If the suspension was required through no fault of the Design-Builder or the Owner, neither party shall owe the other for the impact.

...

§ 13.2.4.1 ~~The Owner may, at any time, terminate the Contract~~may terminate this Agreement in whole or in part upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.~~cause whenever Owner determines that termination of the Agreement is in the best interest of the Owner or the public. After such notice, the Design-Builder shall provide the Owner with immediate and peaceful possession of the premises and materials located on and off the premises for which the Contract received progress payments under Section 9.6.~~

...

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, and also except for Work not covered by the termination, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, as to the terminated part of the Contract pursuant to the provisions of Article 13, but otherwise shall be paid the total of (1) the cost of the Work incurred by the Design-Builder to the date of termination, (2) an amount for overhead and profit on the Cost of the Work, or if no such amount is set forth, a reasonable amount, (3) fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Design-Builder which the Owner elects to retain and which is not otherwise included in the cost of the Work under subitem (1), and (4) fair compensation for the Design-Builder's demobilization costs and other costs directly incurred relating to the termination which are not otherwise included in the cost of the Work under subitem (1). In no event, however, shall Design-Builder be entitled to payment of its fee or other payment, including but not limited to lost profits or consequential damages on this Project or any other project, on account of Work not performed.

§ 13.2.5 If the Owner elects to suspend the Work or partially terminate Design-Builder, Owner reserves the right to unilaterally impose a deductive change and to self-perform such Work.

### **§ 13.3 Action Upon Termination**

§ 13.3.1 Upon receiving a notice of termination, and except as directed otherwise by the Owner, Design-Builder shall immediately cease placing further subcontracts or orders for materials, services, or facilities. In addition, Design-Builder shall terminate all subcontracts or orders to the extent they relate to the Work terminated and, with the prior written approval of the Owner, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts and orders.

§ 13.3.2 As directed by the Owner, Design-Builder shall, upon termination, transfer title and deliver to the Owner all Record Documents, information, and other property that, if the Contract had been completed, would have been required to be furnished to the Owner.

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§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract, submitted in accordance with the requirements and within the time limits established for review of Claims in this Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

~~§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time 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 Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.~~

### **Notice of Claims**

#### **§ 14.1.3 Notice of Claims**

§ 14.1.2.1 Claims by Design-Builder must be initiated by written notice to the Owner five (5) days after a denial of Design-Builder's initial request for an adjustment of Contract terms, payment of money, extension of Contract Time or other relief, provided that such initial request has been submitted in accordance with the requirements and within the time limits established in this Contract. Within thirty (30) Days after the initial Claim, Design-Builder shall submit to the Owner a complete and detailed description of the Claim (the "Detailed Notice") that includes all information required by Section 14.1.2.2. Unless the Claim is made in accordance with these time requirements, it shall be waived by Contractor.

§ 14.1.2.2 The Detailed Notice of the Claim shall be submitted in writing by Design-Builder and shall include a detailed, factual statement of the basis of the Claim, pertinent dates, Contract provisions which support or allow the Claim, reference to or copies of any documents which support the Claim, the dollar value of the Claim, and the Contract Time adjustment requested for the Claim. If the Claim involves Work to be completed by subcontractors, the Design-Builder will analyze and evaluate the merits of the subcontractor claim prior to forwarding it and that analysis and evaluation to the Owner. The Owner will not consider direct claims from subcontractors, suppliers, manufacturers, or others not a party to this Contract. Design-Builder agrees that it will make no agreement, covenant, or assignment, nor will it commit any other act that will permit or assist any subcontractor, supplier, manufacturer, or other to directly or indirectly make a claim against Owner.

#### **§ 14.1.3 Owner's Review of Claims**

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner will review all Claims and take one or more of the following preliminary actions within ten (10) Days of receipt of the Detailed Notice of a Claim: (1) request additional supporting information from the Design-Builder; (2) inform the Design-Builder in writing of the time required for adequate review and response; (3) reject the Claim in

whole or in part and identify the reasons for rejection; (4) based on principles of equitable adjustment, recommend approval of all or part of the Claim; or (5) propose an alternate resolution.

