

Note: This document is a sample and subject to modifications as a result of negotiations prior to execution.

**DESIGN-BUILD**

**AGREEMENT**

between

Oregon State University (OSU)

(Owner)

and

\_\_\_\_\_  
(Design-Builder)

For Construction and Engineering Services for

Underground Construction: PacWave South

Dated \_\_\_\_\_, 2020

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**DESIGN-BUILD**  
**AGREEMENT**

THIS DESIGN-BUILD AGREEMENT (this “Agreement”) is by and between Oregon State University (OSU), a public university (the “Owner”), and \_\_\_\_\_, a[n] \_\_\_\_\_ (the “Design-Builder”) (collectively, the “Parties”), Oregon State Construction Contractors Board License No. \_\_\_\_\_. Owner and Design-Builder agree as follows:

ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

**1.1 Definitions.** The following terms have the meanings set forth below:

“Alternate” shall mean, where applicable, a scope of work that Design-Builder shall include in applicable budgets and estimates, such that Owner may, at its option and in its sole discretion, approve or disapprove the same as an additional component of the Work.

“Alternate Schedule” shall mean, where applicable, Design-Builder’s separate and identifiable pricing and scheduling information for all Alternates of a Deliverable Portion of Work, including in the applicable Pricing Amendment Documents, for possible addition to the Work.

“Applicable Laws” shall mean federal, state and local laws, codes, rules, regulations, zoning and ordinances and university standards and policies applicable to the Project, including: ADA; ORS Chapter 659, as amended; ORS Chapter 659A, as amended; subcontracting laws in ORS 701.005 and ORS Sections 701.021 to 701.068; landscape contractor laws in ORS Sections 671.520(2) and ORS 671.560; excavation notification laws in OAR Sections 952-001-0010 through OAR 952-001-00100; Exhibit \_\_\_\_ - Oregon State University Standard Terms and Conditions for Services; and all regulations and administrative rules established pursuant to the same.

“Bridging Documents” shall mean, where applicable, the Owner’s design documents illustrating and identifying the framework of a Deliverable Portion of Work’s design, including functional, aesthetic, and quality requirements.

“Business Inclusion and Diversity Program” shall have the meaning given in the General Conditions.

“Claim” shall have the meaning given in the General Conditions.

“Construction Contingency” shall mean separately identifiable contingency funds included in a Pricing Amendment as set forth in *Section 7.4* of this Agreement.

“Construction Documents” shall mean the documents Design-Builder and its consultants prepare for use when performing construction of a Deliverable Portion of Work, or the Project, as the context requires.

“Construction Phase” shall mean the phase of a Deliverable Portion of Work after Owner and Design-Builder enter into a Pricing Amendment for that Deliverable Portion of Work.

“Construction Schedule” shall have the meaning given in the General Conditions.

“Constructor’s Standard of Care” shall mean the professional standard that prevails in comparable areas throughout the United States among construction professionals and construction firms experienced

with, and performing the construction and management of, projects similar to the scope, quality, and complexity of the Project.

“Contract Documents” shall have the meaning given in the General Conditions.

“Day” shall have the meaning given in the General Conditions.

“Deliverable Portion of Work” shall have the meaning given in the General Conditions.

“Design Phase” shall mean the phase of a Deliverable Portion of Work prior to Owner and Design-Builder entering into a Pricing Amendment for that Deliverable Portion of Work.

“Design Professional” shall mean any individual or professional organization that Design-Builder engages to perform Services, acting in accordance with ORS Chapter 671 (Architects) or ORS Chapter 672 (Engineers) and administrative rules adopted pursuant to the same.

“Design Professional’s Standard of Care” shall mean the professional standard that prevails in comparable areas throughout the United States among design professionals and design professional firms experienced with, and performing the design and administration of, projects similar to the scope, quality, and complexity of the Project.

“Design Schedule” shall mean Design-Builder’s comprehensive, detailed, updated, schedule for delivery of the Services of a Deliverable Portion of Work that is consistent with the Project Schedule, and approved by Owner in writing.

“Early Work” shall mean, where applicable, Work, including preparatory activities and long lead time materials, Design-Builder shall perform under an Early Work Amendment (defined below) prior to a Pricing Amendment that includes such Work.

“Early Work Amendment” shall mean Owner’s written order describing and authorizing Design-Builder to proceed with certain Early Work in a form substantially similar to attached *Exhibit B*.

“Effective Date: shall mean the date it has been signed by every party hereto.

“Estimated Pricing Amendment Sum” shall mean Design-Builder’s estimate of the total cost to Owner of each Deliverable Portion of Work.

“Estimated Project Sum” shall mean Design-Builder’s preliminary estimate of the total amount Owner will pay for the Project, generated in accordance with *Section 5.2*.

“Final Completion” shall have the meaning given in the General Conditions.

“General Conditions” shall mean the General Conditions of the Contract for Construction attached as *Exhibit A*.

“Guaranteed Substantial Completion Date” shall mean the date, as set forth in the applicable Pricing Amendment, by which Design-Builder shall achieve Substantial Completion of the applicable Deliverable Portion of Work.

“Instruments of Service” shall mean the Drawings, Specifications, and other documents and information expressing the Project, whether in form, function, concept, or otherwise, produced by Design-Builder or its Subcontractors.

“Key Personnel” shall have the meaning given in *Section 4.5* of this Agreement.

“Liquidated Damages” shall have the meaning given in *Section 8.3* of this Agreement.

“Notice to Proceed” shall have the meaning given in the General Conditions.

“Owner Parties” shall mean, individually or collectively, as the case may be, [Owner, Owner’s Representative, and Design Professional]’ provided, however, Owner shall have the exclusive right to change at any time such parties so designated as Owner Parties.

“Owner-Supplied Equipment and Materials” shall mean equipment and materials Owner procures and supplies for Design-Builder’s incorporation in the Project as part of the Work. [Optional – project-specific]

“Owner’s Representative” shall mean \_\_\_\_\_, or its successor as designated by Owner, to whom Owner has delegated some or all of Owner’s Project duties and responsibilities.

“Preliminary Services Sum” shall mean the lump sum amount payable by Owner to Design-Builder for Services rendered before Owner agrees to a Pricing Amendment applicable to those Services.

“Pricing Amendment” shall mean an amendment to this Agreement, signed by Owner and Design-Builder, determined in accordance with *Article 5*, issued in the form of *Exhibit C*, establishing the Pricing Amendment Sum, compensation method, Completion Date as updated and set forth in the Project Schedule, and Pricing Amendment Documents, for each Deliverable Portion of Work.

“Pricing Amendment Documents” shall mean the Drawings, Specifications, clarifications, qualifications, assumptions, and other documents, upon which a Pricing Amendment is based, all as approved by Owner.

“Pricing Amendment Sum” shall mean the maximum amount payable by Owner to Design-Builder for a Deliverable Portion of Work, whether a lump sum or a GMP, as set forth in a Pricing Amendment.

“Project or PacWave South” shall mean the wave energy test facility located off Newport, Oregon. PacWave will be the Nation’s first grid-connected, pre-permitted wave energy test facility. PacWave is funded and supported by DOE, the State of Oregon and various other public and private entities.

“Project Criteria” shall mean Owner’s preliminary Project information, which may include preliminary designs, design requirements, programming information, physical characteristic requirements, sustainable objectives, siting requirements, geotechnical reports or data, preliminary budget, scheduling information and milestone dates, or other requirements and information, all as set forth in *Exhibit D*, as the same may be supplemented from time to time, subject to the Work Schedule.

“Reimbursable Expenses” shall mean Design-Builder’s consultants’ (including Design Professional) travel and subsistence expenses, communication services, approval fees of authorities having jurisdiction over the Services, document production fees, postage and shipping fees, Site office expenses, and other similar Owner-approved Project-related expenses.

“Services” shall mean the design services Contractor furnishes to fulfill its obligations and execute the terms of the Contract Documents.

“Standard of Care” shall mean Design Professional’s Standard of Care, or Constructor’s Standard of Care, as the context requires.

“Supporting Documents” shall have the meaning given in the General Conditions.

“Work” shall have the meaning given in the General Conditions.

**1.2 Other Terms.** In addition to the terms defined in this *Article 1*, other terms are defined throughout this Agreement in sections relevant to their use, and in the General Conditions. If terms are not defined in this Agreement or the General Conditions, they shall have their well-known technical or construction industry meanings.

**1.3 Context.** As the context of each provision of this Agreement changes, so too shall its verbs and nouns. Specifically, terms in the singular and the plural shall include one another, and terms in the feminine, masculine, or neuter, shall include one another. Use of the word “including” throughout this Agreement shall mean “including without limitation” and shall not be deemed a limitation but instead an illustration.

**1.4 Incorporation by Reference.** All exhibits, schedules, and other attachments to this Agreement, including the General Conditions, shall be incorporated in and integrated into this Agreement by their reference.

**1.5 General Conditions.** Design-Builder is referred to in the General Conditions as “Contractor.”

## ARTICLE 2

### RELATIONSHIP OF THE PARTIES

**2.1 Relationship of the Parties.** Design-Builder acknowledges and accepts that by the terms of the Contract Documents, Owner places its trust and confidence in Design-Builder. As such, Design-Builder covenants to: (i) cooperate with Owner Parties; (ii) exercise its best skill and judgment in furthering Owner’s interests for the benefit of the Project, including delivering efficient design, construction, administration, management, and supervision; (iii) furnish at all times an adequate supply of labor and Materials; and (iv) perform the Work in conformance with the Contract Documents and in an expeditious and economical manner.

**2.2 Open Communication.** Design-Builder shall regularly communicate with Owner Parties for the duration of the Project.

**2.3 [Intentionally Deleted.]**

**2.4 Project Financing.** Design-Builder shall reasonably assist during Owner’s Project financing process. Design-Builder shall cooperate with those entities financing any portion of the Project and shall sign any amendments to the Agreement, and provide information and documentation that such entities may reasonably require. Design-Builder covenants it will make available upon reasonable request, Site access and Project information including construction progress and expenditures, such that Owner’s lenders, bond trustees, and rating agencies, may inspect or cause its agents to inspect, the Work, and review pay applications. Design-Builder covenants to disclose to any financial institution financing the Project information concerning Design-Builder’s financial status, credit rating, and similar information. However, nothing in the Contract Documents shall be construed to require Owner to obtain a loan for the Work.

If Owner’s Project construction loan is secured by a mortgage on real or personal property at the Site, this Agreement may be assigned to Owner’s construction lender as collateral. Design-Builder agrees to subordinate, and shall cause all Subcontractors and Suppliers to subordinate, their construction liens and bond claims to the Project construction loan. Design-Builder agrees to sign, and shall require Subcontractors and Suppliers to sign, subordinations and other agreements as the Project’s lenders may reasonably require. [Optional – discussion point]

## ARTICLE 3

### OWNER’S RIGHTS AND RESPONSIBILITIES

**3.1 Timely Response.** Owner Parties shall render decisions in a timely manner to avoid unreasonable delay in the orderly progress of the Work; provided, however, Design-Builder shall timely advise Owner Parties of the time requirements pertaining to such decisions.

**3.2 Owner’s Personnel.**

**3.2.1 Project Consultants.** Owner has separate agreements with Owner’s Representative and Owner’s other Project consultants, and although referred to in, are not parties to, this Agreement. Owner reserves the right to change Owner’s Representative and will give Design-Builder



prompt written notice of any such change. None of Owner's Representative's services supplant or modify any of Design-Builder's obligations, whether express, implied, or customary.

3.2.2 **Communications.** Owner's Representative shall give Design-Builder written direction on behalf of Owner. Unless specifically authorized, Design-Builder shall communicate with Owner, through Owner's Representative. All communications to and from Subcontractors and Suppliers shall be through Design-Builder.

3.2.3 **Control.** Owner Parties shall not be deemed to have control or charge of, and will not be responsible for acts or omissions of, Design-Builder, Subcontractors, or their respective agents or employees, or any other Persons performing Work.

## ARTICLE 4

### DESIGN-BUILDER'S RIGHTS AND RESPONSIBILITIES

4.1 **Standard of Care.** Design-Builder covenants it and its Subcontractors will perform the Work in accordance with the recognized standards of design and construction industry practices. Design-Builder further covenants the Services will be performed in accordance with Design Professional's Standard of Care and Work other than the Services will be performed in accordance with Constructor's Standard of Care.

4.2 **Design-Builder's Role Generally.** Design-Builder shall fully, properly, and timely, perform all Work, as required by the Contract Documents, to furnish Owner with a first-class, complete, fully-functional Project, capable of being used for its intended purpose. Throughout the course of Work, Design-Builder shall coordinate and manage the design and building process as an independent contractor, continuously monitor the schedules and budgets pertaining to the Work, and recommend adjustments to the Work as necessary to ensure completion of the Work in the most expeditious and efficient manner possible. During the Construction phase, Design-Builder shall be the general contractor and construction manager.

4.3 **Cooperation.** Design-Builder covenants to support a collaborative and cooperative relationship among it, Owner, Owner's Representative, Design Professional, other Project participants, and others Owner may engage to perform services or work not included in the Work. Design-Builder shall obtain and transfer, or assist others to obtain and transfer, warranties, and to perform warranty and inspection Work for the Project through the expiration date of the applicable warranty period.

4.4 **Progress Reports.** Design-Builder shall keep Owner Parties informed of the progress of the Work. Design-Builder shall submit to Owner Parties monthly Progress Reports, which shall include: (i) Work completed for the reporting period; (ii) an updated Work Schedule, Design Schedule and Construction Schedule, as applicable; (iii) an updated Submittal log including a summary of outstanding Submittals; (iv) pending and approved changes under *Article 10* of the General Conditions; (v) test and inspection reports; and (vi) current total Reimbursable Expenses.

4.5 **Design-Builder's Personnel and Consultants.**

4.5.1 Design-Builder's personnel shall include those described in Design-Builder's staff chart in attached *Exhibit E* (the "Key Personnel"). Design-Builder shall submit to Owner Parties for approval within fifteen (15) Days of the Effective Date a list of the Key Personnel, which shall include the background, experience, and qualifications, of each of the Key Personnel. Following Owner Parties' approval, Design-Builder shall use best efforts to keep the Key Personnel assigned to the Project and performing in accordance with Owner's expectations and shall not assign to the Project any other senior personnel without Owner Parties' prior written approval.

4.5.2 Design-Builder shall promptly replace any personnel assigned to the Work upon Owner Parties' reasonable objection to such personnel.

4.5.3 In addition to the staff chart referenced above, Design-Builder shall include in *Exhibit E* its individual scheduled payment rates for all Key Personnel and non-Key personnel. Such rates shall include the pro rata portion of the cost of (a) mandatory and customary contributions and benefits pursuant to Design-Builder's company-wide policy and (b) applicable collective bargaining agreements.

4.5.4 In the event Design-Builder no longer employs any of the Key Personnel, Design-Builder shall promptly notify Owner Parties and shall use best efforts to provide a permanent replacement suitable to Owner Parties within ten (10) Days after such event.

4.5.5 Design-Builder represents that all persons under its direction performing Work who are required by Applicable Laws to be licensed are so licensed and will remain licensed for the duration of the Agreement.

4.5.6 The Design-Builder acknowledges and agrees that (1) all Work performed by the Design-Builder, Design Professionals, Subcontractors, and any others for whom the Design-Builder is responsible (collectively, the "Design-Build Team") shall be performed in the interests of the Owner and for its benefit, (2) the Owner will be relying on the Design-Build Team to perform their obligations consistent with this Section, and (3) as a result, the Design-Build Team and each of them shall owe a duty to the Owner to exercise reasonable care and to avoid negligence in performing their obligations under this Design-Build .

**4.6 Governmental Approvals.** Design-Builder and Subcontractors shall secure and assist Owner to secure all Governmental Approvals, and Design-Builder shall comply with all requirements and conditions of all Governmental Approvals.

4.6.1 As of the Effective Date, Owner is specifically and only procuring the following permits, licenses, and authorizations:

- DSL *Cable Easement* - expected April 2020.
- Bureau of Ocean Energy Management (BOEM) *Lease* - expected May 2020.
- Department of Environmental Quality (DEQ) *401 Water Quality Certification* - expected May 2020.
- DEQ *1200-C Water Quality Permit* - expected May 2020.
- Oregon Department of Transportation (ODOT) *Easement* - expected June 2020.
- Private Property *Easements* - expected June 2020.
- Federal Energy Regulatory Commission (FERC) *License* - expected July 2020.

**4.7 Service Plan.**

4.7.1 Submittal. Design-Builder shall submit to Owner Parties for review, within fifteen (15) Days of the Effective Date, its service plan. The service plan shall clearly communicate to Owner Parties Design-Builder's Project management plan including staffing and a Work Plan, all as set forth below.

4.7.2 Forms and Procedures. Owner Parties may develop forms and procedures for the administration and tracking of the Work and the Contract Documents. Design-Builder agrees it shall incorporate into its service plan all such forms and procedures as Owner Parties may require.

4.7.3 Staffing. Design-Builder shall include in its service plan a detailed staffing plan describing Design-Builder's and its consultants' services, including those of the Key Personnel. The staffing plan shall include, at a minimum, (i) the names of all individuals assigned to each phase; (ii) a

brief description of such individuals' roles and responsibilities; and (iii) anticipated percentage of working time such individuals will expend performing Work for each phase.

4.7.4 **Work Plan.** Design-Builder shall include in its service plan and shall implement throughout the Work an updated and comprehensive work plan defining and describing Design-Builder's (and its Subcontractors' and consultants') deliverables and tasks throughout the design and construction process for each Deliverable Portion of Work, as well as procedures, schedules, documentation, and quality control plans (collectively, the "Work Plan"). The Work Plan shall also include Design-Builder's points of contact, file type and data transfer methods, and other protocols for everyday communications and document processing during preconstruction, construction, and post-construction.

#### **4.8 Owner-Supplied Goods.**

4.8.1 Design-Builder acknowledges Owner may supply the Project certain Owner-Supplied Equipment and Materials. Design-Builder shall cooperate with Owner Parties and shall provide information and assistance as Owner Parties may reasonably request to investigate such Owner-Supplied Equipment and Materials. Design-Builder's assistance may include providing quotes or Alternates such that Owner Parties may understand the cost of potential Owner-Supplied Equipment and Materials versus the cost of those same goods supplied through Design-Builder.

4.8.2 If Owner elects to procure Owner-Supplied Equipment and Materials for the Project, Owner Parties, together with Design-Builder, will develop an agreed upon responsibility matrix for the same. However, unless Owner and Design-Builder otherwise agree in writing, the Work shall include coordination, handling, inspecting, preparing, installing, commissioning, and testing such Owner-Supplied Equipment and Materials. [Optional – discussion point]

4.8.3 Owner and Design-Builder agree they will sign amendments and other documentation necessary to memorialize their agreement to matters related to the Owner-Supplied Equipment and Materials.

4.9 **LEED Standards.** Design-Builder agrees to use best efforts, including providing all reasonable documentation, to aid Owner Parties in causing the applicable Work to incorporate, within the applicable Pricing Amendment Sum, elements and criteria necessary to qualify for U.S. Green Building Council Leadership in Energy and Environmental Design ("LEED") certification points required to achieve Owner's selected LEED certification standard identified in the Project Criteria (the "LEED Certification Standard"). Design-Builder acknowledges the LEED Certification Standard might include waste and air quality management practices that will directly affect Design-Builder's Site operations. [Optional Section – project specific]

4.10 **Other Obligations.** Design-Builder shall perform all other obligations and provide all other services (a) set forth in the Contract Documents and (b) necessary and incidental to full and proper completion the Work and the intent of the Project.

4.11 **Limitation of Authority.** Design-Builder shall have no authority to bind Owner without Owner's prior written approval. Design-Builder shall have authority to act on Owner's behalf only to the extent provided in the Contract Documents.

## ARTICLE 5

### DESIGN PHASE SERVICES

5.1 **Design Phase Services.** During the Design Phase, Design-Builder shall provide Services, as set forth in this Agreement, including this *Article 5*, and as Owner Parties may reasonably request.

5.2 **Project Planning.** Design-Builder shall jointly with Owner Parties schedule and attend regular meetings to consult, advise, and solicit feedback from Owner Parties on all aspects of the planning and design of the Work. Design-Builder shall review and comment on Owner's Project Criteria, each in

terms of the other. Design-Builder shall assist Owner to refine its proposed budgets, including by generating and delivering to Owner Parties its Estimated Project Sum, utilizing the Project Criteria, and estimating techniques appropriate to each stage of development, and shall refine the Estimated Project Sum based on changes during the Work.

Design-Builder shall schedule and conduct regularly reoccurring meetings at least weekly with Owner Parties to review development of the Services, Drawings, Specifications, and the Work in general, including procedures, progress, coordination, and scheduling.

Design-Builder shall collaborate with the Owner, Design Professionals, and any Subcontractors to make an affirmative, good faith effort during the course of the design and construction to identify and propose for review and decision by Owner, value engineering and other deductive changes to the Work with the aim of lessening the overall cost of the Work without any or significant diminution in the overall value and quality of the Work.

### **5.3 Project Criteria.**

5.3.1 Design-Builder shall meet with Owner Parties to discuss its preliminary evaluation of the Project Criteria (the “Preliminary Evaluation Meeting”) during which Design-Builder shall address (a) possible alternative approaches to design and construction of the Project and recommend when appropriate accelerated or fast-track scheduling, procurement, or phased construction and (b) cost information, constructability, and procurement and scheduling issues.

5.3.2 Within ten (10) Days of the Preliminary Evaluation Meeting, Design-Builder shall report in writing to Owner Parties with a summary of its understanding and a plan for implementation of the Project Criteria (the “Preliminary Design Report”), including: (i) a preliminary Estimated Project Sum and recommendations for meeting or adjusting the Project Criteria to conform to the Owner’s budget; (ii) preliminary Design Schedules, including proposed design milestones; (iii) dates by which information and decisions from Owner are required; (iv) an anticipated date of delivery to Owner Parties of each Pricing Amendment; and (v) dates of periodic design review sessions with Owner Parties.

5.3.3 Owner Parties shall review the Preliminary Design Report and either approve in writing of, or comment on, the same. Design-Builder shall revise the Preliminary Design Report in accordance with Owner Parties’ comments until Owner approves in writing the Preliminary Design Report (the “Preliminary Report Approval”). Upon issuance of the Preliminary Report Approval, Design-Builder shall proceed with the Design Phase in accordance with the Design Schedules; provided, however, the Preliminary Report Approval shall not be deemed to modify the Project Criteria unless Owner and Design-Builder formally enter into a change in accordance with *Article 10* of the General Conditions.

5.3.4 Design-Builder shall confirm that the Project Criteria complies with Applicable Laws and lawful orders of Governmental Authorities. In the event the Project Criteria conflicts with Applicable Laws or lawful orders of Governmental Authorities, Design-Builder shall notify Owner of the same. If Design-Builder determines that Owner Parties’ instructions would cause a violation of Applicable Laws or lawful orders of Governmental Authorities, Design-Builder shall promptly notify Owner Parties in writing. In the instance of any conflict between the Contract Documents and Applicable Laws, the more stringent requirement shall apply to the extent allowed by law.

5.3.5 After Owner issues the Project Criteria, if there is a change to the Project Criteria that is other than a minor change as set forth in *Section 10.3* of the General Conditions and one that actually causes an increase in the Contract Sum and/or Contract Time, as shall be demonstrated by the Design-Builder, Owner and the Design-Builder shall enter into a Change Order in accordance with *Section 10.3.2* of the General Conditions.

### **5.4 Scheduling.**

5.4.1 **Preliminary Scheduling.** Throughout each Design Phase, Design-Builder shall continue to refine and update the applicable Design Schedule as necessary to respond to changes to the Work.

5.4.2 **Work Schedule.** Design-Builder shall prepare in conjunction with Owner Parties, and periodically update, a preliminary Work Schedule. Design-Builder shall include the necessary activities and timelines to support the Work of which Design-Builder is aware or believes to be necessary, including off-site transportation, site work outside of the scope of the Work, and off-site utility extensions. Design-Builder and Owner Parties shall each furnish the other with proposed revisions to the preliminary Project Schedule and Design-Builder shall edit and revise the same until Owner approves.

.1 Design-Builder shall be responsible for updating the Project Schedule throughout the duration of the Project.

.2 Design-Builder shall also propose to Owner Parties, and evaluate as requested, alternative schedules for delivery of the Project. Design-Builder shall estimate and inform Owner Parties of affects such alternative schedules may have on the Estimated Project Sum.

5.4.3 **Special Procurement Issues.** Design-Builder shall investigate and recommend to Owner a schedule for the purchase of Materials and equipment requiring advance procurement (e.g., due to long lead times) [and for Owner-Supplied Equipment and Materials]. Design-Builder shall also work with Owner Parties to identify critical elements of the Work that may require special procurement. [Optional depending on complexity of the Project, how involved Owner chooses to be, etc.]

**5.5 Phasing.** Each Deliverable Portion of Work includes a Design Phase and a Construction Phase. Design-Builder shall recommend to Owner Parties phasing and Work prioritization based on the labor and material markets, project logistics, and such other important factors including time of performance, overlapping trade jurisdictions, weather conditions, and provisions for temporary facilities for the Work.

In the event Owner chooses to proceed with the Work in phases, Design-Builder shall cooperate to economically and efficiently divide the Work into separate Deliverable Portions of Work to accommodate such phases.

**5.6 Construction Schedules.** Design-Builder shall prepare and update Construction Schedules in accordance with *Section 5.13* below.

**5.7 Cost and Constructability.** During the Design Phase, Design-Builder shall work with Owner Parties to regularly estimate costs and analyze constructability of all major components and systems of the Work such that the design and budget can timely develop together.

Upon the dates set forth in the Schedule and in accordance with the development of the Services, Design-Builder shall submit to Owner Parties its final updated Estimated Project Sum.

**5.8 Cost Estimates.** Design-Builder shall use the final Estimated Project Sum to prepare for Owner Parties a detailed Project budget, including an Estimated Pricing Amendment Sum for each Deliverable Portion of Work, in accordance with this Agreement, and on the dates set forth in the Project Schedule. Design-Builder shall update its budget and Estimated Pricing Amendment Sums, using recognized and accepted industry techniques. In the event the Work cost estimates, including the Estimated Pricing Amendment Sums, when taken together, exceed the Estimated Project Sum, Design-Builder shall meet with Owner Parties to discuss changes and review alternatives necessary to maintain a mutually acceptable budget for the Work.

**5.9 Design Documents.**

5.9.1 **Facilitation of Services.** Prior to entering into a Pricing Amendment for a Deliverable Portion of Work, information Design-Builder submits to Owner Parties and Owner's

decisions, shall be to facilitate the Services and shall not be deemed to modify the Project Criteria unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions.

5.9.2 **Design.** During the Design Phase, Design-Builder shall advise Owner on proposed Site use and improvements, selection of materials, building systems and equipment, and other pertinent design-related considerations.

5.9.3 **Certification.** Upon Owner Parties' request, Design-Builder shall furnish Owner Parties with individual certifications from Design Professional and Design-Builder's consultants stating (a) to the best of their knowledge, information and belief, the Drawings, Specifications, or Services to which the certifications relate are (i) consistent with the Contract Documents, except to the extent specifically identified in the certificate, and (ii) comply with Applicable Laws and lawful orders of Governmental Authorities and (b) Owner Parties shall be entitled to rely upon the certification.

## **5.10 Design Phase Deliverables.**

5.10.1 [In accordance with the Work Schedule, for each Deliverable Portion of Work, Design-Builder shall prepare and submit to Owner Parties its initial design, including a report identifying any deviations from the Project Criteria, and: (i) a Site plan; (ii) the applicable schematic design; and (iii) updated budgets and pricing estimates (collectively, the "Preliminary Design Deliverable").

5.10.2 Owner Parties shall review the Preliminary Design Deliverable and either approve in writing of, or comment on, the same. Design-Builder shall revise the Preliminary Design Deliverable in accordance with Owner Parties' comments until Owner approves the same in writing. The Preliminary Design Deliverable shall not be deemed to modify the Project Criteria unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions.

5.10.3 Upon Owner's approval of the Preliminary Design Deliverable, Design-Builder shall prepare and submit to Owner Parties its final design, including: (i) a report identifying any deviations from the Project Criteria; (ii) developed Drawings and Specifications; and (iii) updated budgets (collectively, the "Final Design Deliverable").

5.10.4 Owner Parties shall review the Final Design Deliverable and either approve in writing of, or comment on, the same. Design-Builder shall revise the Final Design Deliverable in accordance with Owner Parties' comments until Owner approves the same in writing. The Final Design Deliverable shall not be deemed to modify the Project Criteria unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions. ]

5.10.5 All design deliverables, including the Preliminary Design Deliverable and the Final Design Deliverable, shall be delivered to the Owner in a form and manner as specified and acceptable to the Owner, for example and including but not limited to in \_\_\_\_\_ format.

