

DRAFT AIA® Document A145™ – 2015

Standard Form of Agreement Between Owner and Design-Builder for a One or Two Family Residential Project

AGREEMENT made as of the day of in the year 2018
(In words, indicate day, month and year.)

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

Oregon State University

and the Design-Builder:
(Name, legal status, address, license or registration number, and other information)

for the following Project:
(Name, location and detailed description. Provide legal description and any statutorily required description of the property.)

Oregon State University President's Residence

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.

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

FEDERAL, STATE AND LOCAL LAW MAY IMPOSE REQUIREMENTS ON CONTRACTS FOR RESIDENTIAL CONSTRUCTION. THE REQUIREMENTS FOR SINGLE FAMILY AND TWO FAMILY PROJECTS MAY BE DIFFERENT. THE OWNER SHOULD CONSULT LOCAL AUTHORITIES OR AN ATTORNEY TO VERIFY REQUIREMENTS APPLICABLE TO THIS AGREEMENT.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Initial Information

§ 1.1.1 The Owner's program and design requirements for the Project: The Owner has provided the Design-Builder with design criteria, in accordance with Section 4.1.1 of this Agreement, that sets forth the Owner's desired parameters to construct a single-family residence (the "Project") for the Owner on the Property. The Owner's design criteria and Program requirements are attached hereto as **Exhibit 1**. The Owner will consult with the Design-Builder in the development of Plans and Specifications based upon those criteria, and will approve the final Plans and Specifications prior to application for permits or commencement of construction. The Owner's approval is for general compliance with the design criteria, and Owner's approval will not be deemed to transfer any design or construction liability to Owner. The Owner will endeavor to provide all reviews and approvals in a timely fashion so as not to delay the Design-Builder's schedule.

§ 1.1.2 Intentionally deleted.

§ 1.1.3 Physical characteristics of the Owner's site: The physical characteristics of the Owner's site, including site, boundary and topographic surveys, geotechnical reports, and the locations of utilities and services are set forth in **Exhibit 2**.

§ 1.1.4 The Owner's budget for the Work to be provided by the Design-Builder is \$ _____.

§ 1.1.5 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

See **Exhibit 3** – Schedule

.2 Submission of Design-Builder's Proposal:

See **Exhibit 3** – Schedule

.3 Phased completion dates:

To be determined.

.4 Substantial Completion date:

No later than _____, 201_.

.5 Other milestone dates:

§ 1.1.6 The Owner will retain the following consultants and separate contractors:
(List name, discipline, legal status, address and other information.)

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

§ 1.1.8 If the Owner's Design Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder will notify the Owner of the conflict.

§ 1.1.9 If there is a change in the Owner's Design-Build Criteria, the Owner and the Design-Builder will execute a Modification.

§ 1.2 Statutory Requirements

§ 1.2.1 Intentionally deleted.

§ 1.2.2 Warranty requirements: Oregon Statute, ORS 701.320, requires the Design-Builder in any contract to build a new residence to make a written offer of a warranty to the Owner. This warranty protects against defects in materials and workmanship for the structure. Owner requires Design-Builder to supply this warranty directly (not through a third-party) for a period of ten (10) years, which warranty will commence on the date the relevant public authority issues a certificate of occupancy. This warranty covers, without limitation: failure of structural components, including load-bearing elements of the structure; failure of plumbing, electrical, heating and air-conditioning systems; failure of major appliances, such as refrigerators, dishwashers, ovens and stove-tops; and defects in workmanship, including installation of equipment or materials.

§ 1.2.3 Intentionally deleted.

§ 1.2.4 Jurisdiction and jurisdiction-specific requirements:

(List the pertinent governmental authorities having jurisdiction over the Project and provide, as applicable, any municipal, flood, environmental protection, historic preservation, zoning and other unique or site specific jurisdictional requirements.)

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§ 1.2.5 Other requirements:

(Insert any other required statutory language here and attach specific documents required by statute, if any. Identify the



§ 1.3 Contract Time

The Contract Time shall be established in the Design-Build Amendment.

§ 1.4 Definitions

§ 1.4.1 Architect

The Architect is an 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.

§ 1.4.2 Construction Schedule

Construction Schedule means the schedule prepared by the Contractor and approved by the Owner, and all adjustments thereto approved by the Owner, that describes sequence and timing of the Work.

§ 1.4.3 The Contract or the Design-Build Documents

The Design-Build Documents, including this Agreement, form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The 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.

§ 1.4.4 Contractor

A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor will be lawfully licensed by the State of Oregon.

§ 1.4.5 Contract Sum

The Contract Sum set forth in the Design-Build Documents, subject to adjustments as authorized in the Design-Build Documents, is the total amount payable by the Owner to the Design-Builder for performance of the Work following execution of the Design-Build Amendment, and includes allowances and contingencies, if any.

§ 1.4.6 Contract Period

The Contract Period means the total period of time beginning with the full execution of this Contract and, if applicable, the issuance of a Notice to Proceed and concluding upon Final Completion.

§ 1.4.7 Contract Time

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

§ 1.4.8 Consultant or Design Consultant

A Consultant is a person or entity providing design 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. The Consultant will be lawfully licensed to provide the required professional services.

§ 1.4.9 Day

The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.10 Design-Build Documents

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

§ 1.4.11 Design-Builder

The Design-Builder is the entity identified as such in this Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder, including, without limitation, the Design-Builder’s authorized representative.

§ 1.4.12 The Drawings

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

§ 1.4.13 Final Completion

Final Completion means the final completion of all requirements under this Agreement, including Contract Closeout as described in Section 9.4 but excluding Warranty Work as described in Sections 1.2.2 and 5.4, and the final payment and release of all retainage.

§ 1.4.14 Final Payment

Final Payment means the last payment to the Contractor, including retainage, in connection with the Work.

§ 1.4.15 Force Majeure

Force Majeure means an act, event or occurrence caused by fire, riot, war, acts of God, nature, sovereign, or public enemy, strikes, freight embargoes or any other act, event or occurrence that is beyond the control of the party to this Contract who is asserting Force Majeure.

§ 1.4.16 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 provided by the Design-Builder. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.4.17 MWESB Report

MWESB Report means an accurate report by the Design-Builder 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 (see Section 9.2) and MWESB Reports are required annually (see Section 9.2) and as a condition of final payment (see Section 9.2.9). 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 Amendments 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.

§ 1.4.18 Notice To Proceed

Notice to Proceed means the official written notice from the Owner stating that the Design-Builder is to proceed with the Work defined in the Contract Documents. Notwithstanding the Notice to Proceed, Design-Builder shall not be authorized to proceed with the Work until all initial Contract requirements, including the Contract, performance bond and payment bond, and certificates of insurance, have been fully executed and submitted to Owner in a suitable form.

§ 1.4.19 Owner

Owner means Oregon State University (OSU). Owner may elect, by written notice to Contractor, to delegate certain duties to more than one party. However, nothing in this Agreement is intended to abrogate the separate design professional responsibilities of Architects under ORS Chapter 671 or of Engineers under ORS Chapter 672.

§ 1.4.20 Person

Person means a natural person or entity doing business as a sole proprietorship, a partnership, a joint venture, a corporation, a limited liability company or partnership, or any other entity possessing the legal capacity to contract.

§ 1.4.21 Plans

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Plans means the drawings which show the location, type, dimensions, and details of the Work to be done under the Contract.

§ 1.4.22 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 which may include design and construction by the Owner and by separate contractors.

§ 1.4.23 Punch List

Punch List means the list of Work yet to be completed or deficiencies which need to be corrected in order to achieve Final Completion of the Contract.

§ 1.4.24 Record Document

Record Document means the as-built Plans, Specifications, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer of ownership to Owner, operational and maintenance manuals, shop drawings, Construction Change Directives, MWESB Reports, correspondence, certificate(s) of occupancy, and other documents listed in subsection 5.12.2 of this Agreement.