**§ 14.1.3.2 Claims Arising After Final Payment.** ~~After Final Payment, Claims by either the Owner or Design Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.~~ The Owner's decision shall be final and binding on the Design-Builder unless appealed by written notice to the Owner within fifteen (15) Days of receipt of the decision. The Design-Builder must present written documentation supporting the Claim within fifteen (15) Days of the notice of appeal. After receiving the appeal documentation, the Owner shall review the materials and render a decision within thirty (30) Days after receiving the appeal documents.

**§ 14.1.4 Continuing Contract Performance.** ~~Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.~~

#### **§ 14.1.4 Mediation of Claims**

**§ 14.1.4.1** The decision of the Owner shall be final and binding unless the Design-Builder delivers to the Owner its request for mediation, which shall be a non-binding process, within fifteen (15) Days of the date of the Owner's decision. The mediation process will be considered to have commenced as of the date the Design-Builder delivers the request. Both parties acknowledge and agree that participation in mediation is a prerequisite to commencement of litigation of any disputes relating to the Contract. Both parties further agree to exercise their best efforts in good faith to resolve all disputes within sixty (60) Days of the commencement of the mediation through the mediation process set forth herein.

**§ 14.1.4.2** In the event that a lawsuit must be filed within this sixty (60) Day period in order to preserve a cause of action, the parties agree that, notwithstanding the filing, they shall proceed diligently with the mediation to its conclusion prior to actively prosecuting the lawsuit, and shall seek from the Court in which the lawsuit is pending such stays or extensions, including the filing of an answer, as may be necessary to facilitate the mediation process. Further, in the event settlements are reached on any issues through mediation, the plaintiff shall promptly cause to be entered by the Court a stipulated general judgment of dismissal with prejudice, or other appropriate order limiting the scope of litigation as provided in the settlement.

**§ 14.1.4.3** The mediator shall be an individual mutually acceptable to both parties, but in the absence of agreement each party shall select a temporary mediator and the temporary mediators shall jointly select the permanent mediator. Each party shall pay its own costs for the time and effort involved in mediation. The cost of the mediator shall be split equally between the two parties. Both parties agree to exercise their best effort in good faith to resolve all disputes in mediation. Participation in mediation is a mandatory requirement of both the Owner and the Design-Builder. The schedule, time and place for mediation will be mutually acceptable, or, failing mutual agreement, shall be as established by the mediator. The parties agree to comply with Owner's administrative rules governing the confidentiality of mediation, if any, and shall execute all necessary documents to give effect to such confidentiality rules. In any event, the parties shall not subpoena the mediator or otherwise require the mediator to produce records, notes or work product, or to testify in any future proceedings as to information disclosed or representations made in the course of mediation, except to the extent disclosure is required by law.

**§ 14.1.5 Claims for Additional Cost.** ~~If the Design Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.~~ **Continuing Contract Performance.** Pending final resolution of a Claim, including the pendency of any mediation or litigation arising out of the claim, and except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

#### **§ 14.1.6 Claims for Additional Time**

**§ 14.1.6.1** If the Design Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

~~§ 14.1.6.2~~ If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### **§ 14.1.7 Claims for Consequential Damages**

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- ~~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 Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

#### **§ 14.2 Initial Decision**

§ 14.1.6 Claims for Additional Cost. If the Design-Builder knows or has a reason to know before performing a particular portion of the Work that it will have a Claim for an increase in the Guaranteed Maximum Price for performing that portion of the Work, written notice as provided herein shall be given by the Design-Builder before proceeding to execute the particular portion of the Work that relates to the Claim. Otherwise, notice of a Claim for an increase in the Guaranteed Maximum Price shall be made as required by Section 14.1.2. Within a reasonable time after delivery of notice of the Claim, Design-Builder shall submit to Owner substantiating data and other information sufficient to permit evaluation of the Claim by Owner. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 14.1.7 Claims for Additional Time**

§ 14.1.7.1 If the Design-Builder intends to make a Claim for an extension in the Contract Time, written notice as provided herein shall be given to the Owner. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time, and a schedule analysis based upon the approved Design-Builder's construction schedule, showing the impact of the cause or event on the critical path of the approved Design-Builder's construction schedule. No Claim under this Section 14.1.7 shall be valid unless so made. If a Claim for additional cost related to this Claim is to be asserted, it shall be made as provided in Section 14.1.6.