**5.11 Pricing Amendment.** If Owner approves a Final Design Deliverable in accordance with *Section 5.10* above, Design-Builder shall prepare Pricing Amendment Documents, which shall include Work that shall be priced, scheduled, and included in the Contract Documents, as an Alternate, and Work that shall be priced, scheduled, and included in the Contract Documents, as an Allowance. The Alternate Schedule shall include the required start dates for each Alternate, and the sequencing priority of implementing each Alternate.

5.11.1 By including an Allowance in Pricing Amendment Documents, Design-Builder represents and warrants it is a reasonable estimate of the costs of the Work of such Allowance, based on Design-Builder's best skill and judgment, based on the other Pricing Amendment Documents that are sufficiently detailed to make such an estimate. Each Alternate's and Allowance's pricing shall remain valid from the date the applicable Pricing Amendment is fully-signed through the date of Final Completion of the applicable Deliverable Portion of Work containing each such Alternate or Allowance unless, in the case of an Allowance, Design-Builder develops a final price for that portion of the Work

included in such Allowance, in which case that final price shall remain valid through the date of Final Completion of the applicable Deliverable Portion of Work.

5.11.2 In accordance with the Work Schedule and based upon the approved Final Design Deliverable and the Estimated Pricing Amendment Sum, Design-Builder shall deliver to Owner Parties for review, comment, and approval its proposed Pricing Amendment, supporting Pricing Amendment Documents, and its Work plan, for the applicable Deliverable Portion of Work.

5.11.3 Upon Owner's approval and the Parties' signatures, a proposed Pricing Amendment shall amend this Agreement, and shall be revised only by Change Order.

5.11.4 Notwithstanding anything to the contrary contained in the Contract Documents, Owner shall not be required to enter into any Pricing Amendment and, unless and until the Parties enter into a Pricing Amendment, Design-Builder's rights, including to payment, under the Contract Documents, shall be limited to only its completed Work, including completed Early Work set forth in an Early Work Amendment.

**5.12 Early Work Amendment.** Notwithstanding an Early Work Amendment, any Early Work Design-Builder may perform or be authorized to perform shall not waive Owner's right to reject the Pricing Proposal.

**5.13 Construction Schedules.** Design-Builder shall incorporate the relevant portions of the Project Schedule, into its Construction Schedules. After Owner approves a Pricing Amendment, Design-Builder shall update and distribute with the Progress Report its approved Construction Schedule for that Work. Each such updated Construction Schedule shall conform to the Contract Documents' requirements and shall accurately reflect progress and remaining estimated durations of applicable Work.

**5.14 Construction Documents.** After Owner and Design-Builder enter into a Pricing Amendment, Design-Builder shall prepare the Construction Documents it will use to construct the Deliverable Portion of Work associated with that Pricing Amendment, which shall be consistent with, and lend further detail to, the Final Design Deliverable.

Upon completion of the Construction Documents, Design-Builder shall provide the same to Owner Parties for review. If Owner Parties discover deviations from the Final Design Deliverable or other inconsistencies among the Construction Documents and the Contract Documents, Owner shall notify Design-Builder in writing of the same. The Construction Documents shall not modify the Project Criteria or the other Contract Documents unless Owner and Design-Builder enter into a change in accordance with *Article 10* of the General Conditions. Owner Parties' failure to discover any such deviations shall not relieve Design-Builder of its obligation to perform the Work in accordance with the Contract Documents.

**5.15 Energy Analysis.** Design-Builder shall cooperate with Owner Parties and maximize energy efficiency in the Project by proposing, supporting, and estimating costs associated with energy related incentive programs with every construction cost estimate and as Owner Parties may request.

**5.16 [Intentionally deleted.]**

**5.17 Other Preparation for Construction.** Design-Builder shall plan, in writing and through drawings as appropriate, the Project's Site coordination, including staging and storage areas, and rules applicable to Site operations.

5.17.1 Design-Builder shall recommend a schedule for and, if Owner requests, aid in delivery of, Owner-Supplied Equipment and Materials, including those items requiring special procurement, as set forth in *Section 5.4.3* above.

5.17.2 Design-Builder shall confirm all Construction Documents: (a) coordinate separate Subcontractors' Work, (b) are assigned to the appropriate trade, (c) minimize the likelihood of jurisdictional disputes, and (d) allow for phased construction if and when applicable.

5.17.3 Unless Owner Parties otherwise direct or the Contract Documents otherwise require, Design-Builder shall obtain all permits, licenses, and approvals for the Work, including building, Site development, shoring and excavation, and utilities, as required by Governmental Authorities and customarily obtained by construction contractors.

5.17.4 The Construction Phase of a Deliverable Portion of Work shall not commence prior to a Pricing Amendment for that Work unless and only to the extent set forth in an Early Work Amendment.

## ARTICLE 6

### CONSTRUCTION PHASE SERVICES

**6.1 General Subcontracting Requirements.** For purposes of this *Article 6* the term “Subcontractor” shall include the term “Supplier.”

Design-Builder shall assure that the Work under all Subcontracts, when taken together, will be complete and sufficient for the entire Construction as required by the Contract Documents.

Design-Builder’s Subcontracting records are not intended to be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to audit and monitor the Subcontracting process to protect Owner’s interests.

Design-Builder’s use of Subcontractors shall not relieve Design-Builder of any of its obligations or liabilities under the Contract Documents. Design-Builder shall have sole responsibility for managing, coordinating, and settling disputes involving any Subcontractor.

**6.2 Subcontractor Interest.** Design-Builder shall develop Subcontractor interest in the Project and the Work and shall furnish Owner Parties with a list of possible Subcontractors for each principal portion of the Work (the “Potential Subcontractor List”). Design-Builder’s submission of the Potential Subcontractor List is for information and discussion only and is not for Owner Parties’ prequalification. Owner’s receipt of the Potential Subcontractor List shall not require Owner Parties to investigate, and shall not waive Owner Parties’ right to reject, the qualifications of any Subcontractors. [Optional depending on desired control over Project.]

6.2.1 Design-Builder shall furnish Owner Parties with information and advice concerning current construction market bidding conditions and shall advise Owner Parties of subcontracting opportunities with certified diverse businesses.

6.2.2 Within fourteen (14) Days of Owner and Design-Builder entering into a Pricing Amendment, Design-Builder shall furnish Owner Parties with a written list of proposed Subcontractors for each principal portion of the applicable Work. Owner Parties will reply within seven (7) Days to the Design-Builder in writing if Owner has reasonable objection to any such proposed Subcontractor. [Optional depending on desired control over Project.]

6.2.3 Design-Builder shall comply with OSU Business Inclusion and Diversity Program as set forth in OSU Standard 03-010 and OSU Procurement and Contract Services Manual Section 316.

6.2.4 Design-Builder shall, and require Subcontractors to, comply with State of Oregon Bureau of Labor & Industries prevailing wage rates. [Confirm if required – project specific]

6.2.5 Design-Builder shall indemnify, defend, and hold harmless, Owner Parties, from and against any Subcontractor claim that arises due to Design-Builder’s failure to incorporate the relevant terms of this *Article 6* and other necessary provisions of the Contract Documents in each Subcontract.

**6.3 Early Work.** Design-Builder and Owner may enter into one or more Early Work Amendment identifying specific Work that shall be performed prior to a Pricing Amendment that includes



such Work, subject to a not-to-exceed budget and price. All Early Work shall be performed and Owner shall pay for the same in accordance with the terms of the Contract Documents and the terms of the applicable Early Work Amendment.

6.3.1 Prior to commencing any Early Work: (i) Design Professional shall have issued Construction Documents for that Early Work; (ii) Governmental Approvals necessary to commence such Early Work shall have been issued; (iii) Design-Builder shall have submitted, for Owner Parties' review and approval, a Construction Schedule and cost estimate for the Early Work; (iv) Design-Builder shall have selected Subcontractors to perform the Early Work; and (v) Owner Parties shall have issued a Notice to Proceed with the Early Work.

6.3.2 The costs of Early Work shall be included in the applicable Pricing Amendment and Design-Builder's obligation to develop its Pricing Amendments shall not be deferred or waived by any Early Work Amendment.

#### **6.4 Construction.**

6.4.1 Scope of Work. Unless otherwise set forth in the Contract Documents, Design-Builder shall provide and pay for labor, Materials, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

6.4.2 Substitutions. When a material or system is specified in the Contract Documents, Design-Builder may make substitutions only in accordance with *Article 10* of the General Conditions.

### ARTICLE 7

#### PAYMENT

7.1 **Contract Sum.** Subject to the terms of the Contract Documents, Owner shall pay Design-Builder the Contract Sum subject to the Preliminary Services Sum and each Pricing Amendment Sum, as the same may be amended from time to time by Change Order. Design-Builder shall bear, without Owner's reimbursement, all costs in excess of (a) the Preliminary Services Sum and (b) each applicable Pricing Amendment Sum.

7.2 **Alternates.** Owner shall approve each Alternate by Change Order in accordance with *Section 10.3* of the General Conditions. Unless so approved, Design-Builder shall not proceed with an Alternate. If Owner approves one or more Alternates, payment for such approved Alternates shall be included in Design-Builder's applicable Applications for Payment in accordance with *Section 7.5*.

#### **7.3 Allowances.**

7.3.1 Design-Builder shall promptly develop and deliver to Owner Parties a final price for each of its Allowances after the Contract Documents pertinent to each such Allowance are completed. If Design-Builder's final price exceeds an Allowance, Owner will elect to: (a) issue a Change Order by an amount to which Owner and Design-Builder agree for the Work of that Allowance, or (b) cause Design-Builder and its consultants to redesign the Work of that Allowance, including Work ancillary to the Work of the Allowance, such that the Allowance price set forth in the applicable Pricing Amendment will not be exceeded.

7.3.2 If Design-Builder's final price is less than an Allowance, Design-Builder and Owner will promptly issue a deductive Change Order to the applicable Pricing Amendment.

7.3.3 In the event some of Design-Builder's final prices exceed, and others are less than, their applicable Allowance prices, Owner may offset such prices to reduce or eliminate the number of Change Orders otherwise necessary due to all of those Allowances.

**7.4 Construction Contingency.** Each Pricing Amendment shall include a preliminary Construction Contingency in an initial amount to which Owner and Design-Builder agree.

7.4.1 **Use of Funds.** Subject to Owner Parties’ prior written approval, Design-Builder may apply Construction Contingency funds to unexpected increases in costs of the Work, including due to: (i) unforeseen differences in the scope of the Work; (ii) corrective Work due to defective work not caused by the Design-Builder or anyone for whom the Design-Builder is responsible; (iii) errors in estimating; (iv) overtime expenses not caused by the Design-Builder or anyone for whom the Design-Builder is responsible; (v) other errors or omissions not due to breach of the Contract Documents, and not due to negligence or willful misconduct of Design-Builder or anyone from whom the Design-Builder is responsible; and (vi) Subcontractor default if Design-Builder shows it took reasonable steps to cause each such defaulting Subcontractor or Subcontractor’s surety to perform its Work; provided, however, requisite or otherwise available insurance would not cover such default.

In no event shall Construction Contingency funds be used to pay Liquidated Damages.

7.4.2 **Reduction Milestones.** [Optional Section – discussion and negotiation point] Each Pricing Amendment’s Construction Contingency funds shall not exceed the amounts set forth below upon the milestones set forth below, and the amount of reduction in such funds, if any, shall be credited to Owner by Change Order included with Design-Builder’s Application for Payment immediately following each such milestone; unless, however, Owner initiates an additive Change Order allocating any such reductions in Construction Contingency to that Change Order.

<b>Reduction Milestone</b>	<b>Reduction Amount</b>
Completion of [TBD]	Construction Contingency funds, not including pending Claims at the time of the milestone, shall not exceed [%] of the applicable Pricing Amendment Sum
Completion of [TBD]	Construction Contingency funds, not including pending Claims at the time of the milestone, shall not exceed [%] of the applicable Pricing Amendment Sum
Completion of [TBD]	Construction Contingency funds, not including pending Claims at the time of the milestone, shall not exceed [%] of the applicable Pricing Amendment Sum
Completion of [TBD]	Construction Contingency funds, not including pending Claims at the time of the milestone, shall not exceed [%] of the applicable Pricing Amendment Sum
[Five (5)] days after [Substantial Completion of the applicable Deliverable Portion of Work]	Construction Contingency funds, not including pending Claims at the time of the milestone, shall not exceed [1%] of the applicable Pricing Amendment Sum
[Five (5)] days after [Final Completion of the applicable Deliverable Portion of Work]	Construction Contingency funds, not including pending Claims at the time of the milestone, shall not exceed [%] of the applicable Pricing Amendment Sum

**7.5 Progress Payments.**

7.5.1 Applications for Payment.

.1 *Design Services.* Design-Builder shall prepare separate Applications for Payment for the Services of each Deliverable Portion of Work executed, in accordance with Article 6 of the General Conditions, and this Section 7.5. Before an applicable Pricing Amendment Sum is established, Owner shall make progress payments for the Work on account of the Preliminary Services Sum and for documented Reimbursable Expenses. After the applicable Pricing Amendment Sum is established, Owner shall

make progress payments on account of that Pricing Amendment Sum as provided in *Article 5* above, including for Reimbursable Expenses.

.2 *Construction Services.* Design-Builder shall prepare separate Applications for Payment for the Work of each Deliverable Portion of Work executed, in accordance with *Article 6* of the General Conditions, and this *Section 7.5*. Owner shall make progress payments on account of the applicable Pricing Amendment Sum as provided below and elsewhere in the Contract Documents.

7.5.2 Required Contents. Design-Builder shall include the following in each Application for Payment and each shall be a condition precedent to Owner's payment:

.1 *Schedule of Values.* An updated Schedule of Values showing all current expenses pertaining to the Work.

.2 *Percent Complete.* The percentage each portion of the applicable Work is completed, as compared to and categorized in the Schedule of Values, as of the end of the period covered by such Application for Payment. The percentage of the Work that is completed in each Application for Payment shall be the percentage of Work that has actually been completed and not rejected for the applicable Deliverable Portion of Work.

.3 *Progress Report.* A current Progress Report, updated Work, Design, and Construction Schedules, if any, for the Deliverable Portion of Work applicable to the Application for Payment, all in accordance with *Section 4.4* and *Article 5* of this Agreement.

.4 *Supporting Documents.* Supporting Documents and any other evidence Owner Parties reasonably require to demonstrate cash payments, all on account of costs of the Work

.5 *Statement of Furnishing.* A sworn statement identifying: (i) the names of all parties furnishing and the goods, labor, or services so furnished to the Project with a value in excess of twenty-five thousand dollars (\$25,000) during the time period of the applicable Application for Payment; (ii) payments made to each party furnishing goods, labor, or services; and (iii) amounts due and remaining amounts that are likely to become due to each party furnishing goods, labor, or services.

.6 *Claims Statement.* A statement expressly made to induce Owner's payment, detailing the costs of the Work completed less retainage withheld, along with any Claims pertaining to that Work, sworn to by the Design-Builder and the Subcontractors, attesting to the satisfactory completion of the Work with qualifications pertaining to the Claims.

.7 *Lien and Bond Claim and Claim Waivers.* The partial unconditional waiver of liens and bond claims and all other claims, in the form set forth on *Exhibit F*, of Design-Builder and all Subcontractors and their Sub-subcontractors and Suppliers who are listed in the immediately prior Application for Payment for which Design-Builder has received payment.

.8 *No Change Orders.* Design-Builder's statement certifying there are no Change Order requests or other claims for additional payment outstanding, or, if a Change Order request or claim for additional payment is outstanding, the amount of funds in issue, the name of the potential claimants, and a description of the pertinent Work.

7.5.3 Computation. Subject to other terms of the Contract Documents, progress payments shall be computed as follows:

.1 Take that portion of the applicable cost limitation (i.e., the Preliminary Services Sum or Pricing Amendment Sum) that is properly allocable to completed Work as determined by multiplying the percentage completion of the applicable Work by the share of the cost limitation allocated to that Work in the applicable Schedule of Values. Pending final determination of cost to Owner of changes in the Work, amounts not in dispute may be included.

.2 Add that portion of the applicable cost limitation properly allocable to Materials and equipment delivered, suitably stored, and in compliance with *Section 6.5.3* of the General Conditions.

.3 Subtract the sum of Owner's previous payments made on account of the applicable Work.

.4 Subtract any shortfall indicated in the documentation required by *Section 7.5.2* above to substantiate prior Applications for Payment, or resulting from errors subsequently discovered in such documentation.

.5 Subtract amounts, if any, Owner is entitled to withhold under the Contract Documents.

.6 Subtract retainage in accordance with *Section 7.5.4* below.

#### 7.5.4 Review; Payment; Retainage.

.1 *Submittal.* Each Application for Payment shall cover one calendar month and shall be due on or before the final Day of each month.

On or before the [25th] Day of each month, Design-Builder shall submit to Owner Parties a draft Application for Payment, together with all applicable Supporting Documents. Owner Parties will review and comment on the draft Application for Payment and return the same to Design-Builder with comments and changes, if any, within [three (3)] Days. On or before the [final] Day of that month, Design-Builder shall submit to Owner Parties its Application for Payment, revised to reflect Owner Parties' comments and changes. [Optional Section – discussion point]

.2 *Payment.* Owner shall pay Design-Builder for the amounts in each approved Application for Payment, delivered pursuant to Owner's invoice delivery requirements, within [thirty (30)] Days of its receipt of the same. Notwithstanding the foregoing, Design-Builder shall not be entitled to payment unless and until its applicable Application for Payment is approved by all of Owner's reviewing parties. In the event Owner fails to make payment within the time required under this *Section 7.5.4*, Design-Builder shall furnish Owner with [ten (10)] Days' advance written notice as a condition precedent to exercising remedies, including those available under the Contract Documents. After receiving a payment, within the legal requirement for prompt payment or seven (7) Days, whichever is less, Design-Builder shall pay each Subcontractor amounts due and owing.

.3 *Retainage.* Retainage shall be withheld and released in accordance with this *Section* and *Section 6.7* of the General Conditions. Owner shall retain from all payments to Design-Builder five percent (5%) of each such payment as security for the Work, until such time as Owner may release retainage or approves a retainage substitute in accordance with the Contract Documents.

## 7.6 Final Payment.

Payment Disputes. In the event Owner Parties determine Design-Builder is due less than amounts requested in its final Application for Payment or Owner otherwise withholds amounts, including because of purported failure of the Work to conform to the Contract Documents' requirements or due to unresolved Claims, and Design-Builder disagrees with any such nonpayment, Design-Builder shall have a Claim in accordance with *Article 12* of the General Conditions.

**7.7 Interest.** Owner shall pay Contractor interest for payable amounts undisputed and overdue, which necessarily do not include retainage properly withheld, at the rate set forth in *Section 14.2* of the General Conditions. For purposes of this *Section*, overdue amounts shall be those due and unpaid for not less than forty-five (45) Days from the latest of (a) the date Owner received the accurate, complete, Application for Payment; or (b) the date Owner receives proper notice of a Claim for nonpayment of amounts due and owing.

## ARTICLE 8

### TIME

**8.1 Time is of the Essence.** Time is of the essence of this Agreement and of the Contract Documents. Dates and milestones established or shown in the Project Schedule or Construction Schedules shall not be altered except by Change Order.

**8.2 Calculation of Time.** If a required time period in this Agreement expires on a Day other than a business day, such time period shall be extended to the next succeeding business day.

**8.3 Liquidated Damages.**

8.3.1 If a Deliverable Portion of Work or other milestone fails to be Complete until after the Completion Date applicable to such Work or such milestone for any number of days, Design-Builder shall pay to Owner by offset from the unpaid amount of the Contract Sum or by direct payment, if there remains insufficient unpaid Contract Sum funds to offset, the per diem liquidated damages amounts set forth in *Exhibit G* for all such days (the "Liquidated Damages"). Liquidated Damages shall be payable upon demand at the time they accrue.

8.3.2 It is understood and agreed by the Parties: (a) Owner will be damaged if Design-Builder fails to meet its obligations under the Contract Documents, including those pertaining to the Project Schedule and Construction Schedules; (b) it will be impracticable or extremely difficult to determine Owner's actual damages resulting from Design-Builder's breach of the Contract Documents, including the Project Schedule and Construction Schedules; and (c) Liquidated Damages payable under this *Article 8* are not a penalty and are instead a fair and reasonable estimate of compensation for the losses that Owner reasonably anticipates under the circumstances of the Work.

8.3.3 Liquidated Damages paid in accordance with this *Article 8* shall be the sole and exclusive measure of delay damages in the event Design-Builder fails to achieve Completion of a Deliverable Portion of Work or milestone on or before the Guaranteed Completion Date for such Work or milestone. However, Liquidated Damages are intended only to cover damages Owner suffers due to delay and do not cover the cost of completion of the Work or other damages, including due to Defective Work.

8.3.4 Construction Contingency shall not be used to pay Liquidated Damages.

8.3.5 This *Section 8.3* shall survive Final Completion and termination of this Agreement.

## ARTICLE 9

### TERMINATION

**8.4 Termination Generally.** Any termination of the Contract Documents shall be pursuant to and in accordance with *Article 13* of the General Conditions. In addition to the terms and conditions of *Section 13.2* of the General Conditions, in the event Owner terminates this Agreement for convenience, Design-Builder shall be entitled to payment for only Work performed and accepted up to and including the date of termination, including Reimbursable Expenses, together with amounts payable for completed Early Work for which Owner issued an Early Work Amendment.

## ARTICLE 9

### MISCELLANEOUS

**9.1 Representations and Warranties.** Design-Builder represents and warrants to Owner (a) its previously submitted qualifications, references, and financial information were and continue to be true and correct in all material respects and are without material change since the date of their submission and (b) the Contract Documents constitute Design-Builder's legal, valid, and binding obligation, enforceable in accordance with their terms.

**9.2 Authority.** Design-Builder and Owner each have full power and authority to enter into and perform the Contract Documents and the persons signing this Agreement on behalf of their respective parties are duly authorized to do so.

**9.3 Ownership of Documents.**

The Instruments of Service are work for hire and as such Owner shall be deemed their owner upon delivery, retaining all common law, statutory and other reserved rights; provided, however, Owner substantially performs its obligations, including prompt payment when due, under the Contract Documents. Design-Builder and its Subcontractors shall, when performing Work, have a limited non-exclusive license to use the Instruments of Service for purposes of designing and constructing. The license granted under this section permits Design-Builder and the Subcontractors to reproduce applicable portions of the Instruments of Service as necessary for the Work. However, if Owner rightfully terminates this Agreement as provided in *Article 13* of the General Conditions, the license granted in this *Section 9.3* simultaneously shall terminate.

9.3.1 Design-Builder shall obtain all necessary releases from Subcontractors to allow it to satisfy its obligations to Owner under this *Article 9*.

9.3.2 In the event Owner alters Instruments of Service without the original author's written authorization or uses the Instruments of Service without retaining the original authors of the Instruments of Service for work other than that which is indicated in those authors' Instruments of Service, the Owner releases such authors from all claims and causes of action arising from or related to such uses. The terms of this *Section 9.3.2* shall not apply if the Owner rightfully terminates this Agreement for cause pursuant to *Section 13.2.4* of the General Conditions.

**9.4 Notice.** Any notice or other written instrument required or permitted pursuant to this Agreement shall be in writing signed by the party giving such notice. Delivery of all such notices and written instruments shall be by hand, overnight courier, or registered letter at the addresses set forth in *Exhibit H*; provided, however, each party shall have the right to change its address by sending notice in the same manner.

**9.5 Third Parties.** Nothing contained in this Agreement shall be deemed to give any third party a claim, Claim, or right of action against Owner or Design-Builder unless that third party is expressly included as an intended beneficiary under the terms of this Agreement.

**9.6 Remedies.** Except as set forth in this Agreement, all rights and remedies contained in this Agreement are in addition to all others available at law or in equity.

**9.7 Headings.** The captions contained in this Agreement are for convenience and reference only and neither extend nor limit the scope or intent of this Agreement or its terms.

**9.8 Exhibits.** All exhibits, schedules, and other attachments referenced in this Agreement are fully incorporated by reference and are an integral part of this Agreement.

**9.9 Entire Agreement.** This Agreement represents the entire and integrated agreement between Owner and Design-Builder and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both Owner and Design-Builder.

**9.10 Counterparts.** This Agreement may be signed in separate counterparts, each of which when signed and delivered shall be an original, and all of which when taken together shall constitute one instrument.

**9.11 Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Contractor shall demonstrate its legal capacity to perform the Services under this Agreement in the State of Oregon prior to entering into this Agreement.

**9.12 Public Records Law.** Owner advises Design-Builder that information OSU receives may be subject to public inspection under Oregon Public Records Law (ORS 192.311-192.355).

THIS AGREEMENT ON THE SUBJECT MATTER HEROF CONSISTS IN ITS ENTIRETY OF THE FOLLOWING IN DESCENDING ORDER: THE AGREEMENT AND ANY ATTACHED EXHIBITS, THE SUPPLEMENTAL GENERAL CONDITIONS, IF ANY, THE GENERAL CONDITIONS, THE PRICING AMENDMENT DOCUMENTS, ANY SOLICITATION DOCUMENTS, AND ANY RESPONSE BY A SUCCESSFUL PROPOSER TO ANY SUCH SOLICITATION DOCUMENTS. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. NO AMENDMENT, CONSENT, OR WAIVER OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY ALL PARTIES. ANY SUCH AMENDMENT, CONSENT, OR WAIVER SHALL BE EFFECTIVE ONLY IN THE SPECIFIED INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT AND THE CONTRACTOR AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

This Agreement is entered into as of the Effective Date.

**OWNER:**

**DESIGN-BUILDER:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_



**Exhibit A**

**GENERAL CONDITIONS**  
**OF THE**  
**DESIGN-BUILD AGREEMENT**

For Construction and Engineering Services for

**Underground Construction: PacWave South (Project)**

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## ARTICLE 10

### DEFINITIONS AND GENERAL PROVISIONS

**10.1 Definitions.** The following terms shall have the meanings set forth below:

“ADA” shall mean the Americans with Disabilities Act of 1990, together with any amendments and rules, regulations, requirements, and best practices promulgated under the authority of the same.

“Addenda” shall mean written, drawn, and graphic instruments and representations issued by Owner Parties prior to Design-Builder signing the applicable Pricing Amendment that change, clarify, or interpret the Project Criteria.

“Agreement” shall mean the Design-Build Agreement effective [\_\_\_\_\_], 2020 between Owner and Design-Builder as the same may be amended from time to time. “Contract” standing alone where used shall have the same meaning as Agreement.

“Allowance” shall mean items of Work that Design-Builder offers to perform at a price that is reasonably estimated but not definitive.

“Applicable Laws” shall mean federal, state and local laws, codes, rules, regulations, zoning and ordinances and university standards and policies applicable to the Project, including: ADA; ORS Chapter 659, as amended; ORS Chapter 659A, as amended; subcontracting laws in ORS 701.005 and ORS Sections 701.021 to 701.068; landscape contractor laws in ORS Sections 671.520(2) and ORS 671.560; excavation notification laws in OAR Sections 952-001-0010 through OAR 952-001-00100; and all regulations and administrative rules established pursuant to the same.

“Application for Payment” shall mean Design-Builder’s certified request for Owner’s payment in the form required by the Contract Documents.

“As-Built Documents” shall mean the Drawings and Specifications revised by Design-Builder to show the as-built condition of the Work and other changes made during the construction process.

“Avoidable Delay” shall have the meaning given in *Section 7.2.3* of these General Conditions.

“Business Inclusion and Diversity Program” shall mean that program established in OSU Standard 03-010, Procurement Thresholds and Methods, and operated pursuant to the university’s Procurement and Contracts unit rules, policies and procedures.

“Certificate for Payment” shall mean each certificate, in the form prescribed in *Section 6.6* of these General Conditions, issued by Owner Parties subsequent to an Application for Payment and in accordance with the Contract Documents evidencing the amount of the Contract Sum then due to Design-Builder.

“Certified Diverse Business Report” shall mean an accurate report by Design-Builder delivered to Owner identifying all certified diverse business enterprises certified with the State of Oregon, in accordance with ORS 200.005, performing work associated with the Project. That report is a condition to Final Completion and shall include the total number of contracts and subcontracts awarded to certified diverse business enterprises and the dollar value of each, including all changes during the course of the Work.