§ 1.4.25 The Specifications

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

§ 1.4.26 Subcontract

Subcontract means a contract between the Design-Builder and a Consultant, Contractor, or Subcontractor for the performance of a portion of the Work.

§ 1.4.27 Subcontractor

Subcontractor means a Person having a direct contract with the Design-Builder, or another Subcontractor, to perform one or more items of the Work.

§ 1.4.28 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 incorporated into a Modification.

§ 1.4.29 Substantial Completion

Substantial Completion means the date when the Owner accepts in writing the construction of the improvement to real property constituting the Work or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose.

§ 1.4.30 Substitutions

Substitutions means items that in function, performance, reliability, quality, and general configuration are the same or better than the product(s) specified. Approval of any substitute item shall be solely determined by the Owner. The decision of the Owner is final.

§ 1.4.31 The Work

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

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

§ 2.1.1 For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, as set forth in Article 4 of this Agreement, the Owner will pay the Design-Builder as follows:

See **Exhibit 4** for the Design-Builder's Compensation prior to execution of the Design-Build Amendment.

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

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

See Exhibit 4.

§ 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 2.1.1 and 2.1.2 and include expenses incurred by the Design-Builder, and the Design-Builder's Consultants and Contractors, directly related to the Project, prior to execution of the Design-Build Amendment, as follows:

- .1 Transportation and authorized out-of-town travel (i.e., more than 200 miles from the Project site) and subsistence, but only to the extent approved in advance in writing by Owner's representative and in accordance with the OSU travel policy;
- .2 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .3 Printing, reproductions, plots, standard form documents;
- .4 Postage, handling and delivery;
- .5 Expense of overtime work requiring higher than regular rates, if authorized in advance in writing by the Owner's representative
- .6 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner's representative or required by reviewing authorities;
- .7 All taxes levied on professional services and on reimbursable expenses; and
- .8 Other similar Project-related expenditures, if authorized in advance in writing by the Owner's representative.

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

§ 2.1.4 With the Owner's written approval, the Design-Builder will provide services not included in Article 4, for additional compensation. Such services may include

- .1 services necessitated by a change in the Initial Information, or previous instructions or approvals given by the Owner's representative;
- .2 services necessitated by a material change in the Project made at the Owner's request, including a change in Project size, quality or complexity; or a change in the Owner's schedule or budget;
- .3 changing or editing previously prepared Instruments of Service, necessitated by the enactment or revision of codes, laws or regulations, or official interpretations; and
- .4 services necessitated by a failure to complete the services under Article 4 within eighteen (18) months of the date of this Agreement through no fault of the Design-Builder.

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

Owner will strive to issue undisputed payments within thirty (30) days after presentation of the Design-Builder's invoice. Undisputed amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below:

See Section 9.2.1 for the interest rate on late payments.

§ 2.1.6 Records of Reimbursable Expenses and services performed on the basis of hourly rates will be available to the Owner at mutually convenient times for a period of ten (10) years after Substantial Completion of the Work or termination of this Agreement, whichever occurs first.

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

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

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

§ 3.1 General

§ 3.1.1 The Design-Builder will comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 Based upon the Owner's design criteria, the Design-Builder shall prepare Plans and Specifications ("Construction Documents") for the Owner's approval using Design Consultants who are properly licensed and qualified to perform architectural, engineering, and other design work. The Construction Documents must be consistent with the Owner's design criteria and any changes thereto. The Design-Builder will perform the Work in accordance with the Design-Build Documents. Design Builder agrees not to engage the services of any Design Consultant or Contractor without first obtaining Owner's written approval, which approval will not be unreasonably withheld. Design-Builder agrees that each Design Consultant and Contractor will be fully bound to Design-Builder in the same manner as Design-Builder is bound to Owner for all material requirements of the Design-Build Contract that are applicable to the Design Consultant's or Contractor's scope of services. Design-Builder will at all times be responsible for the services performed by its Design Consultants and Contractor, and will coordinate the services of its Design Consultants and Contractor to satisfy Design-Builder's obligations under the Design-Build Contract. The Design-Builder is not relieved of the obligations to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3 The Design-Builder will perform the Work in compliance with applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, building codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction. Nothing in this Contract relieves Design-Builder from responsibility for the services performed by its Design Consultants or Contractor, or creates any legal or contractual relationship between Owner and any Design Consultant or Contractor.

§ 3.1.4 The standard of care for all design and engineering services, professional services, performed by Design-Builder and its Design Consultants pursuant to this Agreement is the care and skill ordinarily used by members of the design profession under similar conditions at the same time and in the state of Oregon. The standard of care for all construction services performed by Design-Builder and its Contractor pursuant to this Agreement is the care and skill ordinarily used by construction contractors under similar conditions at the same time and in the State of Oregon.

§ 3.2 Progress Reports

§ 3.2.1 The Design-Builder will 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 will submit written progress reports to the Owner, showing Work completed for the period and Project schedule status; cumulative total of the Contract Sum paid to date; approved and pending Change Orders and Change Directives; tests and inspection reports; status of Work rejected by the Owner; status of Claims previously submitted in accordance with Article 14; cumulative total of the Cost of the Work to date, including the Design-Builder's compensation and Reimbursable Expenses, and additional information agreed upon by the Owner and Design-Builder.

§ 3.2.2 The Design-Builder will be responsible to the Owner for acts and omissions of the Design-Builder's employees, and other Persons, performing portions of the Work for, or on behalf of, the Design-Builder or any of its Contractor, Subcontractors, and Consultants.

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

§ 3.3 Owner's Selections and Substitutions

The Design-Builder will prepare a schedule for Owner's selections of products and materials, and submit the schedule for the Owner's approval. The schedule for Owner's selections will (1) provide a list of product and material selections to be made by the Owner and the date by which selections will be made, (2) identify the products or materials for which the Design-Builder will provide samples or information for review and consideration by the Owner and the dates by which the samples or information will be provided, and (3) allow the Owner reasonable time to review and consider selections. If the Design-Builder fails to submit a schedule for Owner's selections, the Design-Builder is not entitled to any increase in the Contract Sum or extension of the Contract Time based on the time required for review of selections. The Owner's selections shall be set forth in the Design-Build Amendment. If the Owner selects specific products that are not readily available in the marketplace, the Design-Builder will recommend Substitutions to the Owner. The Design-Builder may make Substitutions only with the written consent of the Owner, after evaluation by the Owner and only in accordance with a Modification. Substitutions shall be subject to the requirements of the bid documents. By making requests for Substitutions, the Design-Builder: represents that the Design-Builder has personally investigated the proposed substitute product; represents that the Design-Builder will provide the same warranty for the

Substitution that the Design-Builder would for the product originally specified unless approved otherwise; certifies that the cost data presented is complete and includes all related costs under this Contract including redesign costs, and waives all claims for additional costs related to the Substitution that subsequently become apparent; and will coordinate the installation of the accepted Substitution, making such changes as may be required for the Work to be completed in all respects.

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

§ 4.1 Owner's Criteria

§ 4.1.1 As soon as practicable after execution of this Agreement, the Design-Builder and the Owner will meet to discuss the Initial Information and the Owner's design criteria. The Owner's written design criteria will include detailed design requirements, physical characteristics, the Owner's budget, milestone dates, and other criteria for the Project.

§ 4.1.2 After development of the Owner's design criteria, the Owner will provide, using electronic mail, the Design-Builder with its written consent to proceed to development of the Preliminary Design.

§ 4.1.3 Intentionally deleted.

§ 4.2 Preliminary Design

§ 4.2.1 Upon the Owner's issuance of its written consent to proceed under Section 4.1.2, the Design-Builder will prepare and submit a Preliminary Design to the Owner in accordance with the agreed upon Owner's design criteria. The Preliminary Design shall consist of Drawings and other documents and Instruments of Service, and include a report identifying any deviations from the Owner's design criteria.

§ 4.2.2 The Owner will review the Preliminary Design and, if acceptable, provide its consent in writing to the Design-Builder to proceed to development of the Design-Builder's Proposal.