§ 14.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of scheduled construction.

~~§ 14.1.7 [Intentionally deleted.]~~

#### **§ 14.2 Litigation**

Any Claim between Owner and Design-Builder that arises from or relates to this Contract and that is not resolved through the claims review process in this Article 14 shall be brought and conducted solely and exclusively within the Circuit Court of Benton County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Article 14 be construed as a waiver by the State of Oregon on any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. DESIGN-BUILDER, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 14.2.

~~§ 14.2.1~~ An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have

passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims. **Time Limit on Litigation.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the within the time period specified by applicable law.

**§ 14.2.2 Procedure**~~[Intentionally deleted.]~~

**§ 14.2.2.1 Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.~~[Intentionally deleted.]~~

**§ 14.2.2.2 Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.~~[Intentionally deleted.]~~

**§ 14.2.3** In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.~~[Intentionally deleted.]~~

**§ 14.2.4** If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.~~[Intentionally deleted.]~~

**§ 14.2.5** The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~[Intentionally deleted.]~~

**§ 14.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.~~[Intentionally deleted.]~~

**§ 14.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~[Intentionally deleted.]~~

**§ 14.2.7** In the event of a Claim against the Design-Builder, 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 Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.~~[Intentionally deleted.]~~

**§ 14.2.8** 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.~~[Intentionally deleted.]~~

**§ 14.3 Mediation**

**§ 14.3** ~~[Intentionally deleted.]~~

**§ 14.3.1** 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 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.~~[Intentionally deleted.]~~

~~§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending 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 proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~[Intentionally deleted.]

~~§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.~~[Intentionally deleted.]

#### ~~§ 14.4 Arbitration~~

##### ~~§ 14.4 [Intentionally deleted.]~~

~~§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.~~[Intentionally deleted.]

~~§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.~~[Intentionally deleted.]

~~§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.~~[Intentionally deleted.]

~~§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.~~[Intentionally deleted.]

##### ~~§ 14.4.4 Consolidation or Joinder~~

###### ~~§ 14.4.4 [Intentionally deleted.]~~

~~§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~[Intentionally deleted.]

~~§ 14.4.4.2 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 in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~[Intentionally deleted.]

~~§ 14.4.4.3 The Owner and Design Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design Builder under this Agreement.~~[Intentionally deleted.]

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern ~~Section 14.4.~~ This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

...

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. ~~Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party~~ The Design-Builder shall not assign its rights or obligations under the Contract in whole or in part without prior written consent of the Owner. No such written approval shall relieve Design-Builder of any obligations of this Contract, and any transferee shall be considered the agent of the Design-Builder and bound to perform in accordance with the Design-Build Documents. Design-Builder shall remain liable as between the original parties to the Contract as if no assignment had occurred. If Design-Builder attempts to make such an assignment without such consent, ~~that party~~ the Design-Builder shall nevertheless remain legally responsible for all obligations under the ~~Contract.~~ Contract and such assignment shall be void.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section ~~3.1.10, 3.1.11,~~ the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this ~~Agreement, Contract,~~ provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.4.2 ~~No~~ Except as otherwise provided in this Contract, no action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

...

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by ~~applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities.~~ Applicable Laws. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. ~~The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.~~

§ 15.5.7 As required by the Design-Build Documents, Work done or material used without required inspection or testing and/or without providing timely notice to the Owner may be ordered removed at the Design-Builder's expense.