“Change Order” shall mean Owner’s written order, signed by Owner and Design-Builder, authorizing and directing a modification to the Contract Documents due to a change to: (i) the scope of the Work, (ii) the Contract Time or a material change to the schedule of performance of the Work, or (iii) the Contract Sum or Design-Builder’s compensation.

“Claim” shall mean a party to the Contract Document’s request, demand, or assertion pertaining to: (i) a material change to the Contract Time or the schedule of performance of the Work, (ii) a change to the Contract Sum or Design-Builder’s compensation, (iii) a reasonable dispute concerning conformance with the Contract Documents, (iv) damages suffered directly or indirectly by the act or omission of the other party; or (v) other relief from the terms of the Contract Documents.

“Close-Out” shall mean the process and plan prepared by Design-Builder that properly prepares the turnover from Design-Builder to Owner, as set forth in *Section 4.13* of these General Conditions.

“Construction Change Directive” shall mean a written order prepared by Owner Parties and signed by Owner directing Design-Builder to perform a change in the Work prior to agreeing to a change, if any, to the Contract Time, schedule of performance of the Work, Contract Sum, or Design-Builder’s compensation.

“Construction Contingency” shall have the meaning given in the Agreement.

“Construction Plan” shall mean Design-Builder’s written and graphic plan for performance of the Work for each Deliverable Portion of Work including: (i) logistics; (ii) staging, storage, and office areas; (iii) pathways, ingress, and egress on the Site; and (iv) safety plans and managing personnel. [Optional]

“Construction Schedule” shall mean Design-Builder’s comprehensive, detailed, updated, critical path method (CPM) schedule (the “critical path”) for each Deliverable Portion of Work, in conformance with accepted industry standards, that is consistent with the Project Schedule, and in a form and format approved in writing by Owner, all as set forth in *Section 4.6.3* of these General Conditions.

“Contract Documents” shall mean, collectively, the Agreement, as amended; these General Conditions, as amended; the Supplemental General Conditions, if any; the original solicitation document(s) and the Contractor’s proposal response submitted in response to the solicitation; the Project Schedule, Design Schedules, and Construction Schedule; the Project Criteria and their Addenda; the Pricing Amendments, including the Pricing Amendment Documents; and all approved changes to the Work formalized as minor changes in the Work, Change Orders, and Construction Change Directives.

“Contract Sum” shall mean the total dollar amount payable by Owner to Design-Builder for the Work of a Deliverable Portion of Work, as set forth in the Agreement.

“Contract Time” shall mean the allotted time to complete the Work of a Deliverable Portion of Work as set forth in the applicable Construction Schedule and/or the allotted time to complete each Work phase or milestone as set forth in the Project Schedule.

“Design-Builder” shall mean the Design-Builder designated in the Agreement, who will manage or perform the Work, and its permitted successors and assigns, or such other design-build firm as Owner may designate from time to time.

“Day” shall mean a calendar day, including weekdays, weekends and holidays, unless otherwise defined.

“Default” shall mean: Design-Builder’s failure to perform the Work in conformance with the Contract Documents; Design-Builder’s failure to supply an adequate number of properly skilled workers or Materials; Design-Builder’s failure to make payments when due and payable for Work or Materials; Design-Builder’s insolvency; commencement of bankruptcy protection by or pertaining to Design-Builder; Design-Builder’s voluntary bankruptcy action or an involuntary bankruptcy action commenced against Design-Builder; or Design-Builder’s failure to comply with Applicable Laws.

“Defective Work” shall mean Work that fails to conform to the Contract Documents’ requirements.

“Delay” shall mean delays in performance of the Work, or other execution of the Contract Documents.

“Deliverable Portion of Work” shall mean each portion of the Work, or all Work, as the case may be, that Owner agrees in writing to accept when such Work is Substantially Complete, all as set forth in the Contract Documents, including the Project Schedule and the Design and Construction Schedule for that Work.

“Design Professional” shall have the meaning given in the Agreement.

“Design Schedule” shall have the meaning given in the Agreement.

“Drawings” shall mean those documents issued to or on behalf of Design-Builder and approved by Owner showing the design, location and dimensions of the Work, known generally as but not limited to, plans, elevations, sections, details, and schedules.

“Final Completion” shall mean the complete execution of all Contract Documents’ requirements for a Deliverable Portion of Work, as the Contract Documents require, including Close-Out as described in *Section 4.13* but excluding warranty Work as described *Section 11.3*, all as described in these General Conditions. The issuance of a final certificate of occupancy for a Deliverable Portion of Work, along with all final approvals from Governmental Authorities, shall be evidence of but not determinative of, Final Completion of that Work.

“Force Majeure” shall have the meaning given in *Section 7.2.2* of these General Conditions.

“General Conditions” shall mean these General Conditions of the Contract for Construction.

“Governmental Approvals” shall mean all permits, licenses, approvals, and consents, of Governmental Authorities required to perform the Work, including performing or approving the Services, or complete the Work.

“Governmental Authority” shall mean any federal, state, county, municipal, local or other governmental body having jurisdiction over approval of Drawings, Specifications, the Work, or the Site.

“Instruments of Service” shall have the meaning given in the Agreement.

“Liquidated Damages” shall have the meaning given in the Agreement.

“Materials” shall mean all materials, supplies, appliances, equipment, fixtures, and other items that are part of the Work, necessary to complete the Work, or consumed during performance of the Work.

“Notice to Proceed” shall mean official written notice from Owner Parties to Design-Builder directing Design-Builder to commence activities described in such notice, including a notice of commencement for all or a portion of the Work.

“Owner Parties” shall have the meaning given in the Agreement.

“Owner’s Representative” shall have the meaning given in the Agreement.

“Owner’s Separate Contractors” shall mean forces hired by Owner other than Design-Builder’s forces, as set forth in *Section 3.1.5* of these General Conditions.

“Owner’s Standard Requirements” shall mean OSU’s standard contractor requirements set forth in *Exhibit I*.

“Person” shall mean any natural person or entity doing business of any kind, including a partnership, a joint venture, a corporation, a limited liability company, and any other entity possessing the legal capacity to contract.

“Product Data” shall mean illustrations, schedules, performance charts, instructions, brochures, diagrams, and other information that Design-Builder furnishes to illustrate Materials to be incorporated into the Work.

“Progress Report” shall mean Design-Builder’s monthly report to Owner containing an executive summary of completed Work and the contents of the report; the up-to-date Design Schedules and

Construction Schedule; the current actual costs as compared to their budgeted costs for completed activities and estimated costs compared to their budgeted costs for incomplete activities; Construction Contingency status; all known and potential Claims; all material issues relating to the Project that may affect Contract Sum, Contract Time, or Project quality, and proposed solutions for each such issue; status of all outstanding requests for information; current safety and accident report; Project progress photos; and other relevant information reasonably required by Owner.

“Work” shall mean the work described on *Exhibit J* which includes the Work of the Contract Documents.

“Project Schedule” shall mean the overall schedule of the Work, as approved by Owner, including proposed activity sequences and durations, phases and milestone dates, preparation and processing of shop drawings and samples, Owner’s occupancy requirements, and pertinent information from Design-Builder’s Design and Construction Schedules, all as updated from time to time.

“Punch List” shall mean the list generated by Design-Builder and approved by Owner Parties of incomplete or Defective Work that must be corrected before the Final Completion is achieved.

“Quality Management and Control Plan” shall mean the comprehensive quality management and control plan described in *Section 4.5* of these General Conditions and attached as *Exhibit K*.

“Record Document” shall mean Design-Builder’s As-Built Documents, testing and inspection records, product data, samples, manufacturer and distributor/supplier warranties evidencing transfer of ownership to Owner, operational and maintenance manuals, approved shop drawings, Certified Diverse Business Report, correspondence that is material to the Contract Documents, certificate(s) of occupancy, Close-Out documents, and other documents recording performance of the Work.

“Samples” shall mean physical examples illustrating Materials or workmanship, and shall establish standards upon which the Work will be reviewed and approved.

“Schedule of Values” shall mean Design-Builder’s statement reflecting the portions of the Contract Sum allocated to the various portions of the Work and, when approved by Owner, used as the basis for reviewing and processing Applications for Payment, in accordance with *Section 6.3* of these General Conditions.

“Services” shall have the meaning given in the Agreement.

“Shop Drawings” shall mean drawings, diagrams, schedules, and other data specially prepared for the Work by or on behalf of Design-Builder to illustrate a portion of the Work.

“Site” shall mean the physical sites and/or real property upon which the Work will assembled and further described in *Exhibit L*.

“Site Condition(s)” means the physical and other conditions at the Site and the surrounding area as a whole, including conditions relating to the environment, transportation, access, waste disposal, handling and storage of materials, the availability and quality of electric power, the availability and quality of water, the availability and quality of roads, the availability and quality of labor personnel and local work and labor rules, climatic conditions and seasons, topography, air and water (including raw water) quality conditions, ground surface conditions, surface soil conditions, sound attenuation, subsurface geology, nature and quantity of surface and subsurface materials to be encountered (including Hazardous Materials), the geological and subsurface conditions of the Site, all other local and other conditions which may be material to Design-Builder’s performance of its obligations under the Agreement, and the location of underground utilities, obstructions and equipment and facilities needed before and during performance of Design Builder’s obligations under the Agreement.

“Specifications” shall mean those documents issued to or on behalf of Design-Builder and approved by Owner containing the written requirements for Materials, systems, and standards of the Work, including inspection, testing, and warranty requirements.



“Standard of Care” shall have the same meaning as in the Agreement.

“Subcontract” shall mean any agreement between Design-Builder and a Subcontractor for performance of Work or a Supplier for supplying Materials to the Project.

“Subcontractor” shall mean a Person having an agreement with Design-Builder to perform Work. Owner’s Separate Contractors are not Subcontractors unless Owner expressly assigns them in writing to Design-Builder.

“Submittals” shall mean any submission to Owner Parties demonstrating how Design-Builder proposes to conform the Work to the Contract Documents including Shop Drawings, Product Data, Samples, and other customary documents.

“Substantial Completion” and “Substantially Complete” shall mean a Deliverable Portion of Work is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the same for its intended purpose. In no event shall Work be deemed Substantially Complete unless a certificate of occupancy has been issued for the Work or Deliverable Portion of Work, as the case may be, by the appropriate Governmental Authorities and such Work can be delivered to Owner with only Punch List items unfinished in the common areas that will not interfere with Owner’s practical use.

“Substitution” shall mean any product or process Design-Builder proposes to substitute for one specified in the Contract Documents that completely fulfills the requirements of the Contract Documents and is approved by Owner Parties.

“Sub-subcontractor” shall mean a Person having an agreement with a Subcontractor to perform Work.

“Supplemental General Conditions” shall mean those conditions that remove from, add to, or modify these General Conditions by separate attachment to the Contract Documents.

“Supplier” shall mean a Person having an agreement with Design-Builder, Subcontractors, or Sub-subcontractors, to supply Materials to the Project.

“Supporting Documents” shall have the meaning given in *Section 6.5.1* of these General Conditions.

“Unavoidable Delay” shall have the meaning given in *Section 7.2.4* of these General Conditions.

“Work” shall mean the furnishing of all Services, Materials, labor, transportation, facilities, management, and other reasonably necessary services and work, to perform and complete design and construction in accordance with, and reasonably inferable from, the Contract Documents.

**10.2 Other Terms.** In addition to the terms defined in this *Article 1*, other terms are defined throughout these General Conditions in sections relevant to their use. Terms used but not specifically defined in these General Conditions shall have their well-known technical or industry meanings.

**10.3 Context.** As the context of each provision of these General Conditions changes, so too shall its verbs and nouns. Specifically, terms in the singular and the plural shall include one another, and terms in the feminine, masculine, or neuter, shall include one another. Use of the word “including” throughout these General Conditions shall mean “including without limitation” and shall not be deemed a limitation but instead an illustration.

**10.4 Incorporation by Reference.** All exhibits, schedules, and other attachments to these General Conditions shall be incorporated in and integrated into these General Conditions by their reference.

**10.5 Public Works.**

10.5.1 Government Employment Status. If payment under the Agreement will be charged against federal funds, Design-Builder represents and warrants that it is not currently employed by the Federal Government. This does not preclude Design-Builder from holding another contract with the Federal Government. Design-Builder further represents and warrants that Design-Builder is not an employee of the State of Oregon for purposes of performing Work.

10.5.2 Retirement System Status and Taxes. Design-Builder represents and warrants that it is not a contributing member of the Oregon Public Employees' Retirement System and will be responsible for any federal or state taxes applicable to payment received under the Contract Documents. Design-Builder will not be eligible for any federal Social Security, employment insurance, workers' compensation or the Oregon Public Employees' Retirement System benefits from payments, except as a self-employed individual. Unless Design-Builder is subject to backup withholding, Owner will not withhold from its payments to Design-Builder federal or state tax obligations.

10.5.3 Minimum Wages Rates on Public Works. Design-Builder shall comply fully with the provisions of ORS Sections 279C.800 through 279C.870. Documents establishing those conditions, as determined by the Oregon Commissioner of the Bureau of Labor and Industries, are included as attachments to or are incorporated by reference in the Contract Documents. Pursuant to ORS 279C.830(1)(c), Design-Builder shall pay workers not less than the specified minimum hourly rate of wage, and shall include the same minimum hourly rate of wage requirement in all Subcontracts. If the Work is subject to both the Oregon state prevailing wage rate law and the federal Davis-Bacon Act, Design-Builder shall pay the higher of the two prevailing rates. Design-Builder shall also provide written notice to all workers of the number of hours per day and days per week such workers may be required to work.

10.5.4 Payroll Certification and Fee Requirements. In accordance with ORS 279C.845, Design-Builder and every Subcontractor shall submit written certified statements to Owner Parties, on the form prescribed by the Oregon Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid to each worker that Design-Builder or a Subcontractor has employed and further certifying that no worker employed has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents. Design-Builders and Subcontractors shall verify by oath that they have read the certified statement, that they know the contents of the certified statement, and that, to their best knowledge and belief, the certified statement is true. The certified statements shall set out accurately and completely the payroll records for the prior week, including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid. Certified statements for each week during which the Design-Builder or Subcontractor has employed a worker shall be submitted each month, by the fifth business day of the succeeding month. The Design-Builder and Subcontractors shall preserve their certified statements for a period of ten (10) years from the date of Final Completion.

10.5.5 Additional Retainage. Pursuant to ORS 279C.845(7), Owner shall retain twenty-five (25) percent of any amount earned by Design-Builder on this public works Project until Design-Builder has filed the certified statements required by *Section 1.5.4* above. Owner shall pay to Design-Builder the amount retained under this *Section* within fourteen (14) Days after Design-Builder files the required certified statements, regardless whether a Subcontractor has failed to file certified statements. Pursuant to ORS 279C.845(8), Design-Builder shall retain twenty-five percent (25%) of any amount earned by a Subcontractor on this public works Project until that SubDesign-Builder has filed with Owner Parties the certified statements required by *Section 1.5.4* above. Before paying any amount retained under this *Section*, Design-Builder shall verify that Subcontractor has filed the certified statement. Within fourteen (14) Days after Subcontractor files the required certified statement, Design-Builder shall pay Subcontractor any amount retained under this *Section*.

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

10.5.7 Hours of Labor. As a condition to Owner's performance under the Contract Documents, no Person shall be employed to perform Work for more than ten (10) hours in any one Day or forty (40) hours in any one week, except in cases of necessity, emergency, or where public policy absolutely requires it. In such instances, Design-Builder shall pay the employee at least time and a half pay: (i) for all overtime in excess of eight (8) hours a day or forty (40) hours in any one week when the work week is five consecutive Days, Monday through Friday; (ii) for all overtime in excess of ten (10) hours a day or forty (40) hours in any one week when the work week is four consecutive Days, Monday through Friday; and (iii) for all Work performed on Saturday and on any legal holiday specified in ORS 279C.540. This *Section 1.5.7* will not apply to Design-Builder's Work to the extent Design-Builder is currently a party to a collective bargaining agreement with any labor organization and shall not excuse Design-Builder from completion of the Work in accordance with the Construction Schedule and within the Contract Time.

10.5.8 Labor Laws. Design-Builder shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Design-Builder shall not, in the awarding of Subcontracts, discriminate against businesses that have been certified by the State of Oregon Certification Office for Business Inclusion and Diversity under ORS 200.055. Design-Builder shall maintain, in current and valid form, all licenses and certificates required by Applicable Laws and by the Contract Documents when performing the Work.

10.5.9 [Intentionally deleted.]

10.5.10 Design-Builder Certifications. Unless contrary to federal law, Design-Builder shall certify that it shall not accept a bid to perform Work from Subcontractors as described in ORS 701.005 unless such Subcontractors, if required, are registered with the Oregon Construction Contractors Board in accordance with ORS Sections 701.021 to 701.068 at the time they submit bids. Unless contrary to federal law, Design-Builder shall certify that each landscape contractor, as defined in ORS 671.520(2), performing Work holds a valid landscape contractor's license issued pursuant to ORS 671.560.

The following notice is applicable to Design-Builders and Subcontractors who perform excavation Work:

“ATTENTION: Oregon law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0010 through OAR 952-001-00100. You may obtain copies of the rules by calling (503) 232-1987.”

10.5.11 Dual Payment Sources. Design-Builder shall not be compensated for Work from any payment source other than Owner.

## ARTICLE 11

### CONTRACT ADMINISTRATION

#### **11.1 Correlation of Contract Documents; Execution of Work**

11.1.1 General Meaning. The Contract Documents are complementary. Whatever is called for in one Contract Document, shall be interpreted to be called for in all Contract Documents. Design-Builder shall perform all Work required by, reasonably inferable from, and consistent with, the Contract Documents. Some of the Contract Documents contain detailed procedures. These detailed

procedures and requirements are supplementary to, and do not control, the requirements of the other Contract Documents. Instead, wherever possible, the Contract Documents shall be read together and inconsistencies shall be, where practicable, considered additional requirements to those of the other Contract Documents.

11.1.2 Contract Documents. All Work shall be performed in a professional manner, consistent with the Standard of Care, and unless the means or methods of performing a task are specified elsewhere in the Contract Documents, Design-Builder shall employ methods that are generally accepted and used by the industry, in accordance with industry practices and the Standard of Care. The Contract Documents contain the entire integrated agreement between Design-Builder and Owner and supersede prior negotiations, representations, and agreements, whether written or oral. The Contract Documents do not create a contractual relationship between Owner and Subcontractors or Sub-subcontractors.

11.1.3 Order of Precedence. In the event of irreconcilable conflicts or discrepancies among the Contract Documents whose requirements cannot be both practicably performed, interpretations shall be based on the following descending order of precedence: (i) executed Change Orders, with those of later date having precedence over those of an earlier date; (ii) the Agreement; (iii) the Supplemental General Conditions, if any; (iv) the General Conditions; (v) the Pricing Amendment Documents; (vi) any solicitation documents; (vii) and any response to the solicitation submitted by the awarded Design-Builder.

11.1.4 Greater Quality/Quantity. In the case of an inconsistency between Contract Documents as to quantity or quality and not clarified by Addenda, the better quality or greater quantity of Work shall be furnished.

11.1.5 Notice to Owner of Inconsistency. If Design-Builder finds discrepancies in, or omissions from, the Contract Documents, or if Design-Builder is in doubt as to their meaning, Design-Builder shall immediately notify Owner Parties. Responses to Design-Builder's notifications and/or requests for interpretation of Contract Documents will be made in writing within any time limits agreed upon or otherwise with reasonable promptness and will be consistent with the intent of the Contract Documents. If an inconsistency or interrelation is unresolved, Design-Builder shall not proceed with affected Work until it receives written direction from Owner Parties.

11.1.6 References to Standards. All references to standards, express or implied, including to standard specifications, manuals, codes of any technical society, organization or association, or laws or regulations of any governmental authority, shall mean the latest standards in effect in the Site's jurisdiction, occurring on the first published date of any solicitation document, except as may be otherwise specifically stated.

11.1.7 Titles and Sections. Some Contract Documents are titled and sectioned for convenience only and such sectioning shall not control Design-Builder's division of Work among its Subcontractors and the trades and shall not relieve Design-Builder of responsibility for satisfactory execution of the Work. Owner Parties assume no responsibility for Design-Builder's division and coordination of the Work.

**11.2 Owner's Representative**. Any Owner's Representative will inform Owner of the progress of the Work and will be Owner's advisor during the course of the Work. However, Owner's Representative shall neither be responsible for nor have control of design, construction, means, methods, or procedures, Site safety, and shall have no control over the acts or omissions of Design-Builder, Subcontractors, Sub-subcontractors, or any other Persons performing Work.

**11.3 Contract Administration.** Owner Parties shall administer the Contract Documents during construction through Final Completion and during the one-year warranty period for correction of Work. However, Owner reserves the right to perform directly all or some of the roles, and will have all of the rights, designated for Owner Parties in the Contract Documents, including to inspections and rejection of the Work and processing and approving Applications for Payment. In the event Owner chooses to self-perform administration of the Contract Documents, Owner shall not be responsible for or have control of design, construction, means, methods, or procedures, Site safety, and shall have no control over the acts or omissions of Design-Builder, Subcontractors, Sub-subcontractors, or any other Persons performing Work.

Design-Builder shall control and shall be solely responsible for safety precautions and programs in connection with the Work.

11.3.1 **Communication.** Except as otherwise provided in the Contract Documents or when direct communications have been specifically authorized, Owner and Design-Builder shall endeavor to communicate with each other about matters arising out of or relating to the Contract Documents through Owner Parties. Communications by and with Subcontractors, Sub-subcontractors, and Suppliers shall be through Design-Builder. Communications by and with Owner's Separate Contractors shall be through Owner's Representative.

11.3.2 **Site Visits.** Owner Parties will visit the site at intervals appropriate to the stage of the Design-Builder's operations to become generally familiar with and to keep the Owner informed of the progress and quality of the Work and to guard against defects and deficiencies in the Work. Owner Parties' review of the Work is to determine, generally, if Work is and will be in accordance with the intent of the Contract Documents. Owner Parties will not make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Owner Parties' site visits and/or reviews of the Work shall not relieve the Design-Builder in any way of its responsibilities and obligations under the Contract and the Contract Documents.

11.3.3 **Safe Access to Work.** Owner Parties shall have access to the Work and the Site at all times. Contactor shall furnish adequate facilities, as required, for Owner Parties to safely access and inspect the Site and the Work, including without limitation, walkways, railings, ladders, tunnels, and platforms. Producers, Suppliers, and fabricators shall also provide proper facilities and access to accommodate Owner Parties' inspections.

11.3.4 **Inspections.** Work performed and Materials furnished shall be subject to inspection, observation, and testing by Owner Parties at their discretion. Owner Parties' inspection of the Work is to independently determine if the Contract Documents' requirements are met and shall not relieve Design-Builder of its responsibility to ensure the Work meets the Contract Documents' requirements, including Design-Builder's own testing and inspection requirements.

11.3.5 **Affected Third Parties.** When the United States Government pays all or a portion of the Contract Sum, when Owner has an agreement with other public or private organizations, or when a portion of the Work is performed for a third party or in close proximity to third party facilities, representatives of these affected organizations (the "Affected Third Parties") shall have the right to inspect the Work impacting their interests or property. Affected Third Parties' rights to inspect shall not give rise to any status as a party to the Contract Documents, however, and shall not interfere with Owner's or Design-Builder's rights under the Contract Documents. Communications concerning Affected Third Parties shall be conducted exclusively between the Owner Parties and Design-Builder.

## ARTICLE 12

### OWNER'S RIGHTS AND RESPONSIBILITIES

#### **12.1 Owner's Rights.**

12.1.1 Right to Reject Work. Owner Parties shall have the authority to reject Work that does not conform to the Contract Documents and to require special inspection or testing of any Work. However, neither Owner Parties' authority to act under this *Section*, nor any decision made by them in good faith, shall give rise to any duty to Design-Builder, Subcontractor, Sub-subcontractor or any other person performing Work. Work that is Defective Work, in Owner Parties' reasonable judgment, shall be removed from the Site, corrected, and repaired, at Design-Builder's expense. Work completed or Materials installed that are subject to inspection or testing under the Contract Documents but for which Design-Builder failed to properly inspect, test, or timely notice Owner Parties, may be ordered removed by Owner Parties at Design-Builder's expense.

12.1.2 Right to Carry Out the Work. If, within five (5) Days after receiving written demand from Owner Parties to diligently prosecute all or any part of the Work, Design-Builder fails or neglects to carry out such Work promptly and in accordance with the Contract Documents, Owner may, and without prejudice to any other remedy, make good Design-Builder's deficiencies.

If Owner carries out Work as set forth above, Owner Parties shall issue an appropriate Change Order deducting from the Contract Sum the cost of correcting such deficiencies, including compensation for Owner Parties' additional services due to such deficiency. If, at the time Owner issues the deductive Change Order, the payments due Design-Builder are insufficient to cover the deduction in the Contract Sum, Design-Builder shall immediately pay to Owner the difference.

12.1.3 Right to Clean Up. In the event Design-Builder and Owner's Separate Contractors dispute responsibility for cleaning up, Owner Parties may direct Design-Builder to clean up and charge its costs, in Owner Parties' reasonable judgment, to the responsible parties.

12.1.4 Partial Occupancy. Owner shall have the right to occupy and use any completed or partially completed portions of the Work, provided Governmental Authorities having jurisdiction over the Work consent to such occupancy. Substantial Completion shall not be a prerequisite to Owner's occupancy or use; provided, however, that Owner and Design-Builder have (a) reasonably accepted in writing their respective responsibilities for payments, retainage, security, insurance, maintenance, heat, utilities, and damage to the Work and (b) agreed in writing to the period for correction of Work and commencement of warranties required by the Contract Documents for those portions of the Work occupied or used. Immediately prior to Owner's partial occupancy or use, Design-Builder and Owner Parties shall jointly inspect the area to be occupied or used to determine and record the condition of the Work. Partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work that fails to conform to the Contract Documents.

12.1.5 Right to Perform Other Work. Owner reserves the right to perform other or additional work at or near the Site with Owner's Separate Contractors. If such work takes place within or adjacent to the Site, Design-Builder shall coordinate such work and cooperate with Owner's Separate Contractors, to carry out the Work with minimal interference and Delay. Design-Builder and Owner's Separate Contractors shall place and dispose of materials so as not to interfere with the operations of the other, and shall join the Work with the work of others in an acceptable manner and in proper sequence. In the event of a dispute among Design-Builder and Owner's Separate Contractors concerning the order or priority of work, Owner Parties' decision shall be final.

## **12.2 Owner's Responsibilities.**

12.2.1 Timely responses and approvals. Owner shall render approvals and decisions with reasonable promptness and shall endeavor to minimize Delay in the orderly progress of Design-Builder's services and the Work; provided, however, Design-Builder shall timely advise Owner of the time requirements of such approvals and decisions.

12.2.2 Surveys and Site Data. With prior written request, Owner shall furnish Design-Builder with all surveys of the Site then in Owner's possession and to the extent necessary to properly perform the Work. Design-Builder shall review all such materials and promptly notify Owner of inaccuracies or inconsistencies that Design-Builder discovers. Design-Builder shall be liable for any inaccuracies or inconsistencies that Design-Builder discovered or should have discovered in accordance with the Standard of Care, but for which Design-Builder failed to promptly give to Owner notice.

12.2.3 Other Information or Services. With Design-Builder's prior written request, Owner shall furnish Design-Builder with all other information or services then under Owner's control and reasonably required for performance of the Work, with reasonable promptness.

12.2.4 No Representations or Warranties. Design-Builder acknowledges that Owner does not make any representation or warranty with respect to the accuracy or completeness of documents or information (including oral statements) or opinions provided to Design-Builder by Owner, any of Owner's Separate Contractors, or anyone else with whom Owner contracts for the Work, prior to the Execution Date with respect to, or regarding, any Site Condition ("Preliminary Site Information"). The Preliminary Site Information includes all information provided in the Request For Proposals, specifically including any geotechnical information or reports. Design-Builder represents and warrants that it has and will not, and will instruct its Subcontractors to not, rely on Owner for any information, data, inferences or conclusions, or other information with respect to Site Conditions, including the surface and subsurface conditions of the Site and the surrounding areas.

## ARTICLE 13

### DESIGN-BUILDER'S RIGHTS AND RESPONSIBILITIES

#### **13.1 Contract Documents.**

13.1.1 Examination of the Contract Documents. Design-Builder shall carefully study and examine the Contract Documents and shall at once report to Owner Parties discovered errors, inconsistencies, omissions, and departures from Applicable Laws, including design errors and omissions. By studying the Contract Documents and preparing the Pricing Amendment Documents, Design-Builder has fully informed itself as to the quality, quantity, and sources of Materials, the character of the Work, and has made a careful examination of the Site and the location and conditions of the Work. As such, Owner shall not be responsible for and Design-Builder shall have no Claim for losses or unanticipated costs that Design-Builder suffers due to conditions that Design-Builder discovered or, as an experienced Design-Builder, should have discovered, but failed to timely report to Owner Parties.