§ 4.3 Design-Builder's Proposal

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.2, the Design-Builder will prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall be based on the Preliminary Design and include all of the information required by AIA Document A145™-2015, **Exhibit 5**, Design-Build Amendment.

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

§ 4.3.3 The Design-Builder will include with the Design-Builder Proposal a detailed Construction Schedule for review and acceptance by the Owner. The schedule, including the time required for design and construction, will not exceed the time limits set forth in **Exhibit 3**, unless the Owner agrees in writing to amend these dates, will be revised at appropriate intervals as required by the conditions of the Work and Project, and will provide for the expeditious and practicable execution of the Work, and will include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The submitted Construction Schedule must illustrate Work by significant Project components, significant labor trades, long lead items, broken down by building and/or floor where applicable. Each Construction Schedule item shall account for no greater than five-percent (5%) of the monetary value of the Project or five percent (5%) of the available time. Schedules with activities of less than one day or valued at less than one-percent (1%) of the Contract shall be considered too detailed and will be rejected by the Owner. Schedules lacking adequate detail, or unreasonably detailed, shall be rejected. Included within the Construction Schedule are the following: Notice to Proceed, Substantial Completion, and Final Completion. Design-Builder shall provide an updated, full project schedule with each payment request. In addition, twice monthly, the Design-Builder shall provide an updated three-week forward-looking Construction Schedule. 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. Any positive difference between the Design-Builder's scheduled completion and the Contract Substantial Completion date is float owned by the Project. Use of the float shall be negotiated by the Design-Builder and Owner. In no case shall the Design-Builder make a claim for delays if the Work is completed within the Contract time but after Design-Builder's scheduled completion.

§ 4.3.4 If the Owner and Design Builder agree on the Design-Builder's Proposal, the Owner and Design Builder will execute the Design-Build Amendment setting forth the terms of their agreement.

§ 4.3.5 The Design-Builder will perform the Work in general accordance with the most recent Construction Schedule submitted to and approved in writing by the Owner.

§ 4.4 Certifications

§ 4.4.1 Upon the Owner's written request, the Design-Builder will obtain from the Architect (if it is a separate entity from the Design-Builder), Consultants, Contractor, and Subcontractors and furnish to Owner, certifications with respect to the documents and services provided by the Architect, Consultants, Contractor, and Subcontractors (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 are entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultant, Contractors are not required to execute certificates or consents that require knowledge, services or responsibilities beyond the scope of their services.

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 will prepare the necessary construction documents, including Drawings and Specifications, and other information setting forth the requirements for construction of the Work. The construction documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the construction documents to the Owner for the Owner's information. If the Owner discovers any deviations between the construction documents and the Design-Build Documents, the Owner will promptly notify the Design-Builder of such deviations. The construction documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations will not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents and will not result in any fault, liability or setoff imposed upon the Owner.

§ 5.2 Construction Phase

§ 5.2.1 Commencement

The Construction Phase shall commence on the date set forth in the executed Design-Build Amendment and Notice To Proceed.

§ 5.2.2 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder is solely responsible for, and has control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Design-Builder's Work.

§ 5.2.3 The Design-Builder is responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 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, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 5.3.2 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 skilled in tasks assigned to them.

§ 5.4 Warranty

In addition to any warranty provided by Section 1.2.2, the Design-Builder warrants to the Owner that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Design-Build Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Design-Build Documents.

§ 5.5 Taxes

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

§ 5.6 Permits, Fees and Notices

§ 5.6.1 The Design-Builder will obtain and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work. The cost of the building permit and any other necessary permits and fees for all licenses and inspections are included in the Owner's anticipated total cost for the Project, which is set forth in Section in 1.1.4.

§ 5.6.2 The Design-Builder shall comply with notice and other requirements of agencies having jurisdiction over the Work. Design-Builder shall be responsible for all violations of the law, in connection with the construction or caused by obstructing streets, sidewalks or otherwise. Design-Builder shall give all requisite notices to public authorities. The Design-Builder shall pay all royalties and license fees.

§ 5.7 Submittals

The Design-Builder shall submit, for the Owner's information or selection, shop drawings, product data, samples and similar Submittals required by the Design-Build Documents. Acceptance of such Submittals by the Owner shall not relieve the Design-Builder of responsibility to perform the Work in accordance with the Design-Build Documents.

§ 5.8 Use of Site

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, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9 Cutting and Patching

The Design-Builder shall not cut, patch, or otherwise alter, fully or partially completed construction by the Owner or a separate contractor, without the written consent of the Owner and the 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, patching, or otherwise altering the Work.

§ 5.10 Cleaning Up

The Design-Builder shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Design-Builder shall remove its tools, construction equipment, machinery and surplus material; and shall properly dispose of waste materials. No later than five days after the relevant public authority issues the certificate of occupancy, Design-Builder will have the residence and all appliances and fixtures thoroughly cleaned by professional house cleaners, including all` windows and screens.

§ 5.11 Indemnification

To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner 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, 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), but only to the extent caused by the negligent acts, intentional misconduct or omissions of the Design-Builder, its Consultants, Contractor, Subcontractors, material suppliers or vendors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. The indemnification obligation under this Section 5.11 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Design-Builder, Consultant, Contractor, or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 5.12 Access to Work and Records

§ 5.12.1 The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress.

§ 5.12.2 Design-Builder shall keep, at all times on the Work site, one record copy of the complete Contract Documents, including the Plans, Specifications, Modifications, 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

Submittals, and shall at all times give the Owner access thereto.

§ 15.12.3 Design-Builder shall retain and the Owner and its duly authorized representatives shall have access, for a period not less than ten (10) years, to all Record Documents, financial and accounting records, and other books, documents, papers and records of Design-Builder that are pertinent to the Contract, including records pertaining to overhead and indirect costs, for the purpose of making audit, examination, excerpts and transcripts. If for any reason, any part of the Work or this Contract shall be subject to litigation, Design-Builder shall retain all such records until all litigation is resolved and Design-Builder shall continue to provide Owner and/or its agents with full access to such records until such time as all litigation is complete and all periods for appeal have expired and full and final satisfaction of any judgment, order or decree is recorded and Owner receives a record copy of documentation from Design-Builder.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 The terms of this Contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written agreement and then only after any necessary approvals have been obtained. A Modification is required, which is not effective until its execution by the Design-Builder and Owner.

§ 6.2 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly in writing by a Modification.

§ 6.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Design-Build Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

§ 6.4 In cases of suspension or partial termination under Article 13, Owner reserves the right to unilaterally impose a deductive change and to self-perform that Work. Adjustments in compensation shall be made under the provisions of Section 6.5, in which costs for deductive changes shall be based upon a direct costs adjustment together with the related percentage markup specified for profit, Overhead and other indirect costs, unless otherwise agreed to by Owner.

§ 6.5 The Owner and Design-Builder agree that adjustments to or deletions from the Work will be administered and compensated as follows:

- (a) Unit pricing may be used at the Owner's option when unit prices or solicitation alternates were provided that established the cost for adjustments to Work, and a binding obligation exists under the Contract on the parties covering the terms and conditions of the adjustment to Work.
- (b) If the Owner elects not to use unit pricing, or in the event that unit pricing is not available or appropriate, fixed pricing may be used for adjustments to or deletions from the Work. In fixed pricing, the basis of payments or total price shall be agreed upon in writing between the parties to the Contract, and shall be established before the Work is done whenever feasible. Notwithstanding the foregoing, the mark-ups set forth in subsection 6.5(c) will be utilized in establishing fixed pricing, and such mark-ups shall not be exceeded. Cost and price data relating to adjustments to or deletions from the Work shall be supplied by Design-Builder to Owner upon request, but Owner shall be under no obligation to make such requests.
- (c) In the event that unit pricing and fixed pricing are not used, then adjustments to or deletions from the Work shall be performed on a cost reimbursement basis for Direct Costs. Such Work shall be compensated on the basis of the actual, reasonable and allowable cost of labor, equipment, and material furnished on the Work performed. In addition, the following markups shall be added to the Design-Builder's, Contractor's, or Subcontractor's Direct Costs as full compensation for profit, Overhead and other indirect costs for Work directly performed with the Design-Builder's, Contractor's, or Subcontractor's own forces:

On Labor.....	15%
On Equipment.....	10%
On Materials.....	10%

- (d) When adjustments to or deletions from the Work under subsection(c) are invoiced by an authorized

Subcontractor 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%

Notwithstanding the foregoing, the maximum aggregate markup to be billed shall not exceed 10% regardless of the number of Subcontract tiers.