...

§ 15.8.3 The Design-Build Documents are intended to be complementary. Whatever is called for in one, is interpreted to be called for in all. However, in the event of conflicts or discrepancies among the Design-Build Documents, interpretations will be based on the following descending order of precedence:

- .1 The Agreement, as amended by Modifications;
- .2 Detailed Schedules of finishes, equipment and other items included in the Specifications;
- .3 Plans and Specifications (other than Division One and the Detailed Schedules to the Specifications);
- .4 Large-scale drawings on Plans;
- .5 Small-scale drawings on Plans;
- .6 Dimension numbers written on Plans which shall prevail and take precedence over dimensions scaled from Plans;
- .7 The Solicitation Document, and any addenda thereto.

Notwithstanding the above-listed interpretational procedures, in no event shall any limitations or disclaimers be allowed except to the extent expressly provided in this Agreement.

§ 15.8.4 In the case of an inconsistency between Plans and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's interpretation in writing.

§ 15.8.5 If the Design-Builder finds discrepancies in, or omissions from the Design-Build Documents, or if the Design-Builder is in doubt as to their meaning, the Design-Builder shall at once notify the Owner. Matters concerning an interpretation of requirements of the Design-Build Documents will be decided by the Owner. Responses to Design-Builder's requests for interpretation of Design-Build Documents will be made in writing by Owner within any time limits agreed upon or otherwise with reasonable promptness. Interpretations and decisions of the Owner will be consistent with the intent of and reasonably inferable from the Design-Build Documents. Design-Builder shall not proceed without direction in writing from the Owner.

§ 15.8.6 References to standard specifications, manuals, codes of any technical society, organization or association, to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code, laws or regulations in effect in the jurisdiction where the project is occurring on the first published date of the Solicitation Document, except as may be otherwise specifically stated.

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

### **§ 15.9 Attorneys' Fees**

Should any arbitration or legal proceeding be commenced in connection with any Claim, dispute or other matter in question between the Owner and Design-Builder arising out of or relating to the Contract or the breach thereof, to obtain a construction of or to enforce any provision of the Contract, to rescind the Contract, or to enforce or collect



any judgment or decree of any court relating to the Contract, the prevailing party shall be entitled to recover its attorneys' and expert witnesses' fees and related costs, disbursements and expenses incurred before and at trial, on review, on appeal or in bankruptcy court.

#### **§ 15.10 Entire Agreement.**

The Contract represents the entire and integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. Any proposed special terms or conditions proposed by Design-Builder, Architect, Consultants or Contractors (including, but not limited to, any limitations of liability or remedy or disclaimers of liability or remedy) whether in a warranty or otherwise shall expressly not be part of this Contract and shall not otherwise apply to the Project even if such terms and conditions are attached as an exhibit or otherwise. Any inconsistency between this Contract and any warranties or attachments shall be resolved in favor of this Contract, which means that, in the case of any limitations of liability or remedy or disclaimers of liability or remedy, no such limitations or disclaimers shall be allowed.

#### **§ 15.11 Severability**

If any provision of this Contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

#### **§ 15.12 Survival of Obligations**

All warranty and indemnification provisions of this Contract, and all of Contractor's other obligations under this Contract that are not fully performed by the time of Final Completion or termination and are not expressly terminated by Owner at the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