13.1.2 Verification of the Contract Documents. Design-Builder shall verify all dimensions before laying out the Work, is responsible for the accuracy of all lines, grades, and measurements, and shall protect and preserve all land and survey markers while performing services and executing the Work. Owner Parties' confirmation of dimensions and layout shall not relieve Design-Builder of its responsibilities to the same.

13.1.3 Requests for Additional Compensation or Time. If Design-Builder reasonably believes adjustments to the Contract Documents that would lead to a Change Order are required due to clarifications or instructions issued by Owner Parties in response to the Design-Builder's notices or requests for information, Design-Builder shall submit a written request to Owner Parties, setting forth the nature and specific extent of the request, including all time and cost impacts, as soon as possible, but in no event later than twenty-one (21) Days after Design-Builder's receipt of the clarifications or instructions issued. If Owner Parties deny Design-Builder's request for additional compensation, and Design-Builder reasonably believes such denial was in error, the Design-Builder may file a Claim in accordance with *Article 12* of these General Conditions.

## **13.2 Use of Site.**

13.2.1 Design-Builder's Operations. Design-Builder shall confine all Materials, storage, and operations at the Site to the limits indicated by the Contract Documents, Applicable Laws, permits, and direction of Owner Parties.

13.2.2 Adjacent Buildings and Owner's Ongoing Business. Design-Builder understands the Work performed at the Site will occur around existing buildings, some of which may be historic and fragile, that house and facilitate Owner's current operations. As such, all Work shall be conducted in a manner causing as little interference with and inconvenience to the surrounding structures and continuous conduct of Owner's operations as possible.

13.2.3 Storage and Safekeeping. Design-Builder shall be solely responsible for storage, handling, and safekeeping at all times of Design-Builder's and Subcontractors' tools, all equipment including Owner-Supplied Equipment, and all Materials. Design-Builder shall provide Site and any necessary storage security to guard against vandalism and theft to the Work, tools, all equipment including Owner-Supplied Equipment, and all Materials under Design-Builder's control and care. Design-Builder hereby waives all Claims that pertain to the requirements of this *Section*.

## **13.3 Procedures and Supervision.**

13.3.1 General Responsibilities. Design-Builder shall supervise, coordinate, and direct the Work, using the Design-Builder's best skill and attention, in accordance with the Standard of Care. Design-Builder shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, Site and Project safety, and for coordinating all portions of the Work, unless the Contract Documents give other specific instructions concerning these matters. In any event, Design-Builder shall also evaluate the coordination and jobsite safety of others contributing to the same.

13.3.2 Governmental Authority Coordination. Design-Builder shall coordinate the Work with all Governmental Authorities and utility companies involved in the Work. Prior to excavation and in accordance with utility locating requirements, Design-Builder shall cause to have located all underground facilities on and about the Site before commencing any digging operations.

13.3.3 Supervision. Among Design-Builder's on-Site staff shall be a senior project manager, superintendent, and necessary assistants who shall be satisfactory to Owner Parties and who shall attend the progress of the Work. The project manager shall represent Design-Builder and all communications given to the project manager shall be binding on Design-Builder as if given directly to it.

13.3.4 Protection of Work; Mitigation. Design-Builder shall protect from damage and maintain the Work during the course of construction and shall mitigate any adverse impacts to the Project,



including those caused by casualty and by Owner's authorized changes, which may affect Contract Sum, Contract Time, schedules, or quality.

13.3.5 [Intentionally deleted.]

13.3.6 Owner's Separate Contractors. Design-Builder shall provide Owner's Separate Contractors reasonable opportunity to introduce and store at the Site their tools, equipment, and Materials and for the execution of their work. Design-Builder shall coordinate the Work with the work and services of Owner's Separate Contractors in accordance with the Contract Documents.

Work whose commencement depends upon completion of Owner's Separate Contractors' work shall not be commenced until Design-Builder inspects such Owner's Separate Contractors' work for conformance with the Contract Documents. In the event Design-Builder finds Owner's Separate Contractors' work defective or incomplete, Design-Builder shall promptly report to Owner Parties the apparent issues. Design-Builder's failure to inspect and report such issues shall, except for latent, concealed defects, constitute an acceptance of Owner's Separate Contractors' work as fit for proper execution of the Work.

Any costs caused by defective or ill-timed Work and any damage to the Work or to Owner's Separate Contractors' work shall be borne by the party responsible for such defect, ill-timeliness, or damage.

**13.4 Labor and Materials.** Design-Builder shall provide and pay for all labor, Materials, machinery, utilities, transportation, and other facilities and services necessary for the proper execution and completion of the Work in accordance with the Contract Documents.

13.4.1 Quality of Work. Design-Builder shall execute the Work with a quality of workmanship consistent with the Standard of Care. Design-Builder warrants that all Materials shall be new unless otherwise called for in the Contract Documents and that the Work will be free from defects and conform to the Contract Documents' requirements.

13.4.2 Labor and Staffing. Design-Builder shall maintain sufficient numbers of qualified workers and personnel assigned to the Work to ensure that its obligations under the Contract Documents are timely met. Design-Builder shall maintain a competent, full-time staff at the Site, including personnel experienced with works of similar size and scope to that of the Work.

13.4.3 Labor Relations. Design-Builder is responsible for the actions of all its personnel, laborers, Subcontractors, Sub-subcontractors, Suppliers, and all Persons performing Work. Design-Builder shall enforce strict discipline and good order among all Persons carrying out the Work. Design-Builder shall not permit employment of Persons who are unfit or unskilled for the tasks assigned to them or to whom Owner Parties make reasonable objection.

13.4.4 Medical and Workers' Compensation Payments. As a condition to Owner's performance, Design-Builder shall promptly, when due, make payment to any person, partnership, association, company, or corporation furnishing medical, surgical, or hospital care or other needed care and attention, incident to sickness or injury, to the Design-Builder's employees. Design-Builder agrees to pay for all such services, including from monies the Design-Builder has collected or deducted from the wages of personnel pursuant to any law, contract, or agreement for providing or paying for such services. Design-Builder shall comply with and shall ensure all Subcontractors and Sub-subcontractors comply with ORS Chapter 656.

### **13.5 Quality Management and Control.**

13.5.1 Quality Management and Control Plan. Design-Builder shall develop, seek approval from Owner Parties of, and implement, the Quality Management and Control Plan. The Quality

Management and Control Plan is intended to ensure performance of the Work is in accordance with the requirements of the Contract Documents, and implements appropriate procedures to verify and document such compliance. The Quality Management and Control Plan shall include, at a minimum: (i) a breakdown of quality control responsibilities to the various participants; (ii) a cost control system for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes; (iii) a quality control matrix listing all testing, inspections, and Submittals, relating to the Work with specific reference to the source of the requirement and the party responsible (whether Owner Parties, Design-Builder, or others) for that testing, inspection, and Submittal; (iv) inspection and testing plans for all critical Work, including commissioning and Subcontractors' and inspection agents' activities necessary for the commissioning process; (v) field monitoring and inspection reports; (vi) Design-Builder's audit plan for auditing Subcontractor's quality control efforts; and (vii) Defective Work identification, reporting, and correction procedures.

Using Design-Builder's Quality Management and Control Plan, which shall be regularly updated and maintained, Design-Builder shall inspect the Work on an ongoing basis and document all Defective Work, whether identified by Governmental Authorities, Owner Parties, or Design-Builder.

**13.6 Communication.** Design-Builder and Owner Parties shall develop and implement acceptable procedures for reviewing, documenting, and processing questions and responses, including requests for information, requests for clarification, minor changes in the Work, and Change Orders. If Owner Parties so choose, Design-Builder shall furnish a web-based system, to facilitate such communications quickly and accurately.

13.6.1 **Meetings; Reports.** Design-Builder shall regularly schedule, conduct, and record pre-construction and construction progress meetings. Design-Builder shall schedule, conduct, and record such progress meetings with Owner Parties at least weekly during construction. For all such meetings, Design-Builder shall distribute its minutes with promptness after each meeting, to Persons or organizations in attendance.

.1 Design-Builder shall submit to Owner Parties for review, comment, and approval within fifteen (15) Days after the effective date of the Agreement a form of Design-Builder's Progress Report. Design-Builder shall implement and update monthly its approved form of Progress Report.

.2 Design-Builder shall keep and make available at the Site a regularly maintained log of recordable OSHA incidents and recordable lost time accidents and shall include such log in Design-Builder's Progress Reports.

.3 Design-Builder shall keep and make available at the Site a log of Defective Work, as set forth in *Section 4.5.1* above, which shall also be included in Design-Builder's Progress Reports. Design-Builder shall maintain communications with Governmental Authorities having jurisdiction and conducting inspections of the Work to ensure timely inspections and adequate time for remedy of Defective Work.

.4 Design-Builder shall keep and make available at the Site a daily record of Site conditions and activities such as weather, number of workers, Work performed, problems encountered, and other relevant data.

.5 Design-Builder shall keep and make available at the Site a regularly maintained log of all Submittals.

.6 Design-Builder shall keep and make available at the Site an accurate record of all tests, inspections, and reports concerning the Work.

13.6.2 Certified Diverse Business Report. Design-Builder shall submit to Owner Parties its Certified Diverse Report with Design-Builder's final Application for Payment for each Deliverable Portion of Work.

13.6.3 Schedules. The Project Schedule shall include the overall timeline of all Work activities, major milestones, and phases if any, and shall include the general timeline of the Design and Construction Schedules. Design-Builder's Design and Construction Schedules shall include (i) all major components and phases of the applicable Work and their associated costs; (ii) break-downs of each major component or phase by building, floor, and trade as applicable; (iii) the time and duration that each activity will take to completion and accurate estimated float time for each activity; (iv) estimated manpower and cost loading for each phase and, for the Construction Schedule, for each trade within such phase; and (v) the dependencies between all scheduled activities. Design-Builder shall also include in its Construction Schedule applicable dates of Substantial Completion and Final Completion, and in its Design and Construction Schedules all prerequisite activities to the applicable Work, including processing of Submittals and long lead-time products. Design-Builder shall adhere to the Project Schedule when managing the Work and to the Design and Construction Schedules when managing and performing the Work. Design-Builder shall update monthly the Design and Construction Schedules and recommend updates to the Project Schedule as and when necessary. Design-Builder shall deliver to Owner Parties upon request all native electronic files of all Work, Design, and Construction Schedules so requested.

Owner Parties' acceptance of a Design or Construction Schedule does not constitute agreement as to Design-Builder's sequencing, means, methods, or durations. Any positive difference between the Design-Builder's scheduled completion dates, the milestone deadlines, and the Contract Time, is float time owned by the Owner.

13.6.4 Schedule Impacts. Within five (5) Days after occurrence of an event that Design-Builder reasonably believes will have a material impact on the Work or any schedule, Design-Builder shall provide written notice to Owner Parties describing the nature and impact of the event, and propose methods of any necessary mitigation.

### **13.7 Documents and Submittals**

13.7.1 Site Copies. Design-Builder shall keep and make available at the Site one record copy, in physical or electronic form, of the complete Contract Documents in good order and marked to record field changes and selections made during construction along with one record copy of Owner's Separate Design-Builder's coordinated work. Design-Builder shall also keep and make available at the Site one copy, in physical or electronic form, of each approved Submittal.

13.7.2 Design-Builder Review. Design-Builder shall cooperate with Owner Parties to develop an internet-based system to provide an up-to-date Submittal log. The Submittal log shall include proposed submittal dates and review time for each item, and the approval status of each Submittal.

.1 Design-Builder shall prepare, review, approve, and submit to Owner Parties, with reasonable promptness and in such sequence as to cause no Delay in the Work or in the work of Owner's Separate Design-Builder's, all Submittals and mock-ups required by the Contract Documents. All Submittals shall be delivered in sufficient time to allow reviewing parties reasonable time for consideration and Design-Builder adequate time for resubmission if required. Design-Builder shall cooperate with Owner Parties and coordinate Design-Builder's Submittals with those of Owner's Separate Contractors.

.2 Prior to Design-Builder's submission to Owner Parties, Design-Builder shall cause all Submittals to conform to the Contract Documents, and shall confirm and evidence

such conformity with Design-Builder's review stamp marked "approved." Owner Parties will annotate, correct, and stamp the Submittals as necessary, indicating what further action is necessary and appropriate, and return each Submittal to Design-Builder. Submittals corrected by Design-Builder and resubmitted for review and approval containing changes other than those indicated by Owner Parties shall have such additional, new changes, clearly marked to bring them to Owner Parties' attention as well as fully explained in a contemporaneous writing.

.3 In the event a Submittal is not approved, Design-Builder will be notified of the reasons for disapproval and Design-Builder shall timely re-submit the revised unapproved Submittal until approved.

.4 By presenting each Submittal to Owner Parties, Design-Builder represents that it has determined, verified, and approved all Materials and field measurements and criteria related to that Submittal and has confirmed each such Submittal meets the requirements of the Contract Documents.

.5 If a Submittal requires professional services or certifications, Design-Builder shall cause each such Submittal document to bear the signature and seal of that professional, as licensed in the state where the Project is located.

.6 Owner Parties' approval of a Submittal shall not relieve Design-Builder of responsibility for deviation from the requirements of the Contract Documents, unless Owner Parties have given written approval to the specific deviation. The Owner Parties' approval does not imply that the items shown on each Shop Drawing are all-inclusive of Design-Builder's responsibilities. Subject to the Standard of Care, in no event shall Design-Builder be relieved of responsibility for errors or omissions, in the Submittals.

.7 No portion of the Work requiring Owner Parties' approval of a Submittal shall be commenced until such Submittal has been approved. Approved Submittals will constitute the standard of quality, appearance, and assembly of all items represented by such Submittals.

13.7.3 Shop Drawings. Shop Drawings shall be submitted, shall be complete, clear, and easily readable, bearing the date of the original submission and of each subsequent resubmission, a title block with Project name and location, and a space for review stamps. All contents of each Shop Drawing shall include the manufacturer, fabricator, and installer, model numbers, schedule designation, and a reference to the Contract Documents requiring the Submittal. Shop Drawings shall be submitted for complete systems. Partial submissions will not be permitted without Owner Parties' prior written approval. Shop Drawings shall also include related work and equipment as appropriate for context and assembly.

13.7.4 Product Data. Product Data, brochures, illustrations, printed charts, schedules, and other such pre-prepared data shall be submitted plus one electronic copy. Such Submittals shall be clearly marked with the particular characteristics or model of the relevant products.

13.7.5 Samples. Upon request, Design-Builder shall promptly provide a detailed list of all Materials and their respective manufacturers proposed for installation, for Owner Parties' review and approval. The list shall be organized by the Specification section corresponding to each Material, and shall include the installers.

Design-Builder shall prepare and submit for Owner Parties' review and approval all Samples as required by the Contract Documents. If not otherwise specified, all Samples shall be large enough to clearly show all physical characteristics which have a bearing on selection and appearance and shall be submitted in triplicate. Each Sample transmittal document shall include the Project name and location, manufacturer, fabricator, and installer, model numbers, name, finish, and composition of the items, schedule

designation, a reference to the Contract Document requiring the Submittal, and a space for review stamps. Upon approval, the Sample transmittal documents will indicate such approval and two samples will be returned to Design-Builder.

13.7.6 **Purpose and Liability.** Submittals are not Contract Documents. Their purpose is to demonstrate the way by which Design-Builder proposes to conform the Work to the information given and the design concept expressed in the Contract Documents. Owner Parties' review of Submittals is not conducted to determine the accuracy and completeness of other details such as dimensions and quantities, or for substantiating installation instructions, or performance requirements. Owner Parties' approval of a specific item shall not indicate approval of an assembly of which the item is a component.

13.8 **Intellectual Property Costs.** Design-Builder shall pay all royalties and license fees arising from the Work, and shall indemnify, defend, and hold harmless Owner from all intellectual property infringement claims arising from or pertaining to the Work, except for those claims concerning a particular design, process, or product selected by Owner Parties or required by the Contract Documents; provided, however, if Design-Builder has reason to believe that a design, process, or product infringes an intellectual property right, and fails to timely notify Owner Parties, Design-Builder shall be responsible for the same.

13.9 **Permits; Fees.** Unless specifically excluded from Design-Builder's scope in the Contract Documents, including but not limited to the Fee Matrix set forth in *Exhibit M*, Design-Builder shall obtain, manage, and pay for all Governmental Approvals that are customarily secured after signing the Agreement, that are legally required at the time the Contract Sum is agreed to, or that are necessary for the proper execution of the Work. Such Governmental Approvals also include, but are not limited to, Design-Builder's temporary obstructions, enclosures, and Work performed on or about public property other than the Site (e.g., opening of streets for pipes, utilities, environmental work) as required for the Project. Design-Builder shall give all requisite notices to Governmental Authorities having jurisdiction and shall bear all responsibility for violations of Applicable Laws pertaining to such Work. Nothing in this *Section* shall make Design-Builder responsible for permits relating to zoning or environmental impact fees.

### 13.10 **Testing.**

13.10.1 **Design-Builder's Testing. In accordance with Design-Builder's Quality Management and Control Plan,** Design-Builder shall implement its checking and testing procedure at appropriate times during the Work to ensure that all systems, assemblies, and equipment are adequately tested and balanced. In doing so, Design-Builder shall make or obtain at the appropriate time and shall include in the Contract Sum, all tests, inspections, and approvals of the Work required by the Contract Documents and required by Applicable Laws. Unless otherwise approved or required, testing of the Work shall be conducted by an independent testing service acceptable to Owner Parties.

13.10.2 **Notice and Results.** Design-Builder shall give Owner Parties timely notice of when and where tests and inspections are to be conducted so that Owner Parties may be then present. Required certificates of testing, inspection, and approval shall, unless otherwise required by the Contract Documents, be secured by Design-Builder and promptly delivered to Owner Parties, with any warranties or assurances under such testing, assigned to Owner.

13.10.3 **Owner Parties' Testing.** If Owner Parties reserve the right to or request to test any Materials or any other portion or component of the Work, Design-Builder shall furnish samples of such Materials and make available the Work for such testing. Design-Builder shall cooperate with all such testing performed by others. If Owner Parties determine any Work requires special inspection or testing, Owner Parties may instruct Design-Builder to order such special inspection or testing. Design-Builder

shall promptly do as ordered, and shall give to Owner Parties reasonable prior notice of the date and time of such special inspection or testing. Any testing performed or requested by or through Owner Parties shall not relieve Design-Builder of its responsibility to ensure the Work meets the Contract Documents' requirements.

13.10.4 Design-Builder's Expense. If any inspection or testing reveals Defective Work, or if Work is otherwise not approved by Governmental Authorities having jurisdiction, Design-Builder shall bear all costs associated with correction of such Work, including compensation for Owner Parties' additional services attributable to such failure.

**13.11 Cutting and Patching**. Design-Builder shall be responsible for coordinating all cutting, fitting, and patching of the Work to make its several parts come together properly and fit to receive other Work or the work of others. Design-Builder shall be responsible for restoring all cut, fitted, or patched surfaces to an original condition; provided, however, that if a different condition is specified in the Contract Documents, then Design-Builder shall be responsible for causing such surfaces to meet the conditions specified in the Contract Documents. Design-Builder shall not damage or endanger completed Work, the existing improvements, or the work of Owner's Separate Design-Builders. Design-Builder shall not cut or otherwise alter the work of Owner's Separate Design-Builder except with prior written consent and Design-Builder shall not unreasonably withhold from Owner's Separate Design-Builders consent to cutting or otherwise altering the Work.

**13.12 Cleaning Up**. At all times Design-Builder shall keep the Site free from accumulation of waste materials, rubbish, and debris. Design-Builder shall keep and maintain adequate on-Site refuse containers and dumpsters to collect and deposit daily excess construction debris. If Design-Builder fails to keep the Site in a clean and orderly manner, Owner may, with reasonable prior written notice sufficient to provide Design-Builder an opportunity to cure, perform cleaning duties and charge their costs to Design-Builder by offset to any payments due under the Agreement.

In conducting its operations and when performing the Work, Design-Builder shall use its best efforts to prevent the release of dust and accumulation of mud at the Site. Prior to the dates of Substantial Completion and Final Completion, Design-Builder shall clean the Site and remove all debris, rubbish, and containers, and take away from the Site Design-Builder's tools, equipment, machinery, and those surplus Materials to which Owner has chosen not to take possession.

**13.13 Project Close-Out**.

13.13.1 Close-Out Plan. Design-Builder shall develop and deliver to Owner Parties a Close-Out plan at least thirty (30) Days before the date of Substantial Completion of the Work or a Deliverable Portion of Work, as applicable. Each Close-Out plan shall establish dates of: (i) Owner's partial and full occupancy of the Project or Deliverable Portion of Work, as applicable; (ii) all relevant Substantial and Final Completion inspections; (iii) expected issuance of all relevant temporary and permanent certificates of occupancy; (iv) equipment startup, balancing, testing, and training; (v) commencement and transfer to Owner of all utility accounts and charges and manufacturer and supplier warranties; (vi) transfer of spare parts and remaining Materials (of which Owner chooses to retain); and (vii) transfer of Record Documents as required.

13.13.2 As-Built Documents. As a condition of Final Completion, Design-Builder shall provide to Owner a complete set of As-Built Documents, in duplicate and in digital format. As-Built Documents shall depict the Project as constructed and shall reflect each change, modification, and deletion made during construction. As-Built Documents include all modifications to the Contract Documents unless otherwise directed.

13.13.3 Operation and Maintenance Manuals. Design-Builder shall prepare operation and maintenance manuals (“O & M Manuals”) containing a complete set of: all Submittals; training information; a telephone list and contact information for all consultants, manufacturers, installers, and suppliers; manufacturers’ printed data; approved relevant Shop Drawings; schematic diagrams of systems; appropriate equipment indices; and warranties and bonds. As a condition to Substantial Completion, Design-Builder shall submit two (2) completed O & M Manuals for Owner Parties’ prior review and approval. Owner Parties will review and return one O & M Manual containing any modifications, adjustments, or additional information required. Owner Parties’ receipt of one (1) physical and one (1) electronic copy (in native file format) of the final approved O & M Manuals shall be a condition precedent to any payment thereafter due.

13.13.4 Training. As part of the Work, and prior to the date of Substantial Completion, Design-Builder shall schedule with Owner training sessions for all equipment and systems installed as part of the Work. Design-Builder shall schedule training sessions at least two (2) weeks in advance of the date of training to provide Owner adequate notice and time to coordinate. In addition to any off-site training required, training shall include a formal session conducted at the Project in the users’ normal operating environment.

13.13.5 Excess Materials. Design-Builder shall provide to Owner spare parts, extra maintenance materials, and other Materials, as specified in the Contract Documents, upon Substantial Completion. Any additional Materials not required to be delivered to Owner under the Contract Documents (the “Spare Materials”) shall be accounted for by Design-Builder and offered to Owner. If Owner refuses to accept all or part of the Spare Materials, Design-Builder shall credit Owner the fair market value of the unaccepted Spare Materials in the final Application for Payment and shall promptly remove them from the Site.

13.13.6 Design-Builder’s Personnel On-Call. During the first three (3) months following Substantial Completion and Owner’s full occupancy of the Project or a Deliverable Portion of Work, as applicable, Design-Builder shall have appropriate personnel on-call to deal with break-down, inoperability, or other issues with major systems of the Work in accordance with the on-call parameters set forth in *Exhibit* \_\_. If such problems arise at the conclusion of such three (3) month on-call period, all on-call personnel shall remain on-call until the issue proves to be resolved an additional period of not less than two (2) weeks. [Optional – discussion point]

13.13.7 Other Responsibilities. Design-Builder shall be responsible for returning to Owner all of Owner’s property issued to Design-Builder during the term of the Project, including keys, security passes, and site admittance badges. Upon Owner’s full occupancy of the Project or a Deliverable Portion of Work, as applicable, and in accordance with the Project’s Close-Out plan, Design-Builder shall coordinate the transfer of all utility company accounts relating to the Project to the Owner. [Consider Including in Owner’s Standard Requirements Exhibit – discussion point]

**Continuation of Performance Through Disputes**. Notwithstanding any outstanding dispute or claim by Design-Builder on the Project, Design-Builder shall proceed diligently with performance of the Work and of the Agreement.

## ARTICLE 14

### SUBCONTRACTS

#### **14.1 Form and Content**

14.1.1 Form of Subcontract. Upon request, Design-Builder shall submit to Owner Parties for prior review and approval the form of Subcontract. If Owner Parties disapprove such form, Design-Builder shall revise and resubmit to Owner Parties the form of Subcontract until approved. Owner Parties' review, comment upon, and approval of, any such form, shall not relieve Design-Builder of its obligations under this Agreement. Unless otherwise waived in writing by Owner, all Subcontracts shall be awarded on a fixed lump-sum price basis. Upon request, Design-Builder shall supply Owner Parties with copies of all fully-signed Subcontracts.

**14.2 Certain Terms of Subcontract**. In addition to Owner Parties' right to review Subcontracts in Section 5.1.1 above, certain terms shall be included in each Subcontract, as set forth below:

.1 Owner shall be a third party beneficiary of each Subcontract and Owner's rights and remedies under each Subcontract shall be all those of Design-Builder, including the right to be compensated for any loss, expense, or damage incurred resulting from Subcontractor's breach of express or implied terms and Subcontractor's error, omission, or negligence in its performance;

.2 following advance written notice to Design-Builder, Owner Parties may contact Subcontractor, to discuss Subcontractor's services; provided, however, such contact with Subcontractor shall not be construed to be Owner Parties' instructions concerning performance of Work;

.3 each Subcontractor shall meet the insurance requirements set forth in these General Conditions, including, but not limited to, naming Owner as an additional insured on applicable liability policies;

.4 a "no damage for delay" clause as set forth in *Section 7.2.6* of these General Conditions;

.5 a payment clause that obligates Subcontractor to pay its Sub-subcontractors for Work satisfactory performed but unpaid within ten (10) Days of Design-Builder's payment to Subcontractor for such Work;

.6 Design-Builder's rights and duties under the Subcontract shall be assignable, for the same fixed lump-sum price, to Owner or Owner's designee upon Owner's written notice to Subcontractor and to Design-Builder;

.7 Design-Builder and Subcontractor shall expressly consent to conditional assignment to Owner of each Subcontract and continued diligent performance of Work, at Owner's discretion and election;

.8 Subcontractor shall promptly notify Owner of any Design-Builder default, whether under the Agreement, or its Subcontract;

.9 Design-Builder may terminate upon ten (10) Days' prior written notice each Subcontract for a default or convenience identical in substance to Owner's right to terminate under *Section 13.2* of these General Conditions.

14.2.2 Flow-Down. Design-Builder shall require each Subcontractor and each Subcontractor shall require each Sub-subcontractor, to be bound by these General Conditions and any Supplemental General Conditions, and to assume toward Design-Builder and Subcontractor, as the case may be, all of the obligations and responsibilities the Design-Builder assumes toward the Owner, unless (i) the same are clearly inapplicable to the contract at issue because of legal requirements or industry practices, or (ii) Design-Builder requests specific exceptions that Owner approves in writing.



**14.3 Conditional Assignment.** Design-Builder hereby conditionally assigns to Owner its rights to all Subcontracts. Owner may exercise, at its election, this assignment if Owner terminates the Agreement in whole or in part, or directly or indirectly takes control of all or any portion of the Work. In so doing, Owner may reassign the Subcontracts to any other Person or entity.

**14.4 Right to Review.** Owner has the right to review Subcontracts at any time during the Project and at any time during an audit period, if prescribed in the Contract Documents, after Final Completion. Design-Builder shall, within three (3) Days of receiving written request from Owner or Owner's agent, submit to the requesting party a complete copy of the requested Subcontract. If Owner's or Owner's agent's request to review a Subcontract can be interpreted to cover more than one Subcontract, Design-Builder shall submit complete copies of all Subcontracts relevant to the request.