Payments made to the Design-Builder will be complete compensation for overhead, profit, and all costs that were incurred by the Design-Builder or by other forces furnished by the Design-Builder, including Contractor and Subcontractors, for adjustments to or deletions from the Work pursuant to a Modification or change order. Owner may establish a maximum cost for additional Work under this Section 6.5, which shall not be exceeded for reimbursement without additional written authorization from Owner in the form of a Modification or change order.

ARTICLE 7 OWNER RESPONSIBILITIES

§ 7.1 Information and Services Required of the Owner

§ 7.1.1 If requested by the Design-Builder, the Owner shall furnish all necessary surveys and a legal description of the Project site.

§ 7.1.2 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization, where essential to the execution of the Project.

§ 7.2 The Owner has authority to reject Work that does not conform to the Design-Build Documents and to require inspection or testing of the Work.

§ 7.3 Owner's Right to Stop the Work

If the Design-Builder fails to correct Work that is not in accordance with the Design-Build Documents, the Owner may direct the Design-Builder in writing to stop the Work until the correction is made.

§ 7.4 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails, within a seven 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, correct such deficiencies. In such case, the Contract Sum shall be adjusted to deduct the cost of correction from payments due the Design-Builder.

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

§ 7.5.1 The Owner reserves the right to perform construction or operations related to the Project, and to award separate contracts in connection with other portions of the Project.

§ 7.5.2 The Design-Builder shall coordinate and cooperate with the Owner, and separate contractors employed by the Owner.

§ 7.5.3 Costs caused by delays, or by improperly timed activities, or defective construction, shall be borne by the party responsible.

ARTICLE 8 TIME

§ 8.1 Time limits stated in the Design-Build Documents are of the essence of the Contract.

§ 8.2 If the Design-Builder is delayed at any time in progress of the Work by changes ordered in the Work, or by Force Majeure, the Contract Time shall be subject to equitable adjustment.

ARTICLE 9 PAYMENT APPLICATIONS AND COMPLETION

§ 9.1 Applications for Payment

§ 9.1.1 At least ten days before the date established for each progress payment in the Design-Build Amendment, the Design-Builder will submit to the Owner an itemized Application for Payment for completed portions of the Work. The

Application will be supported by data substantiating the Design-Builder's right to payment, as the Owner may require, including a schedule of values ("Schedule of Values") for the Work, which will be the basis for progress payments. The Schedule of Values must include a breakdown of and specifically identify the value and completion percentage for each component of the Work. The Owner will use this Schedule of Values to review Design-Builder's Application for Payment. If the Owner objects to the content or representations in the Schedule of Values, Design-Builder will revise its Schedule of Values until the document is acceptable to the Owner. Design-Builder will submit an updated Schedule of Values with every Application for Payment, and certify on each Schedule of Values that the representations therein are accurate.

§ 9.1.2 The Design-Builder warrants that title to all Work covered by an Application for Payment, will pass to the Owner no later than the time of payment. The Design-Builder further warrants that upon submittal of an Application for Payment, all Work for which payments have been received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of claims, security interests or other encumbrances adverse to the Owner's interests.

§ 9.2 Progress Payments

§ 9.2.1. Owner shall make progress payments on the Contract monthly as Work progresses, in accordance with the requirements of this Section 9.2. Applications for Payment shall be based upon estimates of Work completed and the Schedule of Values. As a condition precedent to Owner's obligation to pay, all Applications for Payment shall be approved by the Owner. 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 interest for overdue invoices at the rate of three percent (3%) per annum 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:

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

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 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 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 Design-Builder 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.

Owner, upon written notice to the Design-Builder, may elect to make payments to the Design-Builder only by means of Electronic Funds Transfers (EFT) through Automated Clearing House (ACH) payments. If Owner makes this election, the Design-Builder shall arrange for receipt of the EFT/ACH payments.

§ 9.2.2 Design-Builder shall submit to the Owner an application for each payment and, if required, receipts or other vouchers showing payments for materials and labor including payments to Consultants, Contractor, Subcontractors, and material suppliers. 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: _____"

§ 9.2.3 Generally, Applications for Payment will be accepted only for materials that have been installed. Under special conditions, Applications for Payment for stored materials will be accepted at Owner's sole discretion.

§ 9.2.4 The Owner reserves the right to withhold all or part of a payment, or may nullify in whole or part any payment previously made, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss because of:

- (a) Work that is defective and not remedied, or that has been demonstrated or identified as failing to conform with applicable laws or the Contract Documents,
- (b) third party claims filed or evidence reasonably indicating that such claims will likely be filed unless security acceptable to the Owner is provided by the Design-Builder;
- (c) failure of the Design-Builder to make payments properly to Consultants, Contractor, Subcontractors, or material suppliers for labor, materials or equipment (in which case Owner may issue checks made payable jointly to Design-Builder and such unpaid persons under this provision, or directly to Subcontractors and suppliers at any level);
- (d) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Price;
- (e)) damage to the Work, Owner or another contractor;
- (f) reasonable evidence that the Work will not be completed within the Contract Time required by the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- (g) failure to carry out the Work in accordance with the Contract Documents; or
- (h) assessment of liquidated damages, when withholding is made for offset purposes.

§ 9.2.5 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- (a) Take that portion of the Contract Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the total Contract Price allocated to that portion of the Work in the Schedule of Values, less retainage as provided in Section 9.2.12. Pending final determination of cost to the Owner of changes in the Work, no amounts for changes in the Work can be included in applications for payment until the Contract Price has been adjusted by a Modification or change order;
- (b) Add that portion of the Contract Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner pursuant to Section 9.2.3, suitably stored off the site at a location agreed upon in writing), less retainage as provided in Section 9.2.12;
- (c) Subtract the aggregate of previous payments made by the Owner; and
- (d) Subtract any amounts for which the Owner has withheld or nullified payment as provided in the Contract Documents.

§ 9.2.6 Design-Builder's Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Consultant, Contractor, Subcontractor, or material supplier.

§ 9.2.7 The Design-Builder warrants to Owner that title to all Work 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 payments are received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Consultants, Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided financing, labor, materials and

equipment relating to the Work.

§ 9.2.8 If Design-Builder disputes any determination by Owner with regard to any application for payment, Design-Builder nevertheless shall continue to expeditiously perform the Work. No payment made hereunder shall be or be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve Design-Builder of any of its obligations hereunder.

§ 9.2.9 Design-Builder shall submit its initial MWESB Report within ten (10) days of Design-Builder's execution of the Design-Build Amendment. Design-Builder shall submit annual MWESB Reports on June 30 of each year the Contract is active. Contracts (or the Design-Build Amendment) 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. 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.

§ 9.2.10 Owner's receipt of payroll certification pursuant to Section 15 of this Contract shall be a condition precedent to Owner's obligation to pay any progress payments or final payment otherwise due.

§ 9.2.11 Design-Builder 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.

§ 9.2.12 Retainage shall be withheld and released in accordance with the requirements set forth in OSU Standard 580-063-0045. 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 percent (50%) of the Work under the Contract is completed if, in the Owner's discretion, the Work is progressing satisfactorily. Elimination or reduction of retainage will be allowed at Owner's sole discretion and only upon written application by the Design-Builder, which application will include written approval of Design-Builder's surety; except that when the Work is 97-1/2 percent (97.5%) completed the Owner may, at its discretion and without application by the Design-Builder, reduce the retained amount to 100 percent (100%) of the value of the Work remaining to be done. Upon receipt of written application by the Design-Builder, Owner will respond in writing within a reasonable time.