### **ARTICLE 16 PUBLIC CONTRACTING PROVISIONS**

#### **§ 16.1 MWESB Report**

Design-Builder shall submit a MWESB Report to the Owner identifying all Minority, Women and Emerging Small Business (MWESB) enterprises, as those terms are defined in ORS 200.005, receiving contracts throughout the course of the Work. An initial MWESB report is required within ten (10) Days of Design-Builder's execution of the Design-Build Amendment. MWESB Reports are required annually on June 30 of each year during the performance of the Work. Contracts (or Design-Build Amendments) first executed by Design-Builder within ninety (90) Days before June 30 of the year of execution by Design-Builder may at the discretion of Owner be exempt from submitting the annual MWESB Report otherwise due on that June 30. The final MWESB Report shall be filed with the application for final payment. The initial report shall include the total number of contracts and subcontracts awarded to MWESB enterprises and the dollar value of their respective contracts and subcontracts. The annual reports shall include the total number of contracts and subcontracts awarded to MWESB enterprises, the dollar value of each, and the expenditure toward each contract and subcontract during the previous twelve (12) months. The final report shall include the total number of contracts and subcontracts awarded to MWESB enterprises and the dollar value of their respective contracts and subcontracts including all Contracts and Modifications incorporated during the course of the project. The reports shall only include enterprises certified with the State of Oregon as MWESB enterprises and shall include individual identification of each enterprise as a Minority business enterprise, a Women business enterprise, and/or an Emerging Small Business Enterprise, as applicable. **TIMELY RECEIPT OF MWESB REPORTS BY OWNER SHALL BE A CONDITION PRECEDENT TO OWNER'S OBLIGATION TO PAY ANY PROGRESS PAYMENTS OR FINAL PAYMENT OTHERWISE DUE.**

#### **§ 16.2 Retirement System Status and Taxes**

Design-Builder 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 this Contract. Design-Builder shall submit a certification of such compliance in accordance with ORS 305.385(6). Design-Builder will not be eligible for any benefits from these Contract payments of federal Social Security, employment insurance, workers' compensation or the Public Employees' Retirement System, except as a self-employed individual. Unless the Design-Builder is subject to backup withholding, Owner will not withhold from such payments any amount(s) to cover Design-Builder's federal or state tax obligations.

### **§ 16.3 Government Employment Status**

**§ 16.3.1** If any portion of the Work is to be federally funded, Design-Builder represents and warrants that it is not currently employed by the Federal Government. This does not preclude the Design-Builder from holding another contract with the Federal Government.

**§ 16.3.2** Design-Builder represents and warrants that Design-Builder is not an employee of the State of Oregon for purposes of performing Work under this Contract.

### **§ 16.4 Compliance with Laws**

**§ 16.4.1** Design-Builder shall comply with Applicable Laws pertaining to the Work and the Contract. Failure to comply with such requirements shall constitute a material breach of Contract and shall be grounds for Contract termination for cause. Without limiting the generality of the foregoing, Design-Builder expressly agrees to comply with the following, as applicable: (i) Title VI and VII of Civil Rights Act of 1964, as amended; (ii) Section 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Health Insurance Portability and Accountability Act of 1996; (iv) the Americans with Disabilities Act of 1990, as amended; (v) ORS Chapter 659A; as amended; (vi) all regulations and administrative rules established pursuant to the foregoing laws; and (vii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

**§ 16.4.2** Design-Builder shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations, and

- .1** AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder shall not discriminate against Disadvantaged, Minority, Women or Emerging Small Business enterprises, as those terms are defined in ORS 200.005, or a business enterprise that is owned or controlled by or that employs a disabled veteran, as that term is defined in ORS 408.225, in the awarding of subcontracts.
- .2** Design-Builder shall maintain, in current and valid form, all licenses and certificates required by Applicable Laws or this Contract when performing the Work.

**§ 16.4.3** Unless contrary to federal law, Design-Builder shall certify that it shall not accept a bid from Contractors to perform Work as described in ORS 701.005 under this Contract unless such Contractors are registered with the Construction Contractors Board in accordance with ORS 701.035 to 701.055 at the time they submit their bids to the Design-Builder.

**§ 16.4.4** Unless contrary to federal law, Design-Builder shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work under this Contract holds a valid landscape contractor's license issued pursuant to ORS 671.560.

**§ 16.4.5** The following notice is applicable to Design-Builders who perform excavation Work. **ATTENTION:** Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503)232-1987.

**§ 16.4.6** Failure to comply with any or all of the requirements of this Section 16.4 shall be a material breach of Contract and constitute grounds for Contract termination for cause. Damages or costs resulting from such noncompliance shall be the responsibility of Design-Builder.