**14.5 Conditions to Payment.** As a condition to Owner's performance, Design-Builder shall: (i) make payment promptly when due, and in no event greater than ten (10) Days after receiving payment from Owner, to all Persons supplying to Design-Builder services, labor, or Materials for prosecution of the Work; (ii) pay all contributions required by and amounts due the State Industrial Accident Fund incurred in performance of the Contract Documents; (iii) not permit any lien or bond claim to be filed or prosecuted against Owner or surety on account of any labor or Material furnished and commensurately provide any lien, bond, and claim waivers required by the Agreement or by Owner; (iv) not assign any claims or Claims that Design-Builder may have against Owner, nor assign any rights to payment from Owner, and will not make any agreement or act in any way to give SubDesign-Builders standing to bring a claim or a Claim against Owner; (v) pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

## ARTICLE 15

### PAYMENT

**15.1 Contract Sum.** A Contract Sum shall be subject to adjustment only when Owner so authorizes in writing.

**15.2 Sales and Use Tax.** As a condition precedent to commencement of the Work, Owner and Design-Builder shall agree upon a sales and use tax (collectively, "Taxes") applicability guideline. In the event Tax is chargeable to any portion of the Work, the Contract Sum shall include all such Tax unless directly paid by Owner. In the event Design-Builder pays such Tax directly, all invoices and Applications for Payment that include Work subject to Tax shall clearly state "sales tax paid" and specifically identify such taxable Work. In the event Owner pays such Tax directly, the Contract Sum shall not include Tax and Owner shall provide to Design-Builder the necessary certificates evidencing the same.

**15.3 Schedule of Values.** Design-Builder shall submit to Owner Parties for approval, at least ten (10) Days prior to submission of its first Application for Payment, a Schedule of Values. Design-Builder shall revise and resubmit the Schedule of Values as necessary to meet Owner Parties' approval. The Schedule of Values shall demonstrate reasonable, identifiable, and measurable components of the Work, as separate line items for each major item of Work, and Construction Contingency, among other items as Owner Parties may reasonably require, all of which shall be supported by data to substantiate its accuracy. The approved Schedule of Values, unless objected to by Owner Parties, shall be used as a basis for reviewing Design-Builder's Applications for Payment. Once approved, Design-Builder's requested changes to the Schedule of Values shall be subject to Owner Parties' prior approval and supported by data to substantiate its accuracy.

**15.4 Periodic Statements.** Upon request from time to time, Design-Builder shall provide to Owner Parties a written summary of all outstanding, incomplete Work necessary to achieve Final

Completion, and the total unpaid cost of that Work (a “Statement of Outstanding Work”). Each Statement of Outstanding Work shall contain sufficient information to allow Owner Parties to determine if the applicable Work can be completed for the Contract Sum and within the Contract Time. However, no such statement shall relieve Design-Builder of its obligations to complete the applicable Work for the Contract Sum and within the Contract Time.

## **15.5 Applications for Payment.**

15.5.1 Supporting Documents. For each payment period established in the Agreement, Design-Builder shall submit to Owner Parties, an Application for Payment, together with: (i) an updated Progress Report; (ii) a schedule of the percentages of the various parts of the Work completed, based on the Schedule of Values; (iii) Design-Builder’s and Subcontractors’ payroll certifications pursuant to *Section 1.5.4* of these General Conditions; (iv) up to date Project Schedule, Design Schedule, and Construction Schedule; (v) lien, bond, and claim waivers as required, and (vi) other supporting documentation as required by the Specifications and the Agreement (collectively, the “Supporting Documents”).

15.5.2 Accuracy of Application. Applications for Payment shall be accurate and based upon estimates of Work completed in accordance with the Schedule of Values. Each Application for Payment shall include, on the face of each copy, Design-Builder’s statement in substantially the following form, dated and bearing Design-Builder’s signature:

“I, the undersigned, hereby certify that the above Application for Payment is true and correct, and payment for the same, has not yet been received.”

Owner Parties may reject any improper or incomplete Application for Payment until Design-Builder corrects and resubmits the same. However, Owner Parties reserve the right, instead of requiring Design-Builder to correct or resubmit a defective or improper Application for Payment, to reject the defective or improper portion of such Application for Payment and pay the remainder of such amounts that are proper and correct.

15.5.3 Stored Materials. Unless otherwise provided in the Contract Documents, Owner shall make payments on account of Materials not incorporated in the Work but delivered and suitably stored at the Site. If approved by Owner in advance, Owner may similarly make payments for Materials suitably stored at a location other than the Site, if agreed upon in writing. As a condition precedent to Owner’s payments for Materials stored on or off the Site, Design-Builder shall submit with its Applications for Payment that include such Materials, photographs of Materials and evidence (e.g., bills of sale), satisfactory to Owner to establish Owner’s title to or otherwise protect Owner’s interest in, the same.

.1 Design-Builder shall include with its Applications for Payment that include Materials stored off-Site, costs and evidence of applicable insurance, storage, and transportation to the Site. Owner Parties shall have the right to access, remove, and inspect, at any time during the Project, Materials stored off-Site for which Owner has paid.

.2 In consideration of Design-Builder’s ability to store certain Materials off-Site, Design-Builder waives and releases any Claims it may have against Owner, either directly or through Design-Builder’s insurer, for damage to or loss of, such Materials not stored at the Site.

.3 Design-Builder shall name Owner as additional named insured on the insurance policy covering the full value of the property while in the care and custody of the

Design-Builder until installed in the Project. A certificate noting this coverage shall be issued to Owner.

15.5.4 **Failure to Pay Subcontractors and Suppliers.** Applications for Payment shall not include requests for payment of Work for which Design-Builder does not intend to pay a Subcontractor or Supplier assigned to such Work, unless Design-Builder intends to pay others who actually performed such Work.

15.5.5 **Title to Instruments of Service and Work.** Design-Builder warrants that title to all Instruments of Service and Work covered by each Application for Payment will pass to Owner no later than the time of payment on account of such Application for Payment. Design-Builder further warrants that upon submittal of each Application for Payment, all Work for which payments have been received shall be free and clear of all liens, bond claims, Claims, security interests, and other encumbrances arising from or relating to the Work. This *Section* shall not relieve Design-Builder of: (i) its sole responsibility for all Work, (ii) any obligation to restore damaged Work, or (iii) its requirement to fulfill of all the terms of the Contract Documents, including, but not limiting, correction of any Defective Work. However, until Owner takes occupancy of all or any portion of the Project, as the case may be, all Work and Materials shall continue to be in the care and custody of Design-Builder, who shall bear the risk of loss for the same except to the extent insured pursuant to *Article 8*. The provisions of this *Section* concerning title to Work for which Owner makes payment shall not constitute an acceptance of the Work, except as otherwise set forth in the Contract Documents.

15.5.6 **Incorrect Applications for Payment.** If an Application for Payment is incorrect, lacks the required Supporting Documents set forth in *Section 6.5* of these General Conditions, or when there is a good faith dispute concerning the Work for which it is submitted, Owner Parties shall endeavor to notify Design-Builder within fifteen (15) Days of its receipt of such Application for Payment, stating the reasons it is rejected. If Design-Builder corrects the rejected Application for Payment within seven (7) Days of Owner Parties' notification to Design-Builder, payments due shall be made in accordance with *Section 6.7* below. Owner's failure to notify Design-Builder within fifteen (15) Days of any reasons for rejection shall not prejudice or waive the Owner's rights to notify the Design-Builder beyond fifteen (15) Days of any questions, clarifications, or reasons for rejection of any Application for Payment, in part or in whole.

15.6 **Certificate for Payment.** Owner Parties will review each Application for Payment and either: (i) issue to Owner a Certificate for Payment indicating Design-Builder is due the amount set forth in such Application for Payment; (ii) issue to Owner a Certificate for Payment indicating Design-Builder is due an amount less than as requested, in which case the Certificate shall state the amount due, or (iii) notify Owner in writing of reasons to withhold payment. In the event Owner Parties determine Design-Builder is not entitled to the amount requested in an Application for Payment, Owner Parties shall forward to Design-Builder the reasons for withholding all or a portion of the payment requested. In the event Design-Builder disputes amounts withheld, Design-Builder shall have a Claim for such amounts.

Owner Parties' issuance of a Certificate for Payment constitutes a representation to Owner that, based on Owner Parties' Site observations and the data comprising the Application for Payment, the Work has progressed to the point indicated in Design-Builder's Application for Payment, that, to the best of Owner Parties' knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents, and that Design-Builder is entitled to payment in the certified amount. Owner Parties' issuance of a Certificate for Payment does not constitute approval or acceptance of the Work in any manner or form.

15.7 **Progress Payments.** Provided no liens or bond claims related to the Work have been filed against the Project after Owner Parties issue a Certificate for Payment, and provided no

Governmental Authorities have raised objections to the Work, Owner shall make payment to Design-Builder in the manner set forth in the Agreement. Upon its receipt of Owner's payment, Design-Builder shall promptly and within ten (10) Days, pay each Subcontractor the amount to which it is entitled, on account of such Subcontractor's Work, and each Subcontractor shall promptly pay its Sub-subcontractors and Suppliers in similar fashion. Owner Parties shall not, however, have any obligation to see that monies due to any Subcontractor are so paid, except as may otherwise be required by law.

15.7.1 Payment Not Acceptance. Owner's progress payments, partial payments, final payment, and Owner's use or occupancy of all or a part the Project, shall not constitute an acceptance of any of the Work or of Defective Work.

15.7.2 EFT Payments. Owner, upon written notice to the Design-Builder, may elect to make payments to Design-Builder by means of Electronic Funds Transfers (EFT) through automated clearinghouse payments. If Owner makes this election, Design-Builder shall make the necessary arrangements to receive such EFT payments.

15.7.3 Payment Directly to Subcontractors. Unless Design-Builder advises Owner of a good faith dispute concerning payment due to a Subcontractor or Supplier, Owner may make payments directly or jointly to Subcontractors and to Suppliers who seek payment for work included in an Application for Payment. Design-Builder shall credit against the Contract Sum such amounts that Owner directly pays. However, Owner's direct payments to Subcontractors or Suppliers shall not relieve Design-Builder or Design-Builder's surety from their obligations to payment claims or demands.

15.7.4 Retainage. Owner will not retain an amount in excess of five percent (5%) of that portion paid for Work completed. If Design-Builder has performed at least fifty percent (50%) of the Work of a Deliverable Portion of Work and is progressing satisfactorily, upon the Design-Builder's submission of written application containing the surety's written approval, Owner Parties may, in their sole discretion, reduce or eliminate retainage on any remaining progress payments for that Work. Owner Parties will respond in writing to all such applications within a reasonable time. Upon Design-Builder's written recommendation to Owner Parties, which shall necessarily include applicable sureties' written approval, Owner will consider early release of retainage for Subcontractors whose Work is completed prior to Substantial Completion of all applicable Work; provided, however, the final decision whether to release such retainage shall be in Owner's sole discretion and Design-Builder shall promptly pay the same to the appropriate Subcontractor. When the Work of a Deliverable Portion of Work is ninety-seven and one-half percent (97.5%) completed, Owner Parties may, in their sole discretion and without application by the Design-Builder, reduce the retainage amount to one hundred percent (100%) of the remaining unpaid Contract Sum. Owner Parties may at any time reinstate retainage. Retainage will be included in the final payment under the Contract Documents.

15.7.5 Subcontractor Retainage. Unless Owner gives prior approval, Design-Builder's payments to Subcontractors and Suppliers shall be subject to retainage of five percent (5%).

15.7.6 Retainage Alternatives. In lieu of cash retainage as set forth above, Design-Builder may substitute one of the following:

.1 *Deposit of Securities*. Design-Builder may deposit bonds or securities with Owner or in any bank or trust company approved by Owner, as retainage. In any event, all such bonds and securities shall be held for Owner's benefit. Bonds and securities deposited or acquired in lieu of cash as retainage will be of a character approved by Owner, including: (i) bills, certificates, notes, or bonds of the United States; (ii) other obligations of the United States or its

agencies; (iii) obligations of any corporation wholly owned by the United States federal government; or (iv) indebtedness of the Federal National Mortgage Association.

If Design-Builder deposits bonds or securities in lieu of cash as retainage, the cash value of such bonds or securities will reduce the cash retainage by an equal amount, and Owner shall reimburse Design-Builder the excess cash retainage. Following Final Completion, after Owner determines all requirements for the protection of its interests have been fulfilled, Owner will release to the Design-Builder all bonds and securities deposited in lieu of cash as retainage.

.2 *Deposit of Surety Bond.* Owner may, in a form acceptable to it and in its sole discretion, allow Design-Builder to deposit with Owner a surety bond as retainage in lieu of all or a portion of cash retainage or to be retainage for the Project. A Design-Builder depositing such a surety bond shall also accept surety bonds from SubDesign-Builders and Suppliers in lieu of cash as retainage. If Design-Builder deposits a surety bond as retainage, the value of such bond will reduce the cash retainage by an equal amount, and Owner shall reimburse Design-Builder the excess cash retainage.

15.7.7 Retainage Handling Costs. Owner shall have the right to recover from Design-Builder by reduction to the final payment, its costs for handling cash retainage and securities.

15.7.8 Release of Retainage. Owner's release of retainage shall not constitute acceptance of Work that fails to conform to the Contract Documents.

**15.8 Right to Withhold Payment.** Notwithstanding any provision of the Contract Documents to the contrary, Owner shall have the right to withhold payment to Design-Builder as necessary to protect itself if: (i) Design-Builder is in default of any of its Contract Documents obligations; (ii) Owner reasonably believes any part of a payment due is attributable to Work that fails to conform to the Contract Documents' requirements, except that Owner shall make payment attributable to Work that does conform to the Contract Documents' requirements; (iii) Design-Builder causes damage to the Work, Owner, or Owner's Separate Design-Builders; (iv) Design-Builder fails to timely make payments due and owing to Subcontractors or Suppliers who contributed to Work for which Owner has paid Design-Builder and for which Design-Builder has given to Owner no notice of its good faith dispute concerning the unpaid Subcontractor or Supplier; (v) reasonable doubt that Design-Builder can complete the Work in accordance with the Contract Documents, including the Construction Schedule; (vi) Owner determines, based on a Statement of Outstanding Work or otherwise, that the Work of a Deliverable Portion of Work cannot be completed for the Contract Sum unless and until Design-Builder furnishes a reasonable and satisfactory statement and plan showing and certifying that the Work can be completed for the Contract Sum, or Design-Builder, at no cost to Owner, causes a sufficient portion of the applicable Work to be performed such that the unpaid portion of the Contract Sum is reasonably sufficient to complete the Work; (vii) reasonable evidence that the Work of a Deliverable Portion of Work will not be completed within the Contract Time, and the unpaid Contract Sum balance will not be adequate to cover Owner's damages for the Delay; (viii) entitlement to offset for assessment of Liquidated Damages; (ix) reasonable evidence of probable third party claims, unless Design-Builder furnishes to Owner acceptable security.

## **15.9 Completion Milestones.**

15.9.1 Substantial Completion. When Design-Builder considers a Deliverable Portion of Work Substantially Complete, Design-Builder shall prepare for Owner Parties' review and approval a comprehensive list of incomplete and unsatisfactory items. Owner Parties will edit and supplement this list, as appropriate, and when approved the list shall be the Punch List for such Deliverable Portion of Work. Design-Builder and Owner Parties shall also, at the same time they develop the first Punch List, establish a schedule (the "Punch List Schedule") setting forth anticipated dates for Owner Parties'

inspections of all anticipated Deliverable Portions of Work to determine Substantial Completion and Final Completion of the same.

.1 Notwithstanding anything to the contrary contained in the Contract Documents, a Deliverable Portion of Work with systems - e.g., mechanical, electrical, HVAC - shall not be considered Substantially Complete until it has demonstrated a minimum of thirty (30) consecutive Days of successful, trouble-free operation, beginning after all inspections and testing have been completed for such Deliverable Portion of Work.

.2 Once a Punch List and Punch List Schedule are mutually accepted, Owner Parties will inspect the Project to determine if each Deliverable Portion of Work is Substantially Complete. During inspection, if Owner Parties determine any incomplete or incorrect item, whether or not included on the Punch List, causes the Deliverable Portion of Work to fail to be Substantially Complete, Design-Builder shall be given notice and shall promptly correct such item. Following completion of all incomplete items, Design-Builder shall request that Owner Parties' re-inspect the Deliverable Portion of Work to again determine if it is Substantially Complete. When Owner Parties determine a Deliverable Portion of Work is Substantially Complete, Owner Parties will prepare a certificate (a "Certificate of Substantial Completion") that will establish the date of Substantial Completion of that Deliverable Portion of Work, fix the time within which Design-Builder shall complete and correct items noted in that Certificate of Substantial Completion, and designate the responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, and insurance pertaining to such Deliverable Portion of Work.

.3 Upon receipt of a Certificate of Substantial Completion, Design-Builder shall diligently complete all items of incomplete Work and repair all Defective Work, including those identified in the applicable Punch List and Certificate of Substantial Completion. However, failure by any party to include an item on the Punch List or in the Certificate of Substantial Completion shall not alter Design-Builder's responsibility to complete all Work in accordance with the Contract Documents.

.4 In accordance with the Punch List Schedule, Owner Parties anticipate they will make an initial visit and one re-inspection for each of Design-Builder's Deliverable Portions of Work. If, after making a re-inspection, Owner Parties determine a Deliverable Portion of Work is not Substantially Complete or that previously scheduled Punch List Work has not been completed, Design-Builder shall pay, without Owner's reimbursement, Owner Parties' costs and expenses resulting from additional inspections necessary for Owner Parties to issue Certificates of Substantial Completion.

15.9.2 Payment Upon Substantial Completion. When Owner Parties issue a Certificate of Substantial Completion and Design-Builder submits an applicable Application for Payment, Owner shall make payment to Design-Builder, reflecting adjustment in retainage, if any, as provided in the Contract Documents. However, Owner shall not release retainage to Design-Builder that will result in Owner holding total retainage less than twice the amount that Owner Parties determine necessary to complete and correct all items on an applicable Punch List.

15.9.3 Commencement of Warranties. Applicable warranties required by the Contract Documents shall commence on the date of Substantial Completion of each Deliverable Portion of Work unless otherwise set forth in a Certificate of Substantial Completion. Design-Builder will collect all written guaranties, warranties, and equipment manuals, and deliver them to Owner upon Substantial Completion of each Deliverable Portion of Work.

15.9.4 Delay. After Owner Parties issue a Certificate of Substantial Completion for a Deliverable Portion of Work, if Final Completion of that Deliverable Portion of Work is subject to material Delay through no fault of Design-Builder or by the issuance of Change Orders affecting Final Completion of that Deliverable Portion of Work, Design-Builder shall be entitled to the balance due for that Deliverable Portion of Work fully completed, accepted, and certified as complete by Owner Parties. However, if the balance of the Contract Sum for Work not fully completed or corrected is less than the retainage then held by the Owner and bonds have been furnished for the Project, Design-Builder shall forward to Owner Parties the written consent of Design-Builder's surety to the payment of the balance due for Work fully completed and accepted. Any such payment shall not constitute a waiver of Owner's Claims.

15.9.5 Final Completion. Following (a) issuance of a Certificate of Substantial Completion for a Deliverable Portion of Work and (b) Design-Builder's completion of all Work of that Deliverable Portion of Work, including the applicable Punch List, Design-Builder shall forward to Owner Parties written notice that the applicable Work is ready for inspection together with a final Application for Payment for such Work. Upon receipt, Owner Parties will promptly inspect the subject Work and, when Owner Parties determine the Deliverable Portion of Work meets the Contract Documents' requirements, will issue a Certificate for Payment approving final payment due Design-Builder for the applicable Work.

.1 Owner Parties' approval of a final payment represents that, to the best of Owner Parties' knowledge, information, and belief, and on the basis of observations and inspections, the Work subject to final review and payment has been completed in accordance with the terms and conditions of the Contract Documents, the conditions precedent to Design-Builder's entitlement to final payment for the Deliverable Portion of work are met, and the entire balance noted in the applicable Certificate for Payment is due and payable to Design-Builder.

.2 As part of Design-Builder's notice to Owner Parties of Final Completion, or as a separate written notice submitted with or before the notice of Final Completion, and as a condition precedent to Owner's obligation to make final payment, Design-Builder shall furnish Owner Parties with written confirmation that all environmental and pollution clean-up, remediation, and closure have been completed in accordance with all Applicable Laws. Design-Builder shall provide to Owner Parties all documentation related to the same, including directives, orders, letters, certificates, and permits. Design-Builder's notice shall further reaffirm its grant to Owner of indemnification given under *Section 9.5.3* of these General Conditions.

15.9.6 Payment Upon Final Completion. The final payment requirements of this *Section 6.9.6* shall apply to the Project and to Deliverable Portions of Work, as applicable and as set forth in the Contract Documents. Final payment, including release of all retainage, shall not be due until Final Completion of the Project of the Deliverable Portion of Work, as applicable, and until Design-Builder has timely furnished to Owner Parties: (i) an affidavit stating that to Design-Builder's best knowledge, information, and belief, all payrolls, bills for Materials, and other indebtedness connected with such Work (less amounts withheld by Owner) have been satisfied; (ii) payroll certifications pursuant to *Section 1.5.4* of these General Conditions (iii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is and will remain in effect and will not be canceled or expire without at least thirty (30) Days' prior written notice to Owner; (iv) Design-Builder's written statement that it knows of no reason all required insurance will not be renewable to cover the period required by the Contract Documents; (v) all warranties and guaranties required by the Contract Documents; (vi) three reproducible copies and an electronic copy of Record Documents; (vii) surety's consent to final payment; (viii) applicable Certified Diverse Business Reports; (ix) final affidavits and releases of liens and bond claims and other claims, as well as satisfactions for liens and bond claims filed on account of the Work of the Deliverable Portion of Work and such other affidavits, waivers, and releases as Owner may reasonably require in order to assure lien and claim-free completion of such Work;

and (x) if Owner requires, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, Claims, security interests or encumbrances arising out of the Deliverable Portion of Work, to the extent and in such form as may be reasonably designated by Owner. If any such lien or bond claim remains unsatisfied after final payment, Design-Builder shall immediately refund to Owner all monies that the latter may be compelled to pay in discharging such lien or bond claim, including all costs and reasonable attorney fees.

.1 Design-Builder's acceptance of final payment shall constitute a waiver of all Claims applicable to the Deliverable Portion of Work for which such final payment is made by Design-Builder, Subcontractors, Sub-Subcontractors, Suppliers and all other Persons delivering services, labor, or Materials to the Project, except those previously made in writing and identified by Design-Builder as unsettled, at the time of the applicable final Application for Payment.

.2 Owner's final payment shall not extinguish, satisfy, or waive any of the Contract Documents' obligations or procedures, or any of Owner's rights or remedies under the Agreement.

15.9.7 Final Inspection. On or about a date eleven (11) months after Substantial Completion of a Deliverable Portion of Work, Design-Builder shall, together with Owner Parties, attend a final inspection of the Work to ensure that it comports with all warranties and guarantees. Design-Builder shall promptly correct any deficiencies noted during such inspection.

**15.10 No Liens; No Bond Claims**. Design-Builder shall permit neither the Project nor any of the Work from incurring any claim, bond claim, lien, charge, or encumbrance. Design-Builder shall, after first receiving notice of any such claim, bond claim, lien, charge, or encumbrance, immediately pay and discharge of record the same.

## ARTICLE 16

### TIME

**16.1 Progress and Completion**. All time limits stated in the Contract Documents are of the essence of the agreement between Owner and Design-Builder. Design-Builder shall begin each phase of the Project, where applicable, in accordance with the Project Schedule and shall commence the Work on the dates set forth in the applicable Design and Construction Schedules. Design-Builder shall carry out the Work expeditiously, with adequate forces, and shall achieve Substantial Completion in accordance with the Project's milestones, the Construction Schedule, and within the Contract Time.

16.1.1 Periodic Statements. At Owner's request, from time to time, Design-Builder and Owner Parties shall each provide a written statement setting forth the date on which each reasonably believes each Deliverable Portion of Work will be Substantially Complete. However, no such statement shall relieve Design-Builder of its obligations to complete the Work in accordance with the Contract Documents.

16.1.2 Acceleration Upon Default. If, in Owner Parties' reasonable judgment, Design-Builder: (i) fails to supply a sufficient number of qualified workers or Materials to prevent Delay; (ii) fails in any way to prosecute the Work or proceed in accordance with the Design or Construction Schedules, or (iii) fails to meet the material covenants of the Contract Documents, Owner shall have the right to direct Design-Builder to accelerate completion of the Work without adjustment to the Contract Sum and until such time as the amount and timing of the completed Work complies with the applicable schedules. Owner's right to compel acceleration includes demanding Design-Builder provide additional labor or expedited deliveries of Materials, and perform overtime, additional shifts, or re-sequencing the Work. Costs of such acceleration may be funded, with Owner's prior written approval, from any available



Construction Contingency, if not recoverable from Subcontractors. Owner's right to demand acceleration under this *Section* shall not limit other rights and remedies Owner may have.

## **16.2 Delays and Extension of Time.**

16.2.1 Delays Generally. Design-Builder shall be granted an extension of time for each Unavoidable Delay (defined below) in accordance with *Section 7.2.4* below. Design-Builder shall not be granted an extension of time for any Avoidable Delay (also defined below).

16.2.2 Force Majeure. "Force Majeure" shall mean an act, event, or occurrence caused by fire, riot, war, acts of God, tornado, hurricane, named storms, flood, earthquake, explosion, public enemy, civil disturbance, embargo, unusual and abnormal severe and adverse weather, or any other act, event or occurrence that is beyond the reasonable expectation or control of the party who is asserting an inability to conform to Contract Documents' requirements. Unusually and abnormal severe and adverse weather shall not include weather events that could be reasonably anticipated from the previous 10-year historical records of the general locality of the Site. Such historical records shall be from the Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Site. However, notwithstanding such historical records, (a) daily rainfall greater than one-half (1/2) inch during a month when the monthly rainfall exceeds the normal monthly average by at least twenty-five percent (25%) or (b) daily rainfall greater than three (3) inches, cannot be reasonably anticipated.

16.2.3 Avoidable Delays. An "Avoidable Delay" is any Delay other than an Unavoidable Delay, and those Unavoidable Delays that could have been avoided, because: (i) Design-Builder, Sub-contractors, or Sub-subcontractors failed to exercise care, prudence, foresight, or diligence; (ii) such Delay only affects a portion of Work that does not necessarily interfere with prosecution of other parts of the Work; (iii) such Delay does not impact the Project's critical path; or (iv) such Delay results from Owner's Separate Design-Builders' work that does not necessarily prevent the timely completion of all Work.

16.2.4 Unavoidable Delays. An "Unavoidable Delay" is any Delay that is not due to the direct or indirect fault of Design-Builder, Subcontractor, Sub-subcontractors, Suppliers, or any of their respective agents, employees, or Design-Builders, and that affects the Project's critical path. Unavoidable Delays include: (i) Delays caused by Owner and Owner's employees and agents, or by Owner's Separate Design-Builders; (ii) Delays caused by Force Majeure that in fact adversely impact the Project in a manner that could not have been avoided by rescheduling or by implementing protective measures; (iii) Delays caused by any differing Site conditions in accordance with *Section 10.3.4* of these General Conditions.

If Design-Builder's delivery of services or performance of the Work is impacted by an Unavoidable Delay, Design-Builder's sole remedy shall be an equitable extension to time; provided, however, in each instance Design-Builder must first meet the notice provisions and other conditions of the Contract Documents, including *Section 12.1* of these General Conditions. Notwithstanding the foregoing, Design-Builder shall not be granted relief: (i) due to Design-Builder's financial inability to perform; (ii) unless a Delay is an Unavoidable Delay and affects the Project's or phase's critical path as set forth in the applicable Construction Schedule, and then only to the extent such critical path is affected; or (iii) if a Delay would have resulted because of Design-Builder's concurrent Avoidable Delay, notwithstanding the existence of an Unavoidable Delay.

16.2.5 Mitigation Required. Design-Builder shall use best efforts to remove, relieve, minimize, and mitigate the effect of all Delays, no matter the cause.

16.2.6 No Damage for Delay. To the fullest extent permitted by Applicable Laws, unless otherwise set forth in the Contract Documents, Design-Builder shall have no Claim against Owner Parties for any increase in the Contract Sum, damages, losses, or expenses, resulting from a Delay, unless Owner or its agents by their acts and omissions caused such unreasonable Delay, in which case Design-Builder's Claim shall be limited to an equitable adjustment for Design-Builder's actual and direct costs, expressly excluding indirect and consequential impact costs such as extended home office, overhead, and loss of profit.

**16.3 Owner-Caused Schedule Changes**. Design-Builder acknowledges and agrees as the Project progresses, as is customary among projects of this size and complexity, Owner may make changes to, and Design-Builder shall subsequently update, the Project Schedule. Design-Builder shall cooperate with and advise Owner Parties of potential outcomes of such changes including their impact on the Design and Construction Schedules. If Owner subsequently approves any such change, Design-Builder will have a Claim, but only if the approved change impacts the critical path of the applicable Construction Schedule.