§ 9.2.13 Design-Builder may request in writing:

- (a) 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;
- (b) 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
- (c) 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. The bond and any proceeds therefrom will 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 (a) or (b), 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 (c), Design-Builder will accept like bonds from subcontractors and suppliers on the project from which Design-Builder has required retainages.

§ 9.2.14 The retainage held by Owner will be included in and paid to the Design-Builder as part of the final payment of the Contract Price. The Owner will pay to Design-Builder interest at the rate of two-thirds of one percent per month on the final payment due Contractor, interest to commence forty-five (45) Days after the date which Owner receives Design-Builder's final approved application for payment and Work under this Agreement has been completed and accepted and to run until the date when final payment is tendered to Design-Builder. The Design-Builder will notify Owner in writing when the Design-Builder considers the Work complete and deliver to Owner its final application for payment and Owner will, within fifteen (15) Days after receiving the written notice and the

application for payment, either accept the Work or notify the Design-Builder of Work yet to be performed under this Agreement. 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 will commence to run forty-five (45) Days after the end of the 15-Day period.

§ 9.2.15 The Design-Builder will promptly pay each Consultant, Contractor, and Subcontractor, upon receipt of payment from the Owner, an amount determined in accordance with the terms of the applicable contracts and purchase orders.

§ 9.2.16 The Owner has no responsibility for payments to a Consultant, Contractor, Subcontractor (of any tier), or material supplier.

§ 9.2.17 A progress payment, or partial or entire use or occupancy of the Project by the Owner, will not constitute acceptance of Work not in accordance with the requirements of the Design-Build Documents.

§ 9.3 Substantial Completion

§ 9.3.1 Substantial Completion is the stage in the progress of the Work when the Work, or designated portion thereof, is sufficiently complete in accordance with the Design-Build Documents so the Owner can occupy or utilize the Work for its intended use, which, in this case, is a residential dwelling.

§ 9.3.2 When the Design-Builder considers that the Work is substantially complete, the Design-Builder will prepare and submit to the Owner a list of items to be completed or corrected prior to final payment, the Punch List. Upon receipt of the Design-Builder's Punch List, the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete and to determine if there are any additional items to be completed or corrected that are not on the Design-Builder's Punch List.

§ 9.3.3 When the Owner determines that the Work is substantially complete, the Design-Builder will prepare a Certificate of Substantial Completion for the Owner's approval that will establish the date of Substantial Completion; will establish the responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and will fix the time within which the Design-Builder will finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents will commence on the date the relevant public authority issues the Certificate of Occupancy to the Owner.

§ 9.4 Final Completion, Contract Closeout and Final Payment

§ 9.4.1. Upon completion of all the Work under this Contract, the Design-Builder will notify the Owner, in writing, that Design-Builder has completed its obligations under the Contract and shall prepare its application requesting final payment. Upon receipt of such notice and application for payment, the Owner will inspect the Work, and, if acceptable, the Design-Builder will submit to the Owner a recommendation as to acceptance of the completed Work and the final estimate of the amount due the Design-Builder. If the Work is not acceptable, Owner will notify the Design-Builder within fifteen (15) days of Design-Builder's request for Final Payment. Upon approval of this final Application for Payment by the Owner and compliance by the Design-Builder with the provisions in Section 9, and Design-Builder's satisfaction of other provisions of the Contract Documents as may be applicable, the Owner shall pay to the Design-Builder all monies due under the provisions of these Contract Documents. Owner's receipt of an unconditioned certificate of occupancy from the appropriate state and/or local building officials is a condition precedent to Owner's obligation to make final payment, except to the extent failure to obtain an unconditional certificate of occupancy is due to the sole fault or neglect of Owner.

§ 9.4.2 Final payment will not become due until the Design-Builder executes and submits to the Owner the form set forth in **Exhibit 6**, which releases and waives payment claims of any kind, and documentation establishing payment or satisfaction of all obligations, Claims, security interests or encumbrances arising out of this Agreement.

§ 9.4.3 Neither Final Payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (2) 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 Contract Documents, (3) consent of surety to Final Payment and (4), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, 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. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 lien, including all costs and reasonable attorneys' fees.

§ 9.4.4 Acceptance of final payment by the Design-Builder constitutes a waiver of claims by the Design-Builder, its Design Consultants, Contractor, Subcontractors (of any tier) and material suppliers, except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

§ 9.4.5 As a condition of Final Payment, Design-Builder agrees to the following: Design-Builder will provide Record Documents for the entire project to Owner. Record Documents shall depict the Project as constructed and shall reflect each and every change, modification, and deletion made during the construction. Record Documents are part of the Work and shall be provided prior to the Owner's issuance of Final Payment. Record Documents include all modifications to the Contract Documents unless otherwise directed, and accurate MWESB Reports.

§ 9.4.6 As part of the Work, Design-Builder shall submit two completed operation and maintenance manuals ("O & M Manuals") for review by the Owner prior to submission of any pay request for more than 75% of the Work. 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. Prior to submission of its final Pay Application, Design-Builder shall deliver 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.

§ 9.4.7 Design-Builder shall provide Owner written notice of both Substantial and Final Completion. The Certificate of Substantial Completion 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. Both completion notices must be signed by the Design-Builder and the Owner to be valid. The Owner shall provide the final signature on the notices. The notices shall take effect on the date they are signed by the Owner.

§ 9.4.8 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 Consultants, Contractor, Subcontractors, 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, Design-Builder agrees that its requests or Claims for additional costs or an extension of Contract Time shall be waived and released.

§ 9.4.9 As part of the Work, and prior to submission of the final application for payment, Design-Builder shall schedule with the Owner training sessions for all equipment and systems as required by the Contract 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 Contract 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.

§ 9.4.10 As part of the Work, Design-builder shall provide spare parts, extra maintenance materials, and other materials or products in the quantities specified in the Contract Documents prior to final payment. Delivery point for extra materials shall be designated by the Owner.

§ 9.4.11 Design-Builder shall be responsible for returning 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.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 The Design-Builder is responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Design-Builder must take reasonable precautions to prevent damage, injury, or loss, to employees on the Work, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Design-Builder will promptly remedy damage and loss to property caused in whole or in part by the Design-Builder, or by anyone for whose acts the Design-Builder may be liable.

§ 10.2 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 will, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner verbally and in writing as soon as possible, but in no case later than one (1) hour after discovering such hazardous substance or condition. Upon receipt of the Design-Builder's written notice, the Owner will obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event the material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area will resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time may be extended appropriately and the Contract Sum may be increased in the amount of the Design-Builder's reasonable additional costs of shutdown, delay and start-up.

§ 10.3 To the extent funds are lawfully available for such purpose, the Owner shall indemnify and hold harmless the Design-Builder, its contractors and consultants, and agents and employees of any of them from and against claims, damages, losses and expenses 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 10.2 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.

§ 10.4 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.

ARTICLE 11 CORRECTION OF WORK

§ 11.1 The Design-Builder will promptly correct Work rejected by the Owner as failing to conform to the requirements of the Design-Build Documents. The Design-Builder bears the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 11.2 In addition to the Design-Builder's other obligations, including warranties under the Contract, the Design-Builder shall, for a period of one year after Substantial Completion, correct Work not conforming to the requirements of the Design-Build Documents.

§ 11.3 If the Design-Builder fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 All drawings, specifications, and other documents and electronic data furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be the property of the Owner. If Owner uses the Work Product on any other project, it will do so at its sole risk and without liability or legal exposure to Design-Builder or its Design Consultants, or anyone working through them. Owner further agrees, to the extent funds are lawfully available for such purpose, to indemnify the Design-Builder and its Design Consultants from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from use of the Work Product on another project.