### **§ 16.5 Access to Records**

Design-Builder shall keep, at all times on the Work site, one record copy of the complete Design-Build Documents, including the plans, specifications, Change Orders, Change Directives and addenda, in good order and marked currently to record field changes and selections made during construction, and one record copy of Shop Drawings, Product Data, Samples and similar submittals, and shall at all times give the Owner access thereto.

### **§ 16.6 Funds Available and Authorized**

If Owner fails to receive funding, appropriations, allocations or other expenditure authority as contemplated by Owner's budget and Owner determines, in its assessment and ranking of the policy objectives explicit or implicit in Owner's budget, Owner may determine it is necessary to and may terminate the Contract.

### **§ 16.7 Minimum Wage Rates on Public Works**

Design-Builder shall comply fully with the provisions of ORS 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Commissioner of the Bureau of Labor and Industries (BOLI), are included as attachments to or are incorporated by reference in the Design-Build Documents. Pursuant to ORS 279C.838 and 279C.840, Design-Builder shall pay workers at not less than the specified minimum hourly rate of wage, and shall include that requirement in all subcontracts. If the Work is subject to both the state prevailing wage rate law and the federal Davis-Bacon Act, Design-Builder shall pay the higher of the applicable state or federal prevailing rate of wage. The prevailing rate of wage will be determined as of the first date that Design-Builder enters into an amendment for construction work subject to prevailing wage requirements.

### **§ 16.8 Payroll Certification and Fee Requirements**

**§ 16.8.1** In accordance with ORS 279C.845, the Design-Builder and every Contractor shall submit written certified statements to the Owner, on the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker which the Design-Builder or the Contractor has employed on the project and further certifying that no worker employed on the project has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of the Design-Builder or the Contractor that the Design-Builder or Contractor has read the certified statement, that the Design-Builder or Contractor knows the contents of the certified statement, and, that to the Design-Builder's or Contractor's best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Design-Builder or Contractor has employed a worker on the project shall be submitted once a month, by the fifth business day of the following month. The Design-Builder and Contractors shall preserve the certified statements for a period of ten (10) years from the date of Final Completion.

**§ 16.8.2** Pursuant to ORS 279C.845(7), the Owner shall retain 25 percent of any amount earned by the Design-Builder on this public works project until the Design-Builder has filed the certified statements required by Section 16.8.1. The Owner shall pay to the Design-Builder the amount retained under this Section 16.8.2 within 14 days after the Design-Builder files the required certified statements, regardless of whether a Contractor has failed to file certified statements.

**§ 16.8.3** Pursuant to ORS 279C.845(8), the Design-Builder shall retain 25 percent of any amount earned by a first-tier Contractor on this public works project until the first-tier Contractor has filed with the Owner the certified statements required by Section 16.8.1. Before paying any amount retained under this Section 16.8.3, the Design-Builder shall verify that the first-tier Contractor has filed the certified statement. Within 14 days after the first-tier Contractor files the required certified statement the Design-Builder shall pay the first-tier Contractor any amount retained under this Section 16.8.3.

**§ 16.8.4** In accordance with statutory requirements and administrative rules promulgated by the Commissioner of the Bureau of Labor and Industries, the fee required by ORS 279C.825(1) will be paid by Owner to the Commissioner.

### **§ 16.9 Prompt Payment and Contract Conditions**

**§ 16.9.1** As a condition to Owner's performance hereunder, the Design-Builder shall:

- .1 Make payment promptly, as due, to all persons supplying to Design-Builder labor or materials for the prosecution of the Work provided for in this Contract.
- .2 Pay all contributions or amounts due the State Industrial Accident Fund from such Design-Builder or Contractor incurred in the performance of the Contract.
- .3 Not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished. Design-Builder will not assign any claims that Design-Builder has against

Owner, or assign any sums due by Owner, to Contractors, suppliers, or manufacturers, and will not make any agreement or act in any way to give Contractors 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.