**16.4 Phased Construction**.

16.4.1 Phases. Design-Builder acknowledges and agrees the Project will progress in phases, in accordance with the Project Schedule. Design-Builder shall prepare, for Owner Parties' review and approval, a separate Construction Schedule, for each phase. Each phase shall commence upon Owner Parties' issuance of a Notice to Proceed for such phase and shall achieve Substantial Completion by the milestone dates set forth in the Contract Documents, including the Construction Schedule.

16.4.2 Contract Sums. Owner may choose to establish separate Contract Sums for each phase of the Project and, if so, Design-Builder shall cooperate to prepare and timely deliver to Owner when due such Contract Sums as set forth in the Project Schedule.

16.4.3 Fast-Track Methods. Design-Builder represents to Owner that it has experience and expertise in fast-track construction and management practices. As such, Design-Builder acknowledges, agrees, and will actively participate in project planning, that may necessitate preparation, issuance, and analysis of a number of bid packages in excess of that which is ordinarily required in non-fast-track construction projects.

16.4.4 Waiver of Claims. In consideration of the foregoing, Design-Builder hereby waives all rights and remedies it may have at law or in equity to extra compensation or damages of any kind, and to extensions to the Project, Design, and Construction Schedules, due in any way to performance or planning of the Work on a fast-track basis.

ARTICLE 17

INDEMNITY; INSURANCE; BONDS

**17.1 Design-Builder Responsibility**. Design-Builder shall be responsible for all damage to property, injury to persons, and loss, expense, inconvenience, and delay caused by, or resulting from, performing its services and carrying out the Work. "Indemnitees" as used in this *Article 8* shall mean Owner Parties, and their respective officers, board members, shareholders, members, partners, lenders, directors, affiliates, agents, assigns, attorneys, and employees.

**17.2 Indemnification**.

**17.2.1 General Indemnity. TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE INDEMNITEES, FROM ALL LIABILITIES, DAMAGES, LOSSES, EXPENSES, AND COSTS, INCLUDING REASONABLE ATTORNEY FEES AT BOTH THE TRIAL AND APPELLATE LEVELS, (COLLECTIVELY, “LOSSES”) AND CLAIMS OF LOSSES, INCLUDING DUE TO BODILY INJURY, DISEASE, DEATH, OR PROPERTY DAMAGE (BUT EXCLUDING DAMAGE TO THE WORK ITSELF TO THE EXTENT COVERED BY BUILDERS RISK INSURANCE), MADE BY ANY THIRD PARTY, THAT IN ANY WAY ARISE OR RESULT FROM: (I) THE WORK; (II) DESIGN-BUILDER’S ACTIVITIES OR THE ACTIVITIES OF ITS SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, OR OTHER PERSONS PERFORMING WORK; (III) OPERATIONS AT THE SITE; OR (IV) VIOLATION OF ANY APPLICABLE LAWS. THE FOREGOING INDEMNITY SHALL BE THE “DESIGN-BUILDER’S GENERAL INDEMNIFICATION.”**

**TO THE FULLEST EXTENT PERMITTED BY LAW, DESIGN-BUILDER’S GENERAL INDEMNIFICATION SHALL INCLUDE LOSSES FOUNDED IN WHOLE OR IN PART ON THE ALLEGED NEGLIGENCE OR MISCONDUCT OF ANY OF THE INDEMNITEES; PROVIDED, HOWEVER, TO THE EXTENT THAT THE NEGLIGENCE OR MISCONDUCT OF THE INDEMNITEES IS ADJUDGED OR STIPULATED TO BE THE CAUSE OF THE LOSSES, THE INDEMNITEES SHALL BEAR ITS ADJUDGED OR STIPULATED PROPORTIONAL SHARE OF THOSE LOSSES AND SHALL PROMPTLY REIMBURSE DESIGN-BUILDER FOR THEIR PROPORTIONAL SHARE OF THE COSTS AND EXPENSES OF DEFENSE. THE DESIGN-BUILDER’S GENERAL INDEMNIFICATION SHALL NOT BE LIMITED TO THIRD-PARTY CLAIMS.**

**17.2.2 Special Indemnity. TO THE FULLEST EXTENT PERMITTED BY LAW AND SUBJECT TO THE STANDARD OF CARE, DESIGN-BUILDER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES FROM ALL LOSSES AND CLAIMS OF LOSSES DUE TO DESIGN-BUILDER’S MISCONDUCT, NEGLIGENCE, ERROR, OR OMISSION, THAT IN ANY WAY ARISE OR RESULT FROM DESIGN-BUILDER’S PROFESSIONAL SERVICES, INCLUDING CLAIMS OF PROFESSIONAL LIABILITY AND VIOLATION OF APPLICABLE LAWS. THE FOREGOING INDEMNITY SHALL BE THE “DESIGN-BUILDER’S SPECIAL INDEMNIFICATION.”**

**17.2.3 Liens; Bond Claims. Design-Builder shall further indemnify, defend, and hold harmless, the Indemnitees, from all Losses and claims of Losses arising or resulting from liens and bonds of any kind asserted against the Project (individually, a “Payment Claim”), Project phase, or any part thereof, by any of Design-Builder’s Subcontractors, Sub-subcontractors, Suppliers, and other Persons contributing to the Work, except for Payment Claims properly filed due to Owner’s wrongful failure to make payments to Design-Builder.**

**17.2.4 Indemnitees’ Control of Defense. Design-Builder’s obligations in the Contract Documents to defend Indemnitees shall be performed by counsel approved by such Indemnitees, in their reasonable discretion. Indemnitees shall have the right to participate in direction of their defense and shall have the ultimate authority whether to settle any claim that may require any payment or admission of liability.**

**17.2.5 No Limitation. Design-Builder’s indemnification obligations shall not be restricted by any limitation on the amount of damages, compensation, or benefits, payable by or for Design-Builder under applicable workers’ compensation acts, disability benefit acts, or other employee**

benefits acts. Design-Builder expressly waives its immunity from suit from Owner under applicable workers' compensation acts, disability benefit acts, and other employee benefits acts.

17.2.6 Costs of Enforcement. Design-Builder shall reimburse all costs and expenses incurred by the Indemnitees to enforce Design-Builder's indemnification duties in the Contract Documents.

### **17.3 Insurance**

17.3.1 Design-Builder's Requisite Insurance. Design-Builder shall furnish and keep in force, and shall cause each Subcontractor to furnish and keep in force, the insurance required in *Exhibit N*. Design-Builder shall further furnish, keep in force, and file certificates evidencing coverage, such additional insurance required by Governmental Authorities having jurisdiction over the Work. To the fullest extent permitted by law, all such insurance requirements: (i) are minimum requirements intended to benefit the Indemnitees; (ii) will not be interpreted to limit Design-Builder's liability under the Contract Documents; and (iii) are independent of Design-Builder's other obligations under the Contract Documents. Design-Builder's failure to furnish, or failure to require Subcontractors to furnish, and Owner's failure to enforce, the Contract Documents' required insurance, certificates, or endorsements, shall not waive the Contract Documents' requirements.

17.3.2 Subcontractor Default Insurance. Design-Builder may maintain Subcontractor default insurance and Owner shall have the right to accept or reject such insurance in Owner's sole discretion.

17.3.3 [Intentionally deleted.]

17.3.4 [Intentionally deleted.]

17.3.5 Design-Builder-Controlled Insurance Program. In the event Design-Builder provides any of the insurance required by the Contract Documents through a Design-Builder-Controlled Insurance Program (a "CCIP"), Design-Builder shall deliver to Owner for review and approval a written description of the material features of the CCIP, including carriers, coverages, policy limits, and deductibles.

17.3.6 Notice Required. If the total of any potential claims against Design-Builder or any of its Subcontractors exceeds more than fifty percent (50%) of the available respective insurance coverage carried by Design-Builder or its Subcontractor, Design-Builder shall give to Owner prompt written notice. Thereafter, Owner shall have the right to require Design-Builder or Subcontractor, as the case may be, to increase its coverage in an amount Owner reasonably requires.

17.3.7 Evidence of Renewal. Not less than thirty (30) Days prior to the expiration of any insurance required by the Contract Documents due to its normal expiration or renewal date, Design-Builder shall furnish Owner with updated certificates of insurance and other necessary documentation, to clearly evidence continuation of all requisite coverage.

### **17.4 Bonds**

17.4.1 Design-Builder's Bonds. When a Contract Sum is One Hundred Thousand and 00/100 Dollars (\$100,000) or more, or Fifty Thousand and 00/100 Dollars (\$50,000) or more when the Project includes highways, bridges, and other transportation projects, Design-Builder shall furnish and keep in effect at all times while the Contract Documents are in effect (a) a performance bond in sum equal to the Contract Sum and (b) a payment bond in sum equal to the Contract Sum. Notwithstanding the dollar thresholds state in this *Section*, Design-Builder shall furnish performance and payment bonds if

otherwise required by the Contract Documents and in the amounts set forth in the Contract Documents. Any requisite performance bond shall cover all warranties and guarantees required by the Contract Documents.

17.4.2 Subcontractor Bonds. Owner and Design-Builder shall agree in writing to the bonding strategy and requirements of Subcontractors prior to any contracts pertaining to the Project between Design-Builder and any Subcontractors.

17.4.3 Public Works Bonds. Prior to signing the Contract Documents, Design-Builder shall file with the Oregon Construction Design-Builders Board, and maintain in full force and effect, the separate public works bond as and when required by Oregon Laws 2015, Chapter 279C, and OAR 839-025-0015. Design-Builder shall also include in every applicable Subcontract a provision requiring Subcontractor to file and maintain with the Oregon Construction Design-Builders Board, a separate public works bond as and when required, before starting Work. Design-Builder shall verify that each Subcontractor has complied with the requirements of this *Section* before permitting each such Subcontractor to begin Work.

17.4.4 Form of All Bonds. All Project bonds shall be in the forms attached as *Exhibit O* unless Owner otherwise approves in writing. All sureties guaranteeing performance or payment shall be (i) authorized to do business in the State of Oregon, (ii) have a rating of not less than “A” in the latest version of A.M. Best & Company’s Insurance Guide, (iii) an A.M. Best & Company financial size category of “X” or higher, and (iv) listed by, and in the net limit of, the United States Treasury Department as acceptable for bonding Federal projects. Design-Builder shall have no affiliation with the bonding agent or agency.

## ARTICLE 18

### PROTECTION OF LIFE AND PROPERTY

#### **18.1 Safety Precautions and Protective Measures.**

18.1.1 Design-Builder’s Safety Plan. Design-Builder shall have overall responsibility and liability for Site, Project, and Work safety. Design-Builder shall develop, implement, and supervise all safety measures and programs at the Site and in connection with the Work, shall implement the safety and fire prevention program set forth in the Construction Plan, and shall require all Subcontractors and other Persons performing Work to conform to the same. Design-Builder shall review and recommend appropriate changes to, but shall not have direct control over, each Subcontractor’s safety program. As such, Design-Builder’s review and recommendations shall not relieve Subcontractors of their responsibility for the safety of persons and property, and for compliance with all Applicable Laws.

18.1.2 Safeguards. Design-Builder shall erect and maintain, as required by existing conditions and the progress of the Work, all reasonable safeguards, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying affected Persons.

.1 Design-Builder shall take all reasonable safety precautions, protective measures, and care to prevent damage, injury, and loss to: (i) all Persons on, about, and adjacent to the Site and in locations with stored Materials; (ii) all Work under the custody or control of Design-Builder, Subcontractors, or Sub-subcontractors, whether completed, in progress, or stored; and (iii) work of Owner and Owner’s Separate Design-Builders; (iv) existing Site landscaping and plant life not designated for removal in the Contract Documents.

.2 Without limiting Design-Builder's responsibility for Site and Work safety, [Design-Builder shall comply with all of Owner's Standard Requirements, attached as *Exhibit I*, and Owner Parties shall have the right, but not the obligation, to review and approve Design-Builder's safety measures and programs.

.3 Design-Builder's safety practices and protection of persons and property shall be industry best practices, conform to the Contract Documents, and comply with all Applicable Laws, including all applicable regulatory and advisory agency safety standards.

18.1.3 Adjacent Property and Work. Design-Builder shall not enter upon property that is private or adjacent to the Site without first obtaining permission. Design-Builder shall be responsible for and use every precaution to preserve all public and private property adjacent to the Work, including trees, shrubs, lawns, walks, pavement, roadways, structures, and utilities. Design-Builder shall be responsible for protection of adjacent work areas, including other work, brought about by activities, equipment, labor, utilities, vehicles, or materials on the Site.

18.1.4 Damages. Design-Builder shall promptly remedy all damage and loss (other than damage or loss covered by property insurance required by the Contract Documents) to any property referred to above, caused in whole or in part by Design-Builder, Subcontractors, Sub-subcontractors, or by Person for whose acts they may be liable.

18.1.5 Site Safety Supervisor. Design-Builder shall designate and keep at the Site a responsible and qualified member of Design-Builder's organization who shall manage Design-Builder's safety program. Design-Builder shall report to Owner the name, position, and direct contact information, of the person so designated.

**18.2 Emergencies**. In any emergency affecting the safety of persons or property, Design-Builder shall act in its sound discretion to prevent threatened damage, injury, or loss. Design-Builder's Claims for additional compensation or extension of time as a result of an emergency shall be determined in accordance with *Article 12* of these General Conditions.

**18.3 Reporting Requirements**. Following an emergency or occurrence involving personal injury or property damage, Design-Builder shall furnish Owner with, not more than three (3) Days after an incident, the full written details, photographs, and statements of witnesses, of each incident. In addition, following an emergency or an occurrence involving serious personal injuries, serious property damage, or death, Design-Builder shall immediately report the same to Owner by telephone or messenger. Design-Builder shall again promptly inform Owner of the ultimate disposition of any occurrences as set forth above, following their conclusion.

**18.4 Hazardous Materials**. Design-Builder shall not use, in connection with the Work, any Hazardous Materials (defined below) in a manner that poses unreasonable safety risks or violates Applicable Laws. This *Section* shall not prohibit Design-Builder from using any item specified in the Contract Documents unless Design-Builder knows it violates Applicable Laws, in which case Design-Builder shall notify Owner Parties in writing so that Owner may issue an appropriate Change Order.

18.4.1 Definition. "Hazardous Materials" shall mean any hazardous waste, toxic substance, radioactive material, asbestos containing material, petroleum product, or related materials including substances defined as "hazardous substances," "toxic substances," and similar designations in any Applicable Laws, including without limitation, in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 et seq.; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 et seq.; the Resource Conservation and Recovery

Act, as amended, 42 U.S.C. Sec. 6901 et seq.; and the corresponding regulations (as amended) issued pursuant to these acts.

18.4.2 Existing Conditions. Unless Hazardous Materials disposition is specifically a part of the Contract Documents or was necessitated by that actions of Design-Builder, Subcontractors, Sub-subcontractors, or the acts or omissions of Persons' for whom they are liable, Design-Builder shall not be responsible for Hazardous Materials existing at the Site prior to commencement of Work (the "Preexisting Hazardous Materials"). If Design-Builder reasonably suspects it has encountered Preexisting Hazardous Materials, Design-Builder shall, immediately upon recognizing the condition, have the right to stop Work in the affected area, and shall immediately notify Owner Parties of the same.

18.4.3 Owner Actions Upon Notice. Promptly after receiving notice of reasonably suspected Preexisting Hazardous Materials, Owner Parties shall take reasonable measures to ensure that the Preexisting Hazardous Materials are remediated. Specifically, Owner shall retain qualified independent experts to (a) determine if the area of concern does contain a Hazardous Material, and (b) prescribe remedial measures to render Hazardous Material harmless as necessary. Design-Builder shall resume Work in the affected area only upon Owner and Design-Builder's written agreement.

## **18.5 Design-Builder's Responsibility**

18.5.1 Environmental Protection. Design-Builder shall at all times direct its activities and the activities of its Subcontractors, Sub-subcontractors, Suppliers, and other Persons performing Work in and around the Site to minimize adverse effects on the environment.

Design-Builder shall, at all times: (i) at no additional cost to Owner, properly handle and dispose of all environmental pollutants and hazardous substances brought onto the Site during performance of the Work, to the satisfaction of Owner and Government Authorities having jurisdiction, and in a manner that complies with Applicable Laws; (ii) be responsible for all spills, releases, discharges, or leaks of environmental pollutants, brought to the Site during performance of the Work; and (iii) promptly clean up and remediate, without cost to the Owner, such spills, releases, discharges, and leaks, to Owner's satisfaction and in compliance with Applicable Laws.

18.5.2 Reporting. Design-Builder shall report all releases of Hazardous Materials as required by Applicable Laws, including 40 CFR Part 302, Table 302.4 and OAR 340-142-0050.

In addition to following the emergency procedures set forth in *Sections 9.2 and 9.3* above, Design-Builder shall immediately report to Owner Parties by telephone all releases of Hazardous Materials introduced to the Site during performance of the Work. A written follow-up report shall be submitted to Owner Parties within forty-eight (48) hours of the initial report, and shall contain at a minimum: (i) a description of items released including identity, quantity, manifest numbers; (ii) whether amounts of items released is EPA/DEQ reportable, and, if so, when Design-Builder so reported; (iii) exact time and location of each release, including a description of the area involved; (iv) Design-Builder's containment procedures initiated; (v) a summary of communications about the release between Design-Builder and officials other than Owner; and (vi) a description of cleanup procedures employed or to be employed, including disposal locations.

18.5.3 Indemnity. **TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING ORS 30.140, DESIGN-BUILDER SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS, THE INDEMNITEES FROM ALL LOSSES AND CLAIMS OF LOSSES THAT IN ANY WAY ARISE OR RESULT FROM HAZARDOUS MATERIALS THAT DESIGN-BUILDER, ITS SUBCONTRACTORS, OR ANY PERSON FOR WHOSE ACTS THEY MAY BE LIABLE, INTRODUCE TO THE SITE.**

The foregoing indemnity shall not apply to Hazardous Materials that Design-Builder or its Subcontractors introduce to the Site in accordance with the Contract Documents and in compliance with all Applicable Laws.

**18.6 No Limitation.** Nothing in this *Article 9* shall limit Design-Builder's responsibility for obtaining insurance coverage required under the Contract Documents, and Design-Builder shall take no action that would void or impair such coverage.

## ARTICLE 19

### ALLOWANCES; SUBSTITUTIONS; CHANGES

**19.1 Allowances.** Design-Builder shall include in the Contract Sum all Allowances stated in the Contract Documents and their Associated Costs (defined below). Items included in Allowances shall be furnished and installed for the amounts and by Persons as Owner Parties direct. Unless Owner Parties request otherwise, Design-Builder shall provide to Owner Parties for approval, at their request, a proposed fixed lump-sum price for any Allowance, including its Associated Costs, prior to its performance.

Unless otherwise set forth in the Contract Documents: (i) when finally reconciled, Allowances shall cover Design-Builder's cost of Materials delivered to the Site, and all applicable Taxes, less applicable trade discounts; (ii) Design-Builder's costs for unloading and handling at the Site, labor, installation costs, overhead, profit, and other expenses, contemplated for the Allowance (collectively, the "Associated Costs") shall be included in the Contract Sum but not in the Allowance; and (iii) whenever Design-Builder's costs are more than or less than an Allowance, the Contract Sum shall be adjusted accordingly by Change Order in the amount of the difference between the amount of the original Allowance item and its actual cost including changes, if any, to Associated Costs.

**19.2 Substitutions.** When more than one product or process is specified by the Contract Documents as being acceptable (including the designation "or equal"), Design-Builder shall have the option of using any such specified product. When only one product or process is specified, Design-Builder shall not be permitted a Substitution except as set forth in this *Section*.

19.2.1 Requested Substitutions shall meet the standards, required function, size, type, appearance, and quality, of Materials they are intended to supplant. In the event Design-Builder wishes to request a Substitution, Design-Builder shall first submit a written request for Owner Parties' approval. Requests for Substitutions shall be timely, fully documented, and will be accompanied by evidence about the requested Substitution, including: (i) its quality and serviceability; (ii) changes in details and construction of related Work; (iii) pertinent drawings, specifications, samples, performance data; (iv) its design and artistic effect; and (v) changes to the Contract Sum. By submitting a Substitution proposal, Design-Builder represents that the Substitution meets or exceeds the standards, qualities, guarantees, and warranties, of the specified item being substituted, except to the extent Design-Builder disclaims in writing within its proposal.

19.2.2 Substitutions may be considered under the following circumstances: (i) when a product or process specified in the Contract Documents is discontinued and not reasonably available; (ii) when a requested Substitution, in Design-Builder's and Owner Parties' opinion, is in Owner's best interest; or (iii) when Design-Builder can demonstrate that the price of the specified product or process is unreasonably inflated and Substitution will be significantly less expensive. Owner Parties will make recommendations to Owner regarding requested Substitutions, and Owner may, in its discretion, reject or approve the same..



Approved Substitutions that result in a change to the Contract Sum shall be accompanied by a Change Order in the amount of the difference in the Contract Sum between the specified product or process and its Substitution.

### **19.3 Changes.**

19.3.1 Minor Changes in the Work. Owner Parties shall have authority to order minor changes in the Work that shall be effective and bind Design-Builder upon Owner Parties' written order. Design-Builder shall promptly carry out all written orders of minor changes in the Work. In the event Design-Builder reasonably believes a change in the Work is not minor, and Design-Builder will be harmed without adjustment to the Contract Sum or Contract Time, Design-Builder shall immediately notify Owner Parties and shall not proceed to implement the change in the Work. If Owner Parties disagree that Design-Builder is entitled to an adjustment to the Contract Sum or the Contract Time, Design-Builder shall proceed with the ordered change in the Work and may submit a Claim. However, if Design-Builder performs the change in the Work set forth in the Owner Parties' order without prior notice that it believes such change will affect the Contract Sum or Contract Time, Design-Builder waives any such Claim.

19.3.2 Change Orders. All Change Orders shall be in the form attached as *Exhibit P*, shall be priced in accordance with this *Article 10*, and shall contain the details of the changes to the scope of Work, Contract Time, Contract Sum, and any related adjustments to the Contract Documents. Except as set forth in this *Article 10*, only a Change Order shall authorize a change to: (i) the scope of the Work, (ii) the Contract Time or a significant modification to the schedule of performance of the Work or the Project, or (iii) the Contract Sum or Design-Builder's compensation. As such, Design-Builder shall have no Claim for Work performed that would have been subject to, but for which Design-Builder failed to request, a Change Order.

19.3.3 Owner-Directed Changes. Owner Parties may order Design-Builder to price and determine time impacts of, at any time, a change in the scope of Work, by submitting to Design-Builder a reasonably-detailed written statement setting forth the nature of the change. If Design-Builder determines in good faith that Owner Parties' change will (a) increase or decrease the Contract Sum or (b) impact the dates for Substantial Completion set forth in the applicable Construction Schedule, Design-Builder shall promptly furnish Owner Parties with detailed information setting forth the cost and time impacts of the change in accordance with *Section 10.3* of these General Conditions. If Owner elects to order the changed Work, it shall issue to Design-Builder a Change Order ordering and authorizing Design-Builder to proceed with the changes, as agreed. Design-Builder shall not commence such a change until Owner has issued a Change Order, except in an emergency endangering life or property, as set forth in *Section 9.2* of these General Conditions.

#### 19.3.4 Changes Other than Owner Directed - Excused Site Condition.

10.3.4.1 "Excused Site Condition" shall mean and be limited solely to the following:

(a) the discovery of archeological artifacts, cultural burial grounds, endangered or threatened species, or religious, historical or archeological resources above or below the surface of the Site;

(b) the discovery of Hazardous Materials in the subsurface of the Site, provided that such Hazardous Materials (i) were not brought onto or generated at the Site by Design-Builder or any Subcontractor; and (ii) such Hazardous Materials (1) are not readily apparent from, or could not reasonably be inferred from, a reasonably diligent visual inspection of the Site and (2) are not disclosed in, or

reasonably inferable from, a reasonable review of the Preliminary Site Information; and (3) are not disclosed or readily apparent in any of Design-Builder's geotechnical information, reports, or studies; and

(c) the discovery of man-made objects in the subsurface of the Site, provided that such man-made objects (1) are not readily apparent or expected from, or could not reasonably be inferred from, a reasonably diligent visual inspection of the Site; (2) are not disclosed in, or reasonably inferable from, a reasonable review of the Preliminary Site Information; and (3) are not disclosed or readily apparent in any of the Design-Builder's geotechnical information, reports, or studies..

10.3.4.2 If Design-Builder encounters an Excused Site Condition at the Site and such Excused Site Condition will actually impact Design-Builder's Schedule and/or Work, Design-Builder shall give to Owner Parties notice before such conditions are further disturbed and in no event later than three (3) Days after their discovery. Owner Parties will promptly investigate purported differing conditions to determine if in fact they constitute an Excused Site Condition.

10.3.4.3 Prior to the Full Notice to Proceed Date, Design-Builder obtained the Preliminary Site Information. Owner makes no representation or warranty as to the correctness or completeness of the information in the Preliminary Site Information. Design-Builder represents and warrants (as of the Full Notice to Proceed Date) that Design-Builder has investigated the Site and each other location where any portion of the Work shall be performed and surrounding locations to the full extent Design-Builder deems necessary in order for Design-Builder to perform this Agreement given its terms and conditions, and that Design-Builder is familiar with, and has satisfied itself with respect to, the nature and location of the Work and Site Conditions. WITH THE SOLE EXCEPTION OF THE DISCOVERY OF AN EXCUSED SITE CONDITION (THE SOLE RELIEF FOR WHICH, PROVIDED CONTRACTOR HAS COMPLIED WITH ALL CONDITIONS PRECEDENT, IS SET FORTH IN SECTION 10.3.5), CONTRACTOR EXPRESSLY ACKNOWLEDGES AND AGREES THAT IT HAS AGREED TO TAKE ALL RISKS WITH RESPECT TO THE SITE CONDITIONS, INCLUDING THE DISCOVERY OF SITE CONDITIONS WHICH ARE NOT DISCLOSED IN THE PRELIMINARY SITE INFORMATION, OR THE DISCOVERY OF SITE CONDITIONS OF A DIFFERENT KIND OR NATURE THAN WHAT CONTRACTOR ANTICIPATED TO OCCUR OR EXIST, IN EACH CASE, AT, ABOVE OR BENEATH THE SITE, AND THAT THE CONTRACT PRICE CONTAINS AMOUNTS WHICH CONTRACTOR BELIEVES WILL COMPENSATE IT FOR AGREEING TO ASSUME SUCH RISKS.

19.3.5 Owner Parties' Determination. Owner Parties shall be entitled to review Design-Builder's Claims for Excused Site Conditions as set forth in *Section 10.3.4* above, and for changes due to Unavoidable Delay as set forth in *Section 7.2.4* of these General Conditions. If, after investigation, Owner Parties agree that a Change Order is appropriate under the circumstances, Design-Builder will be entitled to adjustment to the Contract Sum, Contract Time, or schedule of performance of the Work, as the case may be, and as agreed to by Owner and Design-Builder. If a request for Change Order includes requests from Subcontractors, Sub-subcontractors, Suppliers, or other Persons performing Work, Design-Builder shall analyze and evaluate the merits of such requests prior to including them in Design-Builder's submission to Owner Parties. By submitting such requests, Design-Builder represents they are accurate and appropriate.

In any event, if Owner Parties disagree that Design-Builder is entitled to a Change Order under the circumstances, Owner Parties shall notify Design-Builder in writing, stating the reasons for disagreement. If Design-Builder wishes to dispute Owner Parties' determination, Design-Builder shall have a Claim.

However, Owner shall in no event approve a Change Order because of missed Work scope or a lack of coordination in the execution or bidding of the Work.

All Claims due to changes shall proceed in accordance with *Article 12*.

19.3.6 Requisite Performance of Changes. In the event Owner refuses to issue a Design-Builder-requested Change Order or Owner and Design-Builder fail to agree to the terms of a Change Order, Owner Parties shall have the right to issue a Construction Change Directive. Upon receiving a Construction Change Directive, Design-Builder shall proceed to perform such changed Work and if payment is warranted, Owner shall pay Design-Builder on a time and material basis in accordance with *Section 10.3.7* below. Owner Parties and Design-Builder shall continue to make good faith efforts to agree to the terms of a Change Order for the Work of the Construction Change Directive. Change Orders may be issued for all or any part of a Construction Change Directive. However, if Owner and Design-Builder cannot agree to one or more Change Orders for all of the Work of a Construction Change Directive, Design-Builder shall have a Claim for that Work executed but not included in a Change Order.