§ 12.2 Upon execution of this Agreement, the Design-Builder understands and agrees that Owner intends to use the Instruments of Service solely for the purpose of work performed by separate contractors, and for the purposes of 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. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1 the license granted in this Section 12.2 shall terminate.

§ 12.3 The Owner releases the Design-Builder, its 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 the Owner's use of the Instruments of Service without retaining the authors of the Instruments of Service. The Owner, to the extent funds are lawfully available for such purpose, further agrees to indemnify and hold harmless the Design-Builder, its 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 under this Section 12.3. The terms of this Section 12.3 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 13.4.

§ 12.4 Except for the licenses granted in this Article 12, no other license or right shall be deemed granted or implied under this Agreement.

§ 12.5 The Design-Builder shall defend all suits or claims for infringement of any patent or other proprietary rights and save harmless and blameless from loss, on account thereof, OSU, and its departments, divisions, members and employees.

ARTICLE 13 SUSPENSION OR TERMINATION OF THE CONTRACT

§ 13.1 Owner's Right to Suspend the WORK

§ 13.1.1 The Owner has the authority to suspend portions or all of the Work due to the following causes:

- (a) Failure of the Design-Builder to correct unsafe conditions;
- (b) Failure of the Design-Builder to carry out any provision of the Contract;
- (c) Failure of the Design-Builder to carry out orders;
- (d) Conditions, in the opinion of the Owner, which are unsuitable for performing the Work;
- (e) Time required to investigate differing site conditions;
- (f) Any reason considered to be in the public interest.

§ 13.1.2 The Owner shall notify Design-Builder and Design-Builder's Surety in writing of the effective date and time of the suspension, and Owner shall notify Design-Builder and Design-Builder's surety in writing to resume Work

§ 13.1.3 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.

§ 13.1.4 When 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 **Compensation For Suspension.** 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 Design-Builder's acts or omissions, 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, Changes in Work. If the suspension was required through no fault of the Design-Builder or the Owner, neither party shall owe the other for the impact.

§ 13.3 Owner's Right To Terminate Contract

§ 13.3.1 The Owner may, without prejudice to any other right or remedy, and after giving Design-Builder seven (7) days' written notice and an opportunity to cure, terminate the Contract under the following conditions:

- (a) If Design-Builder should, voluntarily or involuntarily, seek 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;
- (b) If Design-Builder should make a general assignment for the benefit of Design-Builder's creditors;
- (c) If a receiver should be appointed on account of Design-Builder's insolvency;
- (d) If Design-Builder should repeatedly refuse or fail to supply an adequate number of skilled workers or proper materials to carry on the Work as required by the Contract Documents, or otherwise fail to perform the Work in a timely manner;
- (e) If Design-Builder should repeatedly fail to make prompt payment to Consultants, Contractor, Subcontractors or for material or labor, or should disregard laws, ordinances or the instructions of the Owner; or
- (f) If Design-Builder is otherwise in breach of any part of the Contract.
- (g) If Design-Builder is in violation of applicable Laws, either in the conduct of its business or in its performance of the Work.

§ 13.3.2 At any time that any of the above occurs, Owner may exercise all rights and remedies available to Owner at law or in equity, and, in addition, Owner may take possession of the premises and of all materials and appliances and finish the Work by whatever method it may deem expedient. In such case, the Design-Builder shall not be entitled to receive further payment until the Work is completed. If the Owner's cost of finishing the Work exceeds the unpaid balance of the Contract Price, Design-Builder shall pay the difference to the Owner.

§ 13.4 Termination For Convenience

§ 13.4.1 Owner may terminate the Contract in whole or in part whenever Owner determines that termination of the Contract is in the best interest of Owner or the public.

§ 13.4.2 The Owner shall provide the Design-Builder with seven (7) Days prior written notice of a termination for Owner's or for public convenience. 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 progress payment under Section. Compensation for Work terminated by the Owner under this provision will be according to Section 9.2. In no circumstance shall Design-Builder be entitled to lost profits for Work not performed due to termination.

§ 13.5 Action Upon Termination

§ 13.5.1 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.

§ 13.5.2 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.

§ 13.5.3 Upon Owner's notice of termination pursuant to either Section 13.3 or 13.4, if Owner shall so elect, Design-

Builder shall assign the Owner such Subcontracts and orders as Owner shall specify. In the event Owner elects to take assignment of any such Subcontract or order, Design-Builder shall take such action and shall execute such documents as Owner shall reasonably require for the effectiveness of such assignment and Design-Builder shall ensure that no contractual arrangement between it and its Subcontractor suppliers of any tier or sub-tier shall prevent such assignment.

ARTICLE 14 CLAIMS AND DISPUTES

§ 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. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner 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 this Agreement 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. As set forth in Section 9.4.4, acceptance of final payment by the Design-Builder constitutes a waiver of Claims by the Design-Builder, its Design Consultants, Contractor, Subcontractors (of any tier) and material suppliers, except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment. To the extent that Owner does not make final payment, through no fault of the Design-Builder, the 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 this Agreement within the time period specified by applicable law.

§ 14.2 Binding Dispute Resolution

§ 14.2.1 Any Claim arising under the terms of this Agreement is subject to litigation in a court of competent jurisdiction unless otherwise agreed by the parties. Any Claim between Owner and Design-Builder that arises from or relates to this Agreement and that is not resolved through direct negotiation between the parties or mediation will 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. This section will not be construed as a waiver by Owner of 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 AGREEMENT, CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION 14.2.1.

§ 14.3 Claims for Consequential Damages

The Design-Builder waives claims against the Owner for consequential damages arising out of or relating to the Contract. This waiver includes: damages incurred 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 waiver is applicable, without limitation, to all consequential damages due to termination in accordance with Article 13.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the laws of the State of Oregon.

§ 15.2 Assignment of Contract

Neither party to the Contract shall assign or transfer the Contract or any interest or obligation herein, whether voluntary or involuntary or by operation of law, without the prior written consent of the other. Any purported assignment or transfer of this Contract or any interest herein without the other party's required written consent is void and unenforceable.

§ 15.3 Tests and Inspections

§ 15.3.1 At the appropriate times, the Design-Builder shall arrange for, and bear the cost of, tests, inspections, and approvals, of portions of the Work, required by the Design-Build Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.3.2 If the Owner requires additional testing, the Design-Builder shall arrange for the performance of those tests. The costs of such tests, except as provided in Section 11.1, shall be at the Owner's expense.

§ 15.3.3 The Owner shall bear the cost of tests, inspections, or approvals, that do not become requirements until after the Design-Build Amendment is executed.

§ 15.4 Project Team

§ 15.4.1 The Owner identifies the following representative to serve as its representative:

_____.

§ 15.4.2 The person or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:

_____.

§ 15.4.3 The Owner will retain the following consultants and separate consultants:

_____.

§ 15.4.4 The Design-Builder identifies the following representative to act on the Design-Builder's behalf with respect to the Project:

_____.

§ 15.4.5 Neither the Owner's nor the Design-Builder's representative will be changed without ten (100 days' written notice to the other party. Any substitution of key members will be submitted to the Owner for approval, which will not be unreasonably withheld. See **Exhibit 4** for a list of Design-Builder's key personnel.

§ 15.5 Minimum Wage Rates on Project

§ 15.5.1 Design-Builder will 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 Contract Documents. Pursuant to ORS 279C.830(1)(c), Design-Builder will pay workers at not less than the specified minimum hourly rate of wage, and will 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, Contractor will pay the higher of the applicable state or federal prevailing rate of wage. Design-Builder will provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

§ 15.6 Payroll Certification and Fee Requirements

§ 15.6.1 In accordance with ORS 279C.845, the Design-Builder and every subcontractor will 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 Contractor or the subcontractor 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 Agreement, which certificate and statement shall be verified by the oath of the Design-Builder or the subcontractor that the Design-Builder or subcontractor has read the certified statement, that the Design-Builder or subcontractor knows the contents of the certified statement, and, that to the Design-Builder's or subcontractor's best knowledge and belief, the certified statement is true. The certified statements will 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 subcontractor 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 subcontractors will preserve the certified statements for a period of ten (10) years from the date of completion of the Contract.