§ 16.9.2 As a condition to Owner's performance hereunder, if Design-Builder fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the Design-Builder of a Contractor 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 Design-Builder under this Contract. Owner reserves the right to make payments directly or by multiple-payee check and Design-Builder hereby consents to such direct and multiple-payee check payments. Upon Owner's request, Design-Builder shall furnish to Owner the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons. Payment of claims in this manner shall not relieve the Design-Builder or the Design-Builder's surety from obligation with respect to any unpaid claims.

§ 16.9.3 Design-Builder shall include in each subcontract for property or services entered into by the Design-Builder and a first-tier Contractor, including a material supplier, for the purpose of performing a construction contract, a payment clause that obligates the Design-Builder to pay the first-tier Contractor for satisfactory performance under its subcontract within ten (10) Days out of such amounts as are paid to the Design-Builder by the public contracting agency under such contract. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to lower-tier parties in a similar manner.

§ 16.9.3.1 Design-Builder shall provide a first-tier Contractor with a standard form that the first-tier Contractor may use as an application for payment or as another method by which the Contractor may claim a payment due from the Design-Builder. Design-Builder shall use this the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Design-Builder may change the form or the regular administrative procedures the Design-Builder uses for processing payments if the Design-Builder notifies the Contractor in writing at least 45 days before the date on which the Design-Builder makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

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

#### **§ 16.10 Payment for Medical Care**

As a condition to Owner's performance hereunder, Design-Builder shall 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 Design-Builder, all sums of which the Design-Builder agrees to pay for such services and all moneys and sums which the Design-Builder 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.

#### **§ 16.11 Hours of Labor**

As a condition to Owner's performance hereunder, no person shall be employed to perform Work under this Contract 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, Design-Builder shall pay the employee at least time and a half pay:

.1 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

- .2 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
- .3 For all Work performed on Saturday and on any legal holiday specified in ORS 279C.540.

Design-Builder shall provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

This Section 16.11 will not apply to Design-Builder's Work under this Contract to the extent Design-Builder is currently a party to a collective bargaining agreement with any labor organization.

This Section 16.11 shall not excuse Design-Builder from completion of the Work within the time required under this Contract.

**§ 16.12 Dual Payment Sources**

Contractor shall not be compensated for Work performed under this Contract from any state agency other than the agency that is a party to this Contract.

**ARTICLE 17 CONTRACT EXHIBITS**

**§ 17.1** This Contract is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder as modified by Owner and Design-Builder, dated \_\_\_\_\_, 2016.
- .2 AIA Document A141™-2014, Exhibit A, draft form of Design-Build Amendment
- .3 Exhibit B, Insurance Requirements
- .4 Exhibit C, Owner's Criteria
- .5 Exhibit D, Forms of Waivers and Releases
- .6 Exhibit E: Forms of Payment and Performance Bonds
- .7 Exhibit F: Reimbursable Travel and Per Diem Expenses
- .8 Exhibit G: Space Plan for the Project
- .9 Exhibit H: Conceptual Design Sketch for the Project
- .10 Exhibit I: Floor Plan Exhibit
- .11 Exhibit J: Construction Equipment Cost Schedule

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

\_\_\_\_\_  
*OWNER (Signature)*

\_\_\_\_\_  
*DESIGN-BUILDER (Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
*(Printed name and title)*

**ARTICLE 16 SCOPE OF THE AGREEMENT**

**§ 16.1** This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- .4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:
- .6 Other:

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

\_\_\_\_\_  
**OWNER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*

\_\_\_\_\_  
**DESIGN-BUILDER** *(Signature)*

\_\_\_\_\_  
*(Printed name and title)*



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Darci L. Dyches, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 09:48:22 on 07/29/2016 under Order No. 9163710375\_1 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A141™ – 2014, Standard Form of Agreement Between Owner and Design-Builder, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

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*(Title)*

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*(Dated)*