19.3.7 Price and Schedule Adjustments. Unless Owner and Design-Builder agree in writing, all monetary adjustments included in Change Orders and Construction Change Directives, whether cost or credit to Owner, shall be calculated using the terms and figures of *Exhibit Q* and other unit prices set forth in the Contract Documents. However, if quantities of Materials and labor originally contemplated in a unit price significantly differ from those in a Change Order such that a unit price will cause substantial inequity to Owner or Design-Builder, that unit price shall be equitably adjusted.

When submitting a request for, or responding to, a Change Order, Design-Builder shall furnish Owner with detailed estimates of proposed adjustment to the Contract Time, changes to the schedule of performance of the Work or the Project, and the Contract Sum or Design-Builder's compensation, as the case may be. As applicable, each approved Change Order shall incorporate an accurate revised Schedule of Values and an accurate revised Construction Schedule.

19.3.8 Accounting. Design-Builder and Subcontractors impacted by a Change Order or Construction Change Directive shall maintain itemized accounts of all charges and credits due to changes in the Work as a result of all such changes. Such itemized accounts shall be open to Owner Parties' inspection.

19.3.9 Owner-Directed Acceleration; Constructive Acceleration. The Owner shall have the right to accelerate the completion date of the Work by Change Order, which may require the use of overtime. Additionally, Owner shall have the right to refuse to grant to Design-Builder an extension of time to meet the completion milestones set forth in the Design Schedule, Construction Schedule, or Project Schedule, even if Design-Builder is entitled to an extension pursuant to the Contract Documents. In the event Owner accelerates performance of the Work, the Contract Sum shall be adjusted in accordance with *Section 10.3.3* above, but Design-Builder shall not be entitled to any other compensation or recovery. Prior to commencing the acceleration of Work, Design-Builder shall submit to Owner Parties for approval its written plan to cost efficiently execute such acceleration.

19.3.10 No Additional Claims. Neither Design-Builder nor Subcontractors shall have Claims for impact costs due to a Change Order. All money and time impacts associated with a Change Order shall be included in that Change Order. Design-Builder shall not be entitled to and shall not request, a Change Order, and shall make no Claims, after Owner Parties receive Design-Builder's final Application for Payment that includes such changed Work.

## ARTICLE 20

### WORK ASSURANCES AND GUARANTEES

**20.1 Design Warranty.** Subject to the Standard of Care, Design-Builder warrants that the Services will conform to the Contract Documents' requirements, Applicable Laws and lawful orders of Governmental Authorities, and will be free from defects. Owner may consider Services not conforming to these requirements defective. If any of the Services are contrary to the Contract Documents' requirements, Applicable Laws and lawful orders of Governmental Authorities, Design-Builder shall promptly correct and cause such Services to conform to the same and all corrective measures shall be at Design-Builder's expense.

#### **20.2 Uncovering of Work.**

20.2.1 Wrongful Covering. If any portion of Work is covered contrary to Owner Parties' written request or contrary to the Contract Documents' requirements, Design-Builder shall, upon request, uncover such Work for Owner Parties' inspection and shall recover and replace the same upon Owner Parties' approval. All uncovering and recovering under this *Section* shall be at Design-Builder's expense.

20.2.2 Requested Uncovering. If Owner Parties have not specifically requested in writing any portion of Work remain uncovered for inspection, Owner Parties may still require that Design-Builder promptly uncover such Work. Following uncovering and Owner Parties' review, if such Work is in accordance with the Contract Documents, then Owner shall pay the cost of uncovering and replacement by Change Order. However, if such Work is Defective Work, Design-Builder shall pay all such costs.

#### **20.3 Correction of Work.**

20.3.1 Design-Builder's Obligation. Prior to Substantial Completion of each Deliverable Portion of Work and for a period of [one (1) year] following the later of: (i) Substantial Completion of each Deliverable Portion of Work; (ii) the date for commencement of warranties in accordance with the Contract Documents; or (iii) such longer periods of time contained in the Contract Documents' specific warranties (collectively, the "Defective Work Warranty"), Design-Builder shall promptly remove from the Site and correct and repair all Defective Work, whether completed or in progress. Costs of removing and correcting Defective Work, including additional testing and inspections, uncovering, replacement, and recovering, and associated compensation for the Owner Parties' additional services, shall be at Design-Builder's expense.

20.3.2 Opportunity to Cure. If Owner Parties become aware of Defective Work they will promptly deliver to Design-Builder written notice of the same and shall provide Design-Builder reasonable opportunity to cure the Defective Work. However, if Design-Builder does not fully perform its obligations under this *Section* within [thirty (30) Days] after it receives Owner Parties' written notice of Defective Work, Owner shall have a Claim and may cause Design-Builder's obligations to be performed at Design-Builder's expense. If Owner chooses to repair such Defective Work using Owner's own forces, Design-Builder shall pay to Owner one and one half (1-1/2) times the standard hourly rate of Owner's forces used to perform the work, plus related overhead and direct non-salary costs. If Owner completes the repairs using Owner's Separate Design-Builder, Design-Builder shall pay to Owner the direct expense billed by Owner's Separate Design-Builder for its work plus the direct salary costs, related overhead, and direct non-salary expenses, of Owner, for monitoring Owner's Separate Design-Builder's work. If any of these expenses cause the Contract Sum to be exceeded, the excess shall be payable to Owner from Design-Builder on demand, or deducted from amounts to be paid by Owner to Design-Builder.

20.3.3 Term Upon Correction or Completion. The [one (1) year] Defective Work Warranty shall be extended for those portions of Work first performed after Substantial Completion of each Deliverable Portion of Work and for the corrective Work performed pursuant to this *Section* by the longer of (a) the period of time between Substantial Completion of each Deliverable Portion of Work and the actual completion or correction of that portion of the Work or (b) the period of time prescribed by law or by the terms of any applicable special warranty or guarantee under the Contract Documents.

20.3.4 Equitable Adjustment. In the event Owner does not require Design-Builder to remove or correct any Defective Work, Owner shall be entitled to an equitable deduction to the Contract Sum for the reduced value of that Defective Work. Owner and Design-Builder shall agree upon a deduction to the Contract Sum that is equitable and all such deductions shall be evidenced by Change Order.

20.3.5 No Limitation. The [one (1) year] Defective Work Warranty neither limits the time within which Owner may enforce Design-Builder's obligation to comply with the Contract Documents, nor the time within which Owner may commence proceedings pertaining to Design-Builder's obligations under the Contract Documents. Specifically, the Defective Work Warranty does not limit any applicable statute of limitations or repose. The expiration of the Defective Work Warranty, and expiration of any of Design-Builder's other guarantees or obligations to correct Defective Work, shall not relieve Design-Builder of the obligation to correct, at its own expense, then-existing patent defects in the Work or latent defects in the Work.

Nothing contained in this *Article 11* shall establish a period of limitation for any warranty obligation under the Contract Documents (other than the Defective Work Warranty) or modify a statute of limitations or repose.

20.3.6 On-Call. During the first three (3) months following Substantial Completion of each Deliverable Portion of Work, Design-Builder shall have appropriate personnel on call to respond rapidly to system emergencies, all as agreed to by Design-Builder and Owner in *Exhibit \_\_* (the "On-Call Parameters"). [Optional Section – discussion point]

20.3.7 Warranties. Warranties arising from this *Article 11* and all other warranties and guarantees required by the Contract Documents (collectively, the "Warranties") that are applicable to a Deliverable Portion of Work shall commence upon Substantial Completion of such Deliverable Portion of Work, and shall run directly to Owner or be fully assignable to Owner and its designee. All such Warranties shall be assigned to Owner or, at Owner's option, its designee. Design-Builder shall furnish Owner with documentation necessary to enable Owner to obtain the benefit of all Warranties. Design-Builder shall assist Owner to enforce its long-term warranties or guaranties. The Warranties shall be in addition to and not in limitation of any other warranty or remedy at law or in equity.

## ARTICLE 21

### CLAIMS

#### 21.1 Notice.

21.1.1 Initial Notice. If Owner has a Claim, Owner shall provide reasonable notice to Design-Builder of such Claim in writing, setting forth the known details and support for the Claim. If Design-Builder has a Claim, Design-Builder shall furnish Owner with a detailed, supported, written notice, setting forth the known or estimated length of any Delay and any known or estimated monetary

impacts, due to such Claim. Design-Builder shall deliver to Owner such notice no later than seven (7) Days following actual knowledge of the event giving rise to the Claim. For purposes of Owner Parties' denial of any of Design-Builder's requests to modify any terms of the Contract Documents (whether Contract Sum, Contract Time, or otherwise) in accordance with Design-Builder's rights to make such requests under the Contract Documents, the event giving rise to the Claim (and thus the start of the seven (7) Day period) shall be Design-Builder's receipt of Owner Parties' written denial.

If it is impracticable to specify the actual length of a delay or monetary amount of a Claim at the time notice is required, the claimant shall provide estimates and periodic supplemental notices to keep the nonclaimant party informed of any change and other relevant information while the events giving rise to the Claim continue.

21.1.2 Formal Claim Process. Promptly following notice of the Claim as set forth above, Design-Builder's on-Site senior project manager (designated in *Section 4.3.3* of these General Conditions) and Owner Parties' project manager, shall work cooperatively to resolve the Claim (the "Preliminary Claim"). However, if three (3) weeks after the notice of Claim has been received by the non-claimant, Design-Builder's and Owner Parties' project managers believe the Preliminary Claim will not be resolved, the Claim shall be submitted to the Major Claim (defined below) process.

All Claims not resolved by the Preliminary Claim process shall be "Major Claims." Owner shall designate a neutral third party with a substantial understanding of and experience in the design and construction industry, to review all Claims (the "Claims Examiner") to hear and decide all Major Claims. Within thirty (30) Days after the initial notice of a Major Claim, the claimant shall submit to the Claims Examiner and non-claimant a complete and detailed written description of its Major Claim including: (i) a detailed, factual statement of the basis of the Claim; (ii) pertinent dates of the events giving rise to the Claim; (iii) Contract Documents provisions that support or allow the Claim; (iv) copies of all documents which support the Claim; (v) the total monetary and time impacts of the Claim, broken down to clearly demonstrate its impact on the Contract Sum, Design-Builder's compensation, the Contract Time, and schedules of performance of the Work (collectively, the "Detailed Claim"). Within ten (10) Days of receiving the Detailed Claim, the non-claimant shall have the right to submit to the Claims Examiner a formal response to the Detailed Claim, confirming or rebutting the allegations and other details set forth in that Detailed Claim.

21.1.3 Indirect Claims. If a Design-Builder's Claim involves Work of Subcontractors, Sub-subcontractors, Suppliers, or other Persons performing work on their behalf, Design-Builder shall analyze and evaluate the merits of such Claim prior to noticing Owner of the same and by giving such notice, represents such Claim is accurate and appropriate. Owner Parties will not consider direct claims from Subcontractors, Sub-subcontractors, Suppliers, and others not a party to the Contract Documents.

21.1.4 Limited Claims for Damages. Neither Design-Builder nor Owner shall have a Claim for damages to property or injury arising from an act, omission, or peril, that is actually insured and paid pursuant to any policy carried by the party suffering such damage. Furthermore, such a Claim shall not be assignable or the subject of a subrogation action by any third party. To the extent a party suffering damage receives insurance proceeds for damages that otherwise could give rise to a Claim, the other party shall be released from liability, for such damages.

21.1.5 Waiver. Unless Design-Builder provides a notice of Claim and the Formal Claim is made in accordance with the time requirements of this *Section*, Design-Builder's Claim shall be deemed waived.

21.1.6 Continuation of Work. Unless otherwise directed by Owner Parties, Design-Builder shall continue to diligently prosecute the Work while any Claim is pending.

## 21.2 Formal Claim Review.

21.2.1 Initial Decision. The Claims Examiner will review all Major Claims and take one or more of the following preliminary actions within fifteen (15) Days of receipt of a Detailed Claim: (i) request additional supporting information from the claimant; (ii) inform the Design-Builder and Owner in writing of the time required for adequate review and response; (iii) reject the Claim in whole or in part and identify the reasons for rejection; (iv) based on unit prices identified in *Exhibit Q* and recommend approval of all or part of the Claim; or (v) propose an alternate resolution. In any event, notwithstanding anything to the contrary contained in this *Article 12*, if the Claims Examiner has not issued its decision within thirty (30) Days of the Detailed Claim being filed, that Claim shall be subject to appeal and submitted to non-binding mediation all as set forth below.

21.2.2 Appeal. The Claims Examiner's decision shall be final and binding unless appealed by Design-Builder's or Owner's written notice to the other, setting forth those portions of the Claims Examiner's decision being appealed, within fifteen (15) Days of all parties' receipt of such decision. Owner and Design-Builder hereby acknowledge and agree mediator, whether temporary or presiding, shall not be subject to subpoena or otherwise asked or required to produce records, notes, or work product, or asked or required to testify in any proceedings as to information disclosed or representations made during the course of mediation, except to the extent required by law.

21.2.3 Mediation. A proper and timely appeal of the Claims Examiner's decision shall be submitted to non-binding mediation within fifteen (15) Days following all parties' receipt of the notice of appeal and such appeal shall be reviewed by the mediator *de novo*. The presiding mediator shall be an individual mutually acceptable to Owner and Design-Builder, unless the parties cannot agree, in which case each party shall select a temporary mediator and the temporary mediators shall jointly select a presiding mediator. Owner and Design-Builder shall pay their own costs and expenses and the cost of the mediator shall be split equally between the two parties. The schedule, time and place for mediation will be mutually acceptable to Owner and Design-Builder, unless the parties cannot agree, in which case the mediation venue shall be at or in close proximity to the Site.

.1 Owner and Design-Builder acknowledge and agree that, subject to Claim Preservation as set forth below, participation in mediation shall be a prerequisite to litigation of any Contract Documents disputes. Owner and Design-Builder shall use best efforts in good faith to resolve through the mediation process all Major Claims within sixty (60) Days of the commencement of such mediation (the "Mediation Period"). However, if the Major Claims are not resolved within ninety (90) Days of the commencement of such mediation, the parties shall have the option to file a lawsuit in accordance with *Section 12.2.4* below and adjudicate those undecided issues, notwithstanding the requirement to mediate as a condition precedent to filing suit. Additionally, if a lawsuit must be filed within the Mediation Period in order to preserve a cause of action (a "Claim Preservation"), Owner and Design-Builder agree that they will nevertheless proceed diligently to mediate the Claim to its conclusion prior to actively prosecuting the lawsuit. As such, Owner and Design-Builder shall seek from the Court presiding over the Claim Preservation lawsuit such stays and extensions, including the filing of an answer, as may be necessary to mediate effectively. Further, if during the Mediation Period Owner and Design-Builder settle any issues, the plaintiff in the Preservation Claim lawsuit shall promptly cause the Court to enter a stipulated general judgment of dismissal with prejudice, or other appropriate order, limiting the remaining scope of litigation.

.2 The parties agree to comply with Owner's Standard Requirements, which may include but are not limited to confidentiality of mediation, and shall promptly sign all documents necessary to give effect to such requirements.

21.2.4 Litigation. Major Claims not resolved by mediation during the Mediation Period shall be submitted to the Benton County Oregon Circuit Court and the Parties hereby consent to the jurisdiction of the same and waive any objection which it may now or later have to the laying of venue of any action or proceeding in such court; provided, however, notwithstanding the foregoing, if a legal action or proceeding must be brought in a federal forum, the Party bringing such action or proceeding shall do so in the United States District Court for the District of Oregon. This paragraph shall not be construed to (a) authorize Design-Builder to bring a legal action or proceeding against Owner in a federal forum except to the extent Congress has validly abrogated OSU's sovereign immunity or (b) waive any form of Owner's immunity, including sovereign immunity and immunity based on the Eleventh Amendment to the United States Constitution.

Owner and Design-Builder hereby acknowledge and agree mediator, whether temporary or presiding, shall not be subject to subpoena or otherwise asked or required to produce records, notes, or work product, or asked or required to testify in any proceedings as to information disclosed or representations made during the course of mediation, except to the extent required by law. ]

### **21.3 No Claims for Consequential Damages.**

21.3.1 Consequential Damages Waived. To the greatest extent allowed by law, Design-Builder and Owner each waive Claims against the other for consequential damages arising out of the Contract Documents, including (a) Owner's damages for rental expenses, loss of use, lost opportunity, loss of income, lost profit, interest from financing, and damage to reputation, and (b) Design-Builder's damages for principal office expenses, lost opportunity, interest from financing, damage to reputation, and loss of profit except anticipated profit arising directly from the Work and earned by Design-Builder in accordance with the Contract Documents.

21.3.2 Limitations. Nothing in this *Section 12.3* shall preclude recovery of: (i) Liquidated Damages in accordance with the Contract Documents; (ii) third-party claims, Claims, and indemnity requirements of *Section 8.2* of these General Conditions; (iii) Claims, damages, costs, or expenses due to violations of Applicable Laws; (iv) Claims, damages, costs, or expenses relating to fraud, gross negligence, or willful misconduct; (v) Claims, damages, costs, or expenses covered by any insurance policy; (vi) Claims, damages, costs, or expenses due to Design-Builder's refusal to perform in accordance with the Contract Documents; or (vii) breach of any intellectual property or confidentiality obligations.

## ARTICLE 22

### TERMINATION

#### **22.1 Suspension.**

22.1.1 Owner's Right to Suspend. Owner may, with or without cause, furnish Design-Builder with a written order to suspend the Work in whole or in part for such period of time as Owner may determine in its sole discretion, but not to exceed [ninety (90)] Days. Upon receipt of such an order to suspend, Design-Builder shall promptly cease all Work, except to the extent Owner's order also requires Design-Builder to protect completed and partially-completed Work or to maintain during the period of suspension the Work protection of the Work, maintenance of access, protection of stored Materials, maintenance of temporary facilities, and general cleaning. If Owner's suspension of the Work exceeds [ninety (90)] Days, and Owner re-engages Design-Builder to commence the Work once again with written notice, Design-Builder shall be entitled to an equitable adjustment to the Contract Sum for the length of time exceeding [ninety (90)] days. No such suspension of the Work will be the basis of a Claim except for Cost of the Work directly relating to maintenance of the Site during such suspension.



## **22.2 Termination.**

22.2.1 Owner's Right to Perform. If Design-Builder fails to perform any of its obligations under the Contract Documents, then Owner may, after five (5) Days' prior written notice, during which time Design-Builder continues to fail to diligently pursue performance of any such breached obligation and without prejudice to any other remedy Owner may have at law or in equity, cause Design-Builder's breached obligations to be completed by others. All costs and expenses Owner incurs addressing Design-Builder's failure to perform under this *Section* shall become Design-Builder's liability to Owner payable upon demand and subject to offset against the Contract Sum. If the balance of the Contract Sum is not sufficient to cover such offset amount, Design-Builder shall immediately pay to Owner the difference. However, in no event shall Owner's actions under this *Section* be deemed a termination of the Agreement.

22.2.2 Funds Available and Authorized. If Owner fails to receive funding, appropriations, allocations, or other expenditure authority, as contemplated by Owner's budget, Owner may terminate the Contract Documents based on its assessment and ranking of the policy objectives explicit or implicit in Owner's budget, and such termination shall be deemed and proceed according to Owner's termination for convenience (below).

22.2.3 Owner's Termination for Convenience. Owner may, at any time and without cause, terminate the Agreement, in whole or in part, by delivering to Design-Builder at least ten (10) Days in advance, a notice of termination for convenience specifying the extent and the effective date of termination. Upon such date of termination, Design-Builder shall (a) immediately and peacefully surrender possession of the Site and all Materials for which the Design-Builder received progress payments, and (b) assign to Owner those Subcontracts that Owner requests. Under those Subcontracts to which Owner elects to take assignment, Owner shall assume Design-Builder's obligations that accrue after the date of termination. Design-Builder shall take such action and shall execute such documents as Owner may reasonably require for such assignments to be effective and shall not enter agreements that prevent such assignment.

Following termination, Design-Builder shall only be entitled to (a) that portion of the Contract Sum earned up until the effective date of termination and (b) reasonable actual demobilization costs.

22.2.4 Owner's Termination for Cause. If a Default occurs at any time during the Project and Design-Builder fails after five (5) Days written notice to commence and diligently pursue a cure to such Default or fails to actually cure the Default within a reasonable period of time, Owner may terminate the Agreement for cause and take possession of the Site and all Materials on the Site, including those Design-Builder owns. Owner may subsequently finish the Work by whatever reasonable methods are expedient and Design-Builder shall not be entitled to receive any further payment until the Work is finished. However, in the event of such a termination for Default, Design-Builder shall not be relieved from its obligations under the Contract Documents.

If Owner completes the Work and the unpaid balance of the Contract Sum exceeds Owner's cost and expense to finish the Work, including its consequential damages and professional services fees, Design-Builder shall be compensated for the Work it actually performed. However, if Owner's costs and expenses to complete the Work, including its consequential damages and professional services fees, exceed the unpaid balance of the Contract Sum, Design-Builder shall pay to Owner the difference upon demand. This *Section* shall survive termination of the Agreement.

22.2.5 Termination Deemed Termination for Convenience. If a court of competent jurisdiction, mediator, or arbitrator, as the case may be, determines that Owner's termination for cause was wrongful, such termination shall be deemed a termination for convenience pursuant to *Section 13.2.3*

of these General Conditions and Design-Builder's remedy shall be limited to the provisions of that *Section*.

22.2.6 Transfer of Documents. As directed by Owner, Design-Builder shall, upon any termination under this *Article 13*, transfer title and deliver to the Owner all Record Documents, information, and other property, that is reasonably necessary to effectuate completion of the Work or assignment of subcontracts, or that Owner Parties may otherwise reasonably request.

22.2.7 Design-Builder's Termination. If Owner fails to pay to Design-Builder within forty-five (45) Days after due any undisputed amounts under the Agreement, Design-Builder may, after fifteen (15) additional Days' written notice to Owner during which time Owner continues to fail to make such payment, terminate the Agreement. If Design-Builder properly terminates for cause under this *Section*, it may recover from Owner that portion of the Contract Sum earned prior to the date of termination. Design-Builder hereby waives any other right of recovery for damages due to termination under this *Section*, including anticipated profits (for the balance of the un-executed Work) and consequential damages.

## ARTICLE 23

### MISCELLANEOUS

**23.1 Use of Drawings and Specifications; Ownership**. The Drawings, Specifications, and other documents prepared by or for Owner Parties, are Instruments of Service. Design-Builder may retain one record set of such Instruments of Service but Design-Builder, Subcontractors, Sub-subcontractors, and other Persons performing Work shall have no claim to or ownership of them and shall not use them for any purpose other than for the Work. Unless otherwise indicated, Owner shall be deemed the author and owner of all Project Instruments of Service.

Design-Builder, Subcontractors, Sub-subcontractors and Suppliers are granted a limited license to use and reproduce applicable portions of the Instruments of Service to aid in the execution of their Work. All such copies made under this license shall bear any statutory copyright notice found on the originals. All such copies, except Design-Builder's record set, shall be returned to Owner upon request and upon completion of the Work.

**23.2 Interest**. Owner shall pay Contractor for services performed at the prices and rates specified herein. Contractor shall look solely to OSU for payment of all amounts OSU owes to Contractor. Payment of OSU contracts is normally made within 30-45 days following the date the invoice is received. After 45 days, Contractor may assess overdue account charges up to a maximum of two-thirds of one percent (2/3 of 1%) per month or eight percent (8%) per annum on the outstanding balance pursuant to ORS 293.462.

**23.3 Independent Contractor Status**. The services and work to be performed under the Contract Documents are those of an independent contractor as defined in ORS 670.600. Design-Builder represents and warrants that it is not and will not employ an officer, employee, or agent, of Owner, as those terms are used in ORS 30.265.

**23.4 Confidentiality**. The terms of the Contract Documents and all information and materials Design-Builder obtains from Owner Parties pertaining to the Work are confidential. Design-Builder shall not disclose any such information and materials without Owner's prior written consent, except when disclosure is to Persons who have a need to know such information and who first agree to maintain their confidentiality.

All information Owner obtains from Design-Builder concerning Design-Builder's costs, accounting, finances, and business operations, is confidential, and Owner shall not disclose the same without Design-Builder's prior written consent, except when disclosure is to Persons who have a need to know such information and who first agree to maintain their confidentiality and when required by law or court order.

This *Section* shall not apply to information that comes into the public domain unless as a result of a disclosure prohibited by this *Section*, and shall not apply to an enforceable court order. This *Section* shall survive the termination of the Agreement.

**23.5 Successors and Assigns.** Owner and Design-Builder bind themselves, their successors, and their assigns, to the other, by the terms of the Contract Documents. Design-Builder shall not assign or transfer any interest in the Contract Documents, whether by merger, consolidation, dissolution, operation of law or any other manner, other than to Design-Builder's surety, without Owner's prior written consent.

**23.6 Written Notice.** Notices required under the Contract Documents shall be in writing and shall be deemed given when delivered if done so in accordance with the Contract Documents.

**23.7 Governing Law; Venue.** The Contract Documents shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

**23.8 Rights and Remedies.** Subject to express limitations of the Contract Documents, rights and remedies available to the parties to the Agreement shall be in addition to, and not a limitation of, any available at law or in equity. No action or failure to act by Owner Parties or Design-Builder shall constitute a waiver of any right or duty under the Contract Documents, except as may be set forth in the Contract Documents, or as specifically agreed to in writing.

**23.9 Severability.** The invalidity or unenforceability of any provision of the Contract Documents shall not impair or affect the validity or enforceability of any other provision of the Contract Documents and invalid or unenforceable provisions shall be limited to the extent necessary to enable enforcement of the remainder of the Contract Documents.

**23.10 Survival.** All warranty and indemnification provisions of the Contract Documents, and all terms of the Contract Documents that are said to or clearly intended to, shall survive termination and completion of the Contract Documents.

## ARTICLE 15

### FEDERALLY REQUIRED PROVISIONS

**15.1 Compliance with Applicable Laws.** The parties shall at all times comply with all federal, state and local laws, regulations, executive orders and ordinances pertaining to their respective businesses, products or services, employment obligations, and the subject matter of this Contract. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Paragraphs 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of

federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

**15.2 Allowable Costs.** All Project costs must be allowable, allocable, and reasonable. The Contractor must document and maintain records of all Contract related expenses, including, but not limited to in-kind contributions. The Contractor is responsible for maintaining records adequate to demonstrate that Contract expenses claimed have been incurred, are reasonable, allowable, and allocable, and comply with cost principles. Upon request, the Contractor is required to provide such records to Owner, DOE, State or Federal auditing agencies; or their authorized representatives. Such records are subject to audit. Failure to provide Owner, DOE, State or Federal auditing agencies adequate supporting documentation may result in a determination by Owner, DOE, State or Federal auditing agencies; or their authorized representatives, that those costs are unallowable.

**15.3 Awards, Prizes and Recognition.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Contractor shall provide the following related to any awards, prizes, or other recognition for project work or results, subject inventions, patents or patent applications, etc. as a result of work performed under this contract. List name of award/recognition/prize, name of sponsoring organization, date of receipt, and subject of award/price/recognition.

**15.4 Contractor Reporting.** As applicable, Contractor shall report to Owner the following: a.) any notices or claims of patent or copyright infringement arising out of or relating to the performance of the Work performed under this Contract; b.) potential or actual violations of federal, state, and municipal laws arising out of or relating to work performed under this Contract; c.) any fatality or injuries requiring hospitalization arising out of or relating to the work under the Contract; d.) potential or actual violations of environmental, health, or safety laws and regulations; e.) Any event which is anticipated to cause significant schedule slippage or cost increase; f.) any damage to Government owned equipment in excess of \$25,000; g.) any incident arising out of or relating to work under the Contract that has the potential for high visibility in the media.

**15.5 Covered Relationship.** The Contractor shall notify Owner of the existence of a ‘covered relationship’ as defined by 5 CFR 2635.502(a) & (b) between the Contractor and Owner which creates at a minimum an apparent conflict of interest. The Contractor shall notify Owner of the covered relationship and provide detailed information and justification (including, for example, mitigation measures) as to why the relationship under this Contract does not create an actual conflict of interest.

**15.6 Equipment.** Title to equipment: Title to equipment (property) acquired under this Contract will conditionally vest upon acquisition with Owner.

**15.7 Invention Disclosures.** As applicable, upon request by Owner or prior to Completion of Work under this Contract, Contractor shall provide the following invention disclosures: List title, date submitted, and name of inventor. Invention disclosures are to be provided to Owner in a manner consistent with 37 CFR 401.14 ‘Standard Patent Rights Clauses.’

**15.8 Licensed Technologies.** As applicable, upon request by Owner or prior to Completion of Work under this Contract, Contractor shall provide the following information for subject inventions licensed to third parties as applicable: list name of licensee, domestic or foreign patent or patent application number, title, and expiration date of Contract.