§ 15.6.2 Pursuant to ORS 279C.845(7), the Owner will retain 25 percent of any amount earned by the Design-Builder on this Project until the Design-Builder has filed the certified statements required by Section 15.6.1. The Owner will pay to the Design-Builder the amount retained under this subsection within fourteen (14) days after the Design-Builder files the

required certified statements, regardless of whether a subcontractor has failed to file certified statements. Pursuant to ORS 279C.845(8), the Design-Builder will retain 25 percent of any amount earned by a first-tier subcontractor on this Project until the first-tier subcontractor has filed with the Owner the certified statements required by Section 15.6.1. Before paying any amount retained under this subsection, the Design-Builder will verify that the first-tier subcontractor has filed the certified statement. Within fourteen (14) days after the first-tier subcontractor files the required certified statement the Design-Builder will pay the first-tier subcontractor any amount retained under this subsection.

§ 15.6.3 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.

§ 15.7 Prompt Payment and Contract Conditions

§ 15.7.1 As a condition to Owner's performance hereunder, the Design-Builder will:

- .1** Make payment promptly, as due, to all persons supplying to the Design-Builder labor or materials for the prosecution of the Work provided for in this Agreement.
- .2** Pay all contributions or amounts due the State Industrial Accident Fund from such Design-Builder or subcontractor incurred in the performance of this Agreement.
- .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 subcontractors, vendors, or manufacturers, and will not make any agreement or act in any way to give subcontractors 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.
- .5** 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 subcontractor by any person in connection with the project as such claim becomes due, the proper officer(s) representing the Owner may pay the claim and charge the amount of the payment against funds due or to become due Design-Builder under this Agreement. Payment of claims in this manner will not relieve the Design-Builder or the Design-Builder's surety from obligation with respect to any unpaid claims.
- .6** The Design-Builder will include in each subcontract for property or services entered into by the Design-Builder and a first-tier subcontractor, 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 subcontractor 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.
- .7** All employers, including the 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 will ensure that each of its subcontractors complies with these requirements.

§ 15.8 Payment For Medical Care

§ 15.8.1 As a condition to Owner's performance hereunder, Design-Builder will 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.

§ 15.9 Hours of Labor

§ 15.9.1 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, the Design-Builder will 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.

This Section 15.9.1 will not apply to Design-Builder's Work under this Agreement to the extent Design-Builder is currently a party to a collective bargaining agreement with any labor organization.

This Section 15.9.1 will not excuse Design-Builder from completion of the Work within the time required under this Agreement.

§ 15.10 Compliance With Government Regulations

§ 15.10.1 Design-Builder will comply with all applicable laws pertaining to the Work and the Contract. Failure to comply with any laws will constitute a breach of Contract and will be grounds for Contract termination. 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 659; as amended; (vi) ORS Chapter 659A; as amended; (vii) all regulations and administrative rules established pursuant to the foregoing laws; and (viii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

§ 15.10.2 Design-Builder will comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Design-Builder will 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. Design-Builder will maintain, in current and valid form, all licenses and certificates required by applicable laws or this Contract when performing the Work.

§ 15.10.3 Unless contrary to federal law, Design-Builder will certify that it shall not accept a bid from Subcontractors to perform Work as described in ORS 701.005 under this Contract unless Subcontractors are registered with the Construction Contractors Board in accordance with ORS 701.021 to 701.068 at the time they submit their bids to the Contractor.

§ 15.10.4 Oregon law requires the Design-Builder, its Contractor and any Subcontractor performing excavation-type work to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-00100. You may obtain copies of the rules by calling the center at (503)232-1987.

§ 15.10 Legal Relations

§ 15.10.1 Nothing in this Agreement will create or is intended to create a contractual relationship with, or a cause of action in favor of, any third party against the Owner.

§ 15.11 Survival

§ 15.11.1 All warranty and indemnification provisions of this Contract, and all of Design-Builder's other obligations under this Contract that are not fully performed by the time of Final Completion or termination, shall survive Final Completion or any termination of the Contract.

ARTICLE 16 INSURANCE AND BOND REQUIREMENTS

§ 16.1 Insurance. The Design-Builder shall procure and maintain during the life of this Contract (and for a period of ten (10) years after final acceptance by the Owner in the case of completed operations coverage), insurance with a carrier licensed to do business in the State of Oregon and a AM Best Rating of no less than A – VII. The Design-Builder shall pay for, the following types and minimum amounts of insurance:

§ 16.1.1 Primary Coverage: Insurance carried by Design-Builder and Subcontractors under this Contract shall be the primary coverage. The coverages indicated are minimums unless otherwise specified in the Contract Documents.

§ 16.1.2 Commercial General Liability: Upon issuance of a Contract, Design-Builder will obtain, and keep in effect at Design-Builder's expense for the term of the Contract, Commercial General Liability Insurance covering bodily injury and property damage in the minimum amount of \$2,000,000 combined single limit per occurrence and \$2,000,000 general aggregate in a form satisfactory to Owner. This insurance will include personal injury liability, products and completed operations, no subcontractors' limitations, blanket XCU, and blanket broad form contractual liability coverage for the indemnities provided under this Contract (to the extent contractual liability coverage for the indemnity is available in the marketplace), and shall be issued on an occurrence basis.

§ 16.1.3 Automobile Liability covering vehicles owned by the Design-Builder and non-owned, or rented vehicles used by the Design-Builder with policy limits of not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section 16.1.3, along with any other statutorily required automobile coverage. Design-Builder and its Subcontractors are responsible for ensuring that all non-owned vehicles maintain adequate Automobile Liability insurance while on the Project site.

§ 16.1.4 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided that such primary and excess insurance policies result in the same or greater coverage as those required under Section 16.1.2 and 16.1.3.

§ 16.1.5 Workers' Compensation: 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. This shall include Employer's Liability Insurance with coverage limits of not less than the minimum amount required by statute for each accident. Contractors who perform the Work without the assistance or labor of any employee need not obtain such coverage if the Design-Builder certifies so in writing. Design-Builder shall ensure that each of its Subcontractors complies with these requirements. The Design-Builder shall require proof of such Workers' Compensation coverage by receiving and keeping on file a certificate of insurance from each consultant and Subcontractor or anyone else directly employed by the Design-Builder, its consultants or its Subcontractors.

§ 16.1.6 Umbrella Liability: Design-Builder shall obtain, at Design-Builder's expense, and keep in effect during the term of this Contract, Umbrella liability Insurance over and above the general liability, automobile liability and workers' compensation coverage with limits of not less than \$5,000,000.

§ 16.1.7 Physical damage insurance covering owned or rented machinery, tools, equipment, office trailers and vehicles, with limits of not less than the value of the machinery, tools, equipment, office trailers, and vehicles.

§ 16.1.8 During the term of this Contract, for new construction the Design-Builder will obtain and keep in effect Builder's Risk insurance on an all risk forms, including earthquake and flood, for an amount equal to the full amount of the Contract, plus any changes in values due to modifications, Change Orders and loss of materials added. The Builder's Risk policy will include, in addition to earthquake and flood, theft, vandalism, mischief, collapse, transit, debris removal, and architect's fees "soft costs" associated with delay of project due to insured peril. Any deductible shall not exceed \$25,000 for each loss, except the earthquake and flood deductible, which shall not exceed two-percent (2%) percent of each loss or \$25,000, whichever is greater. The Design-Builder will maintain the Builder's Risk insurance shall be until Owner has occupied the residence.

§ 16.1.9 Builder's Risk Installation Floater: For Work other than new construction, Design-Builder shall obtain and keep in effect during the term of this Contract, a Builder's Risk Installation Floater for coverage of the Design-Builder's labor, materials and equipment to be used for completion of the Work performed under this Contract. The minimum amount of coverage to be carried shall be equal to the full amount of the Contract. The policy will include as loss payees Owner, the Design-Builder and its Subcontractors as their interests may appear. Owner may waive this requirement at their sole and absolute discretion.

§ 16.1.01 The Owner will adjust any loss insured under the Builder's Risk insurance and any payments from the insurer will be made payable to the Owner as loss payee. The Design-Builder shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate written agreements shall require Subcontractors to make payments to their sub-subcontractors of any tier in similar manner. The Owner shall have power to adjust and settle a loss with insurers.

§ 16.1.12 Professional Liability: Design-Builder shall provide Professional Liability coverage with a limit of no less than \$2,000,000 per claim. Design-Builder will require each of its Consultants who perform design services, whether architectural or engineering services, to procure and maintain Professional Liability coverage with a limit of no less than \$2,000,000 per claim.

§ 16.1.23 The Design-Builder shall require its Subcontractors to procure and maintain during the progress of their portion of the work the same types and terms as shown in Sections 16.1.2, 16.1.3, 16.1.5, and 16.1.6. Design-Builder shall review all Subcontractor's insurance documents to assure compliance with the provisions of their respective Subcontracts and the requirements set forth below. This insurance shall provide coverage at least in the minimum limits as follows:

- (a) Worker's Compensation Insurance Certificate – with statutory limits under all circumstances; and
- (b) Commercial Automobile Liability - \$500,000 Combined Single Limit; and
- (c) Commercial Liability - \$1,000,000 per occurrence, \$2,000,000 aggregate amount, \$2,000,000 for products and completed operations coverage for six [6] years after final acceptance by the Owner; and
- (d) Umbrella Excess Liability - \$2,000,000 per occurrence, \$2,000,000 aggregate; and
- (e) Subcontractor's Commercial General Liability, Comprehensive Automobile Liability, and Umbrella/Excess Liability policies shall be endorsed to add Contractor and Owner as additional insured with respect to the performance of Subcontractor's operations under the Subcontract Agreement and the Contract documents, specifically including completed operations coverage.

§ 16.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property.

§ 16.3 The Design-Builder shall obtain an endorsement to its commercial general liability insurance policy to cover the Design-Builder's obligations under Section 5.11.

§ 16.4 Each party shall provide certificates of insurance showing their respective coverages prior to commencement of the Work.

§ 16.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Design-Builder waive all rights against each other, and any of their consultants, contractors, suppliers, agents, and employees, each of the other, for damages caused by fire, or other causes of loss, to the extent covered by property insurance pursuant to Section 16.2, or other insurance applicable to the Work and completed construction.

§ 16.6 "Tail" Coverage: If any of the required liability insurance is arranged on a "claims made" basis, "tail" coverage will be required at the completion of this Contract for a duration of 36 months or the maximum time period available in the marketplace if less than 36 months. Design-Builder shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 36 months following Final Completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of this Contract. Owner's receipt of the policy endorsement evidencing such coverage shall be a condition precedent to Owner's obligation to make final payment and to Owner's final acceptance of Work or services and related warranty (if any).

§ 16.7 Additional Insured: The general liability insurance coverage and umbrella insurance policies shall include the Owner as additional insureds, and shall include completed operations coverage.

§ 16.8 If Design-Builder cannot obtain an insurer to name the Owner as additional insureds, Design-Builder will obtain at Design-Builder's expense, and keep in effect during the term of this Contract, Owners and Contractors Protective Liability Insurance, naming the Owner as additional insureds with not less than a \$2,000,000 limit per occurrence. This policy must be kept in effect for at least 36 months following Final Completion. As evidence of coverage, Design-Builder shall furnish the actual policy to Owner prior to execution of the Contract.

§ 16.9 Notice of Cancellation or Change: If the Design-Builder receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the

insurance requirements herein, Design-Builder agrees to notify Owner by electron mail, reader receipt requested, within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. When notified by Owner, the Design-Builder agrees to stop Work pursuant to this Contract, unless all required insurance remain in effect. Any failure to comply with the reporting provisions of this insurance, except for the potential exhaustion of aggregate limits, shall not affect the coverages provided to the Owner and its institutions, divisions, officers, and employees.

Owner shall have the right, but not the obligation, of prohibiting Design-Builder from entering the Work site until a new certificate(s) of insurance is provided to Owner evidencing the replacement coverage. The Design-Builder agrees Owner reserves and has the right to withhold payment to Design-Builder until evidence of reinstated or replacement coverage is provided to Owner.

§ 16.10 Certificate(s) of Insurance: As evidence of the insurance coverage required by this Contract, Design-Builder shall furnish certificate(s) of insurance to the Owner prior to execution of the Contract. The certificate(s) will specify all of the parties who are additional insureds or loss payees for this contract. Insurance coverage required under this Contract shall be obtained from insurance companies or entities acceptable to the Owner and that are eligible to provide such insurance under Oregon law. Eligible insurers include admitted insurers that have been issued a certificate of authority from the Oregon Department of Consumer and Business Services authorizing them to conduct an insurance business and issue policies of insurance in the state of Oregon, and certain non-admitted surplus lines insurers that satisfy the requirements of applicable Oregon law and which are subject to approval by the Owner. Design-Builder shall be financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder. Any deductible, self-insured retention and/or self-insurance in excess of \$25,000 shall be subject to approval by the Owner in writing and shall be a condition precedent to the effectiveness of any Contract. The Owner has the right to require the Design-Builder at any time during the performance of the Work to furnish to Owner copies of the Design-Builder's actual policies.

§ 16.11 Waivers: The Design-Builder waives, and it shall require its Subcontractors to waive, any and all rights of recovery which they or any of them may now or subsequently have against the Owner in connection with the Work to the extent covered by the insurance required to be obtained under this Contract. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 16.12 Reservation of Rights: Acceptance of insurance certificates by Owner shall in no way limit or relieve Design-Builder of the duties and responsibilities under this Agreement. Except as provided in the Contract Documents, insurance provided by Design-Builder shall not relieve or decrease the liability of Design-Builder or its Subcontractors. Design-Builder shall be responsible for the payment of the deductibles, subject to a \$25,000 limit per claim or loss, in connection with the claims made under insurance policies required in this Contract.

§ 16.13 Payment and Performance Bonds. the Design-Builder shall furnish and maintain in effect at all times during the Contract Period a performance bond in a sum equal to the Contract Sum and a separate payment bond also in a sum equal to the Contract Sum. Design-Builder shall furnish such bonds even if the Contract Sum is less than the above thresholds if otherwise required by the Contract Documents.

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

§ 16.15 Before execution of this Agreement the Design-Builder shall file with the Construction Contractors Board, and maintain in full force and effect, the separate public works bond required by Oregon Laws 2015, Chapter 279C, and OAR 839-025-0015, unless otherwise exempt under those provisions. The Design-Builder shall also include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting Work, unless otherwise exempt, and shall verify that the subcontractor has filed a public works bond before permitting any subcontractor to start Work.

ARTICLE 17 SCOPE OF THIS AGREEMENT

§ 17.1 This Agreement represents the entire and integrated Agreement between the Owner and the Design-Builder and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended

only by written instrument signed by both Owner and Design-Builder. If there is any conflict within the Design-Build Documents, the most recent document will govern over previously signed documents.

§ 17.2 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A145™–2015, Standard Form of Agreement Between Owner and Design-Builder for a One or Two Family Residential Project
- .2 Exhibit 1: Owner’s Design Criteria and Program
- .3 Exhibit 2: Physical Characteristics of Project Site
- .4 Exhibit 3: Schedule
- .5 Exhibit 4: Design-Builder’s Compensation Prior to Execution of the Design-Build Amendment
- .6 Exhibit 5: AIA Document A145™–2015, Exhibit A, Design-Build Amendment, if executed
- .7 Exhibit 6: Design-Builder’s Unconditional Waiver of Payment Claims

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

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OWNER (Signature)

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Oregon State University
Michael J. Green
Title: Interim Vice President for Finance and Administration

DESIGN-BUILDER (Signature)

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(Printed name, title and address)