**15.9 Media.** Contractor shall make no news release, press release or statement to a member of the news media regarding this Work under this Contract without prior written authorization from Owner. For any media articles (e.g. newspapers, magazines, online media) produced by the Contractor after receiving written authorization from Owner to produce such media, the Contractor shall provide to Owner

upon request or prior to Completion of Work under this Contract, the following: author, title, publication or website, page number (if applicable), and date of publication.

**15.10 Network and Collaborations.** As applicable, upon request by Owner or prior to Completion of Work under this Contract, Contractor shall provide information to Owner about partnerships and other arrangements concluded with respect to the project or technology area or Work performed under this Contract. Contractor shall list name of network or collaboration (if any), name of entities involved, date of Contract (if any), brief description of network or collaboration, and technology area. Contractor shall clearly denote the partner organizations unique and distinguished contribution to the Project as a result of work performed under this Contract.

**15.11 Other Products.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Contractor shall provide Owner the following information: additional Work output, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment. Contractor shall provide a brief description of additional project output, date of release, and entity to which output was provided.

**15.12 Patent Applications.** As applicable, upon request by Owner or prior to Completion of Work under this Contract, Contractor shall provide the following patent application information: list patent number, name of inventors, assignee, patent application number, date of filing, and title of patent application.

**15.13 Protected and Limited Rights Data.** As applicable, the Contractor shall mark protected data and limited rights data for all deliverables provided under this Contract. Failure to properly mark data may result in its public disclosure under the Freedom of Information Act (FOIA, 5 U.S.C. Section 552) or otherwise. The work under this Contract is funded by the U.S. Government. Therefore, unlimited rights are may be retained by the government, to any technical data or commercial or financial data produced under this Contract.

**15.14 Publications.** Contractor shall include the following acknowledgement in publications arising out of, or relating to, work performed under this Contract:

- **Acknowledgement:** “This material is based upon work supported by the U.S. Department of Energy’s Office of Energy Efficiency and Renewable Energy (“EERE”) under the Water Power Program Award Number DE-EE0007899.”
- **Disclaimer:** “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

**15.15 Records Retention and Audit.** Contractor is responsible to provide any information, documents, site access, or other assistance requested by Owner, Federal or State auditing agencies; or their authorized representatives, for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Contractors records relating to this Contract.

**15.16 Technologies and Techniques.** As applicable, upon request by Owner or prior to Completion of Work under this Contract, Contractor shall briefly describe the new technologies or techniques (specific capabilities and performance improvements enabled), the pre-commercialization history of the technologies and their potential application to current and future projects.

**15.17 Website Featuring Work or Work Results.** As applicable, upon request by Owner or prior to Completion of Work under this contract, Contractor shall provide Owner the following information: website or other Internet sites that reflect the Work or results of Work under this Contract. List name of website, specific webpage(s) on which Work or results featured, and brief description of Work or results featured.

**15.18 Anti-Kickback Act (40 U.S.C. 3145).** Contractor certifies compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each Contractor or Subcontractor must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Contractor must report all suspected or reported violations to OSU.

**15.19 Byrd Anit-Lobbying Amendment (31 U.S.C. 1352).** Contractors that apply or bid for a contract of \$100,000 or more, must file the required certification that it will not and has not used Federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Contractor must require any subcontractor who applies or bids for subcontract of \$100,000 or more to provide a similar certification to the next higher tier (Contractor or subcontractor as applicable). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Contractor or subcontractor must forward any disclosures from tier to tier up to OSU.

**15.20 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Water Control Act (33 U.S.C. 1251-1387), as amended.** If this Contract provides for payments in excess of \$150,000, Contractor must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**15.21 Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** For all contracts awarded in excess of \$100,000 that involve the employment of mechanics or laborers, the Contractor must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each Contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**15.22 Debarment and Suspension Executive Orders 12549 AND 12689.** A contract award (see 2 CFR 180.220) must not be made to parties listed on the government-wide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in SAM contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Before a contract

award of \$25,000 or more is made, verification is required that the intended awarded party is not on the government-wide exclusions in the SAM. Required verification must be made by checking the SAM Exclusions. Compliance with Subpart C of 2 CFR Part 180 by checking that the intended awarded party is not listed on the SAM Exclusions, before making a contract award, will flow down from tier to tier for contract awards of \$25,000 or more. Contractor must include a term or condition similar to this term, in any subsequent lower tier contract awards of \$25,000 or more. Contractor hereby certifies they are not listed on the government-wide exclusions in the SAM.

**15.23 Energy Policy and Conservation Act.** Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

**15.24 Equal Employment Opportunity.** Contractor must comply with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

**15.25 Rights to Inventions Made Under a Contractor or Contract.** If this Contract is for the performance of experimental, developmental, or research work, the Federal Government and OSU have rights in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Contracts," and any implementing regulations issued by the awarding agency.

Exhibit B

## Early Work Amendment

See attached

[Note: this can also be built from OSU's preferred notice to proceed.]



Early Work Amendment

Date: [\_\_\_\_\_]

Early Work Amendment Number \_\_

[Design-Builder Name]

Attn: [\_\_\_\_\_]

[Address]

[Address]

with copy to:

[Name]

Attn: [\_\_\_\_\_]

[Address]

[Address]

RE: [Project Name], [Contract Number]

Design-Builder:

In accordance with Section 6.3 of the Agreement, you are hereby authorized to commence the Early Work described in Section 1 below and shall be paid for such Early Work in accordance with the Agreement, subject to the not to exceed price set forth in Section 2 below. In accordance with Section 6.3 of the Agreement, the amount paid on account of this Early Work Amendment Number \_\_ shall be included in the Pricing Amendment applicable to the Deliverable Portion of Work to which the Early Work relates.

- 1. The Early Work of this Early Work Amendment Number \_\_ consists of the following: [Note: Describe the Early Work in reasonable detail]

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- 2. The not to exceed price for the Early Work of this Early Work Amendment Number \_\_ shall be: [Note: Insert the Early Work NTE budget]

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Signed and accepted as of the date first written above:

OWNER:

DESIGN-BUILDER:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**Exhibit C**

**Form of Pricing Amendment**

See attached

**Pricing Amendment**

Pursuant to Section 5.11 of the Design-Build Agreement (the "Agreement") dated \_\_\_\_\_, 20\_\_\_\_, between Owner and Design-Builder, Owner and Design-Builder agree to the following terms and conditions for the \_\_\_\_\_ Deliverable Portion of Work (this "Pricing Amendment"). Capitalized terms used but not defined in this Pricing Amendment shall have the meanings given in the Agreement.

ARTICLE 1

DEFINITIONS AND GENERAL PROVISIONS

"Design-Builder's Lump Sum" shall mean the amount Owner shall pay to Design-Builder for all Work of the Deliverable Portion of Work of this Pricing Amendment.

"Qualifications and Assumptions" shall mean, following Owner Parties' approval, Design-Builder's written statement of qualifications to, exceptions to, and assumptions in, a Pricing Amendment, all based upon the applicable Pricing Amendment Documents.

ARTICLE 2

PRICING

1. Design-Builder's Lump Sum for the \_\_\_\_\_ Deliverable Portion of Work is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
2. The Guaranteed Substantial Completion Date for the \_\_\_\_\_ Deliverable Portion of Work is \_\_\_\_\_, 20\_\_\_\_.
3. The following schedules are attached to and incorporated into the Agreement:

**Schedule 1** Pricing Amendment Documents, including the Qualifications and Assumptions, upon which Design-Builder's Lump Sum is based, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 2** Schedule of Values, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 3** Construction Schedule, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 4** Allowance items, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 5** Alternates, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 6** Unit Prices, dated \_\_\_\_\_, \_\_\_\_\_ pages.

**Schedule 7** Claims, if any, \_\_\_\_\_, \_\_\_\_\_ pages.

4. Except as set forth in this Pricing Amendment, the Agreement shall remain in full force and effect. In the event of an irreconcilable conflict between the terms of the Agreement and those of this Pricing Amendment, the terms of this Pricing Amendment, control.
5. As of the date of this Pricing Amendment, Design-Builder acknowledges it is neither aware of, nor has reserved, any Claim except as identified on **Schedule 7**.

6. This Pricing Amendment shall take effect upon the date it is last signed and may be signed in separate counterparts, each of which when signed and delivered shall be an original, and all which when taken together, shall constitute one instrument.

This Pricing Amendment is entered as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**OWNER:**

**DESIGN-BUILDER:**

\_\_\_\_\_

\_\_\_\_\_

By:

Name:  
Its:

By:

Name:  
Its:

**Exhibit C-1**

**Preliminary Services Sum**

See attached

**Preliminary Services Sums**

1. For Deliverable Portion of Work \_\_\_\_, Design-Builder's not-to-exceed sum for the Services is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
2. For Deliverable Portion of Work \_\_\_\_, Design-Builder's not-to-exceed sum for the Services is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
3. For Deliverable Portion of Work \_\_\_\_, Design-Builder's not-to-exceed sum for the Services is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).
4. For Deliverable Portion of Work \_\_\_\_, Design-Builder's not-to-exceed sum for the Services is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**Exhibit D**  
**Project Criteria**

See attached

[Insert Project Criteria]



**Exhibit E**

**Key Personnel and Hourly Rates**

See attached

### **Design-Builder's Key Personnel**

The personnel indicated below shall be committed to the Project and shall not be assigned any other work responsibilities that lessen or hinder their ability to perform their Project responsibilities:

1. Project Executive. Design-Builder shall assign \_\_\_\_\_ as Project Executive to supervise Design-Builder's services and the Work and be available to Owner at all reasonable times.
2. Senior Project Manager. Design-Builder shall assign \_\_\_\_\_ as Senior Project Manager to supervise the Work and be available to Owner at all reasonable times.
3. Project Manager. Design-Builder shall assign \_\_\_\_\_ as Project Manager to supervise the Work and be available to Owner at all reasonable times.
4. General Superintendent. Design-Builder shall assign \_\_\_\_\_ as General Superintendent to supervise the Work.
5. Design Manager. Design-Builder shall assign \_\_\_\_\_ as Design Manager to supervise Design-Builder's Design Services.
6. Submittals Coordinator. Design-Builder shall assign \_\_\_\_\_ as Design-Builder's Submittals Coordinator to coordinate all Submittals and shall check for conflicts, completeness, and accuracy, and confirm such Submittals conform to the requirements of the Contract Documents and are appropriate for Owner Parties' review.
7. Other Personnel. Design-Builder shall assign other persons as necessary who shall be responsible for the job descriptions set forth next to each of their names. [Note: Design-Builder to provide for Owner's approval.]

## **Design-Builder's Personnel Rates**

[Note: Design-Builder to provide hourly rates for Owner's approval]

**Exhibit F**  
**Form of Payment Claim Waiver**

See attached

[Note: Insert OSU's preferred form of claim waiver, if any.]

**Exhibit G**

**Per Diem Liquidated Damages**

See attached

**Per Diem Liquidated Damages**

Deliverable Portion of the Work 1 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]
Deliverable Portion of the Work 2 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]
Deliverable Portion of the Work 3 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]
Deliverable Portion of the Work 4 [ ]	Guaranteed Substantial Completion Date [ ]	Per Diem Damages (30 Days) [ ]	Per Diem Damages (60 Days) [ ]	Per Diem Damages (90 Days) [ ]

Exhibit H

Notice and Contact Information

Notices required under the terms of the Agreement shall be given to the attention of each party's representative designated below using the following contact information.

*Owner:*

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Attn:

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Phone:

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Fax:

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Email:

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*with copy to:*

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Attn:

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Phone:

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*Owner Parties:*

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**Exhibit I**

**Owner's Standard Requirements**

See attached

### **Security/Background Checks:**

The OSU facilities in which work performed under this Agreement is performed are designated as critical, occupied or security-sensitive facilities. Thus, Contractor shall conduct criminal background checks, including sex offender registration checks, (for both: Oregon at a minimum, and national for Contractor employees that formerly lived outside of the state of Oregon) on each Contractor employee and agent with satisfactory results before referral or placement at any OSU work location. The Contractor shall also conduct drug and alcohol testing of each Contractor employee and agent with satisfactory results before referral or placement at any OSU work location. Contractor must perform the criminal background checks and drug and alcohol testing within the 12 months immediately preceding referral or placement at any OSU work location.

Disqualifying crimes may include: 1) felony convictions of any kind within the last 8 years, 2) all crimes involving weapons of any kind ever committed, 3) all person to person crimes involving physical injury to another person ever committed, 4) sexual offenses, including stalking, and 5) child abuse, molestation, child pornography or other crimes involving child endangerment, including neglect and abandonment ever committed.

Contractor shall require Contractor's employees and agents to self-disclose to Contractor any new convictions that occur within three business days of the conviction and Contractor shall reassess the individual's assignment under this Contract.

OSU, at its discretion, may require Contractor to reassign a Contractor employee or agent to no longer perform work under this Agreement or for OSU if, at any time, OSU believes that the Contractor employee or agent may create a danger to the health or safety of the campus community.

Contractor is solely responsible for complying with all applicable federal, state or local laws, rule, and regulations, including but not limited to the Fair Credit Reporting Act and equal opportunity laws and regulations, when conducting background checks. The costs and Fair Credit Reporting Act obligations for criminal background checks and drug and alcohol testing are the responsibility of Contractor.

Contractor shall require Contractor's subcontractors and agents providing services under this Agreement to comply with this provision. OSU may audit Contractor's background check and drug and alcohol testing processes at any time to ensure compliance with this section. Failure of Contractor to comply with this section is a material breach of the Agreement and may result in OSU seeking monetary damages or pursue other remedies, termination by OSU without further liability or obligation, or both. Contractor shall indemnify, defend, and hold harmless OSU and its directors, agents, trustees, and employees from all claims, suits, and actions arising out of or related to any and all claims relating to the conducting of such checks and testing and any adverse action that may be taken as a result of such checks and testing.

### **OSU to add/supplement as needed**

**Exhibit J**

**Project Description**

See attached

[Insert written description of the Project]

**Exhibit K**

**Quality Management and Control Plan**

See attached

- Cost control system
- Breakdown of quality control responsibilities to the various Project participants
- Quality Control matrix identifying and cross referencing
  - Testing
  - Inspections
  - Submittals
  - Project participants
- Inspection and testing plans for all critical Work including commissioning
- Field monitoring and inspection report qualitative examples issuance schedule
- Contractor's Subcontractor's quality control audit plan
- Defective Work identification, reporting, and correction procedures

[Design-Builder to insert written descriptions and supplement the above list]

**Exhibit L**

**Site Description**

See attached

[Insert description of the Site, which may include  
a legal description and survey]

Exhibit M

Fee Matrix

See attached



**Exhibit N**  
**Insurance Requirements**

See attached

## **INSURANCE REQUIREMENTS**

### **A. GENERAL.**

Contractor shall, and shall cause each Subcontractor(s) to, maintain the insurance coverages set forth below:

**1. Commercial General Liability (CGL)**

\$2,000,000 Each Occurrence

\$4,000,000 General Aggregate – Per Project Aggregate

\$4,000,000 Products/Completed Operations Aggregate

\$2,000,000 Personal Injury

If the Contractor or Subcontractor(s) will be performing blasting, excavation, drilling, or soil sampling, then the Commercial General Liability Policy exclusion for the explosion, collapse and underground (“XCU”) hazards shall be removed by endorsement, and a copy shall be provided to Owner.

**2. Business Automobile**

\$1,000,000 Combined Single Limit

**3. Workers' Compensation/Employers' Liability (Stop Gap)**

Statutory Workers' Compensation – Coverage A

\$1,000,000 Each Accident

\$1,000,000 Disease – Policy Limits

\$1,000,000 Disease – Each Employee

**4. Contractors Pollution Liability**

\$5,000,000 Each Occurrence and General Aggregate

If the coverage is written on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. Owner and its officers, trustees, employees, and agents shall be included as additional insured in said insurance policy to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract. The policy shall include a waiver of subrogation in favor of Owner.

**5. Marine General Liability, as applicable**

\$2,000,000 Each Occurrence

\$4,000,000 Annual Aggregate

This insurance must include premises-operations, independent contractors, products and completed operations, broad form property damage, blanket contractual, and personal injury endorsements. The policy must specifically be endorsed with ISO CGL or equivalent form with deletion of Care, Custody and Control and Watercraft exclusions.

**6. Excess Umbrella Liability**

A combination of primary and excess/umbrella liability insurance may be used to meet the required limits of insurance above, as long as the coverage “follows form”.

For Contractor:

\$5,000,000 Each Occurrence/Annual General Aggregate

For Subcontractors, unless a higher limit is set by Subcontract:

Where the Subcontract Sum is over \$500,000 but not more than \$2,000,000,  
\$5,000,000 Each Occurrence/Annual General Aggregate

Where the Subcontract Sum is over \$2,000,000 but not more than \$5,000,000,  
\$10,000,000 Each Occurrence/Annual General Aggregate

Where the Subcontract Sum is over \$5,000,000 but not more than \$10,000,000,  
\$15,000,000 Each Occurrence/Annual General Aggregate

Where the Subcontract Sum is over \$10,000,000, then \$25,000,000 Each  
Occurrence/Annual General Aggregate

## 7. Professional Liability Insurance, as applicable

- a) Contractor shall maintain professional liability insurance for claims arising from any professional services Contractor and its Subcontractors perform on the Project. The professional liability insurance shall be maintained throughout the Project and for a period of not less than three (3) years after Final Completion of the Work. Contractor’s consultants and contractors working on Contractor’s behalf shall maintain professional liability insurance with limits customary for the scope and character of the professional services performed.
- b) Minimum Limits:
  - a. \$2,000,000 Each Occurrence
  - b. \$2,000,000 General Aggregate – Per Project Aggregate

## 8. Watercraft

Contractor, or Vessel Operator if Contractor is not operating the vessel, shall secure and maintain the following insurance when watercraft is used:

### 8.1 Marine Hull & Machinery:

Declared Hull Value

### 8.2 Marine Protection & Indemnity:

\$2,000,000 Each Occurrence

\$2,000,000 Aggregate

Coverage shall provide In rem protection. If the vessel is a tug or engaged in towing, the exclusion of claims arising out of or having relation to towage of any other vessel or craft shall be deleted. Policy shall also contain Collision Liability Insurance. If Marine Employers Liability is not provided elsewhere, then coverage for crew will be provided under the Protection & Indemnity. Owner, its officers, trustees, employees and agents shall be named as additional assured, and policy shall contain a waiver of subrogation in favor of Owner. An excess policy or umbrella liability policy may be used to meet the

minimum limit requirements provided that the coverage is written on a “following form” basis.

**8.3 Marine Pollution:**

\$2,000,000 Each Loss

\$2,000,000 Aggregate

This insurance must be broad in nature and cover marine pollution conditions to include clean-up of discharges or releases, third party property damage, defense, investigation and assessment of and damage to natural resources. Contractor must provide evidence of coverage under Water Quality Insurance Syndicate (WQIS) or equivalent (Protection & Indemnity Association), with at least the minimum statutory limits of coverage. This coverage must be in effect when the vessel enters the water. Owner, its officers, trustees, employees and agents shall be named as additional assured, and policy shall contain a waiver of subrogation in favor of Owner. An excess policy or umbrella liability policy may be used to meet the minimum limit requirements provided that the coverage is written on a “following form” basis.

**6.4 Workers’ Compensation/Jones Act coverage:**

Statutory Workers' Compensation – Coverage A

\$1,000,000 Each Accident

\$1,000,000 Disease – Policy Limits

\$1,000,000 Disease – Each Employee

Policy shall be endorsed to include Jones Act coverage and/or coverage for any other similar workers’ compensation requirement.

**B. ADDITIONAL REQUIREMENTS.**

**1. Commercial General and Excess Umbrella Liability Insurance.**

- a) CGL insurance shall be written on current ISO occurrence for CG 00 01 or its equivalent if Owner approves and shall cover liability arising from premises, operations, independent contractors, products-completed operations, death, bodily injury, property damage, personal injury and advertising injury and liability assumed under an insured contract. Excess Umbrella Insurance coverage shall be provided on a follow-form basis and Contractor shall be responsible for any gaps between underlying coverage and excess coverage for all policies required under the terms of this Agreement.
- b) The Indemnitees shall be included as additional insureds under the CGL, excess umbrella liability and contractors pollution liability coverages. The additional insured coverage under the CGL shall be on current ISO additional insured endorsements CG 20 10 (07 04) and CG 20 37 (07 04) or substitutes providing equivalent coverage if Owner approves. Such insurance shall apply as primary insurance to the additional insureds.

**2. Completed Operations Liability Insurance.**

Completed operations coverage required by the Contract Documents shall be maintained for at least ten (10) years following Final Completion of the Work.

**3. Business Auto and Umbrella Liability Insurance.**

- a) Business Auto and Umbrella Liability Insurance shall cover liability arising out of any auto including owned, unowned, and hired.
- b) Business auto coverage shall be written on current ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20 or its equivalent if Owner approves.

**4. General/Certificates of Insurance.**

- a) All insurance policies shall: (i) be written by insurance companies authorized to do business in the State of Oregon having a financial size of VII or higher and a rating of not less than "A-" in the latest version of A.M. Best's Insurance Guide and (ii) not be suspended, canceled, or altered except after thirty (30) days' prior written notice to Owner by certified mail, return receipt requested.
- b) Prior to commencement of any applicable Work, Contractor shall file with Owner certificates of insurance evidencing the required insurance is in effect. At Owner's request, Contractor shall deliver to Owner the actual insurance policies and any endorsements or riders. The endorsements and riders shall include cross-claim and severability of interests endorsements.

**5. Deductibles.**

- a) CGL and Workers' Compensation/Employer's Liability (Stop Gap) policies shall not include a deductible or self-insured retention of more than \$200,000 per claim.

**C. PROPERTY/BUILDERS' RISK INSURANCE.**

1. Contractor shall place and maintain, on an "all-risk" or "special form" policy form, builders risk insurance for the Project, insuring against the perils and including extended coverage, coverage for physical loss or damage, coverage in transit. Contractor shall be responsible for \$50,000 per claim deductible under the builders risk policy if the loss is caused by Contractor, its Subcontractor, Sub-subcontractor or other person or entity for whose acts Contractor may be liable. Owner and Contractor shall cooperate with each other and jointly adjust and settle any loss insured under the builders risk policy. Any loss shall be made payable to Contractor as fiduciary for the insureds, as their interests may appear, and Contractor shall pay to Owner its just share of insurance proceeds. Contractor shall pay its Subcontractors and sub-subcontractors their just share of insurance proceeds received, and by appropriate agreements shall require all Subcontractors and Sub-Subcontractors to make their respective obligated payments.
2. Owner and Contractor waive all rights against (a) each other and their respective contractors, subcontractors, sub-subcontractors, agents and employees, and (b) Design Professional and any of its respective consultants, contractors, agents and employees, for damages caused by perils to the extent covered by the builders risk policy, except such rights as any of them may have to the proceeds of such insurance. The builders risk policy shall expressly provide such waivers of subrogation which shall be effective against all parties whether they have a duty of indemnification, pay the insurance premium directly or indirectly, or have an insurable interest in the damaged property.
3. The builders risk insurance shall include Owner and Contractor as named insureds. Subcontractors and Sub-subcontractors shall be loss payees as their interests may appear.

**D. SUBCONTRACTOR DEFAULT INSURANCE.**

1. Subject to the terms of the Agreement, and if permitted by the Agreement, including but not limited to Section 8.3.2 of the General Conditions, Contractor may place and maintain subcontractor default insurance.
2. The premium cost of any subcontractor default insurance policy permitted and chargeable to Owner as a cost of the Work shall be limited in accordance with the terms of the Pricing Amendment.

Exhibit O

Form of Bonds

See attached

[OREGON STATE UNIVERSITY]

STANDARD FORM OF  
ARTICLE 1 PERFORMANCE BOND

Bond No. \_\_\_\_\_  
Contract \_\_\_\_\_  
Contract Date \_\_\_\_\_  
Project Name \_\_\_\_\_

\_\_\_\_\_ (Surety #1)                      Bond Amount No. 1:                      \$ \_\_\_\_\_  
\_\_\_\_\_ (Surety #2)\*                      Bond Amount No. 2: \*                      \$ \_\_\_\_\_  
\* *If using multiple sureties*                      Total Penal Sum of Bond:                      \$ \_\_\_\_\_

We, \_\_\_\_\_, as Principal, and the above identified Surety or Sureties, collectively as Surety, authorized to transact surety business in Oregon, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents and will pay unto [Oregon State University], as Obligee, the sum of (Total Penal Sum of Bond) \_\_\_\_\_, lawful money of the United States of America (provided, that we the Surety bind ourselves, and our heirs, executors, administrators, successors and assigns, in such sum “jointly and severally” as well as “severally” only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, the Principal has entered into the above-referenced written Contract with the Obligee;

WHEREAS, the terms and conditions of the Contract are made a part of this Performance Bond by reference, whether or not attached to the Contract; and

WHEREAS, the Principal has agreed to perform the Contract in accordance with its terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which change the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance;

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal herein shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things undertaken by Contractor to be performed under the Contract, upon the terms set forth therein, and within the time prescribed therein, or as extended as provided in the Contract, with or without notice to the Surety, and shall indemnify and save harmless Obligee and the \_\_\_\_\_ (name of any other Owner agency), and members thereof, their respective officers, employees and agents, from and against any direct or indirect damages of every kind and description, and claims of every kind and description, that shall be suffered or claimed to be suffered in connection with or arising out of performance of the Contract by the Principal or its subcontractors, and shall in all respects perform said Contract according to law, then this obligation is to be void; otherwise, it shall remain in full force and effect.



Surety hereby waives notice of all modifications and amendments to the Contract and agrees that the obligations undertaken by this Performance Bond shall not be impaired in any manner by reason of the same.

Surety hereby agrees this Performance Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto or notice to the Surety thereof, upon any amendment to the Contract, so as to bind the Principal and Surety, jointly and severally, to the full and faithful performance of the Contract as so amended or modified, provided only that the Surety shall not be liable for more than the Total Penal Sum of Bond.

Nonpayment of the bond premium will not invalidate this bond nor shall Obligee, [or the above-referenced agency(ies)], be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapter 279C, the provisions of which are incorporated into this bond and made a part hereof.

No right of action shall accrue on this Performance Bond to any person or entity other than Obligee and its executors, administrators, successors and assigns.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE SIGNED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES.

*[Signature page follows]*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

SURETY: \_\_\_\_\_  
*[Add signatures for each surety if using multiple bonds]*

BY ATTORNEY-IN-FACT:  
*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City State Zip

\_\_\_\_\_  
Phone Fax

[OREGON STATE UNIVERSITY]

STANDARD FORM OF  
PAYMENT BOND

Bond No. \_\_\_\_\_  
Contract \_\_\_\_\_  
Contract Date \_\_\_\_\_  
Project Name \_\_\_\_\_

\_\_\_\_\_ (Surety #1)                      Bond Amount No. 1:                      \$ \_\_\_\_\_  
\_\_\_\_\_ (Surety #2)\*                      Bond Amount No. 2:\*                      \$ \_\_\_\_\_  
\* *If using multiple sureties*                      Total Penal Sum of Bond:                      \$ \_\_\_\_\_

We, \_\_\_\_\_, as Principal, and the above identified Surety or Sureties, collectively as Surety, authorized to transact surety business in Oregon, hereby jointly and severally bind ourselves, our respective heirs, executors, administrators, successors and assigns firmly by these presents and will pay unto [Oregon State University], as Obligee, the sum of (Total Penal Sum of Bond) \_\_\_\_\_ lawful money of the United States of America (provided, that we the Surety bind ourselves, and our heirs, executors, administrators, successors and assigns, in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as is set forth opposite the name of such Surety), and

WHEREAS, Principal has entered into the above-referenced written Contract with the Obligee;

WHEREAS, the terms and conditions of the Contract are made a part of this Payment Bond by reference, whether or not attached to the Contract; and

WHEREAS, the Principal has agreed to perform the Contract in accordance with its terms, conditions, requirements, plans and specifications, and all authorized modifications of the Contract which change the amount of the work, the amount of the Contract, or constitute an authorized extension of the time for performance;

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH that if the Principal shall faithfully and truly observe and comply with the terms, conditions and provisions of the Contract, in all respects, and shall well and truly and fully do and perform all matters and things by it undertaken to be performed under said Contract and any duly authorized modifications that are made, upon the terms set forth therein, and within the time prescribed therein, or as extended therein as provided in the Contract, with or without notice to the Sureties, and shall indemnify and save harmless Obligee and the \_\_\_\_\_ (name of any other Owner agency), and members thereof, their respective officers, employees and agents, against any claim for direct or indirect damages of every kind and description that shall be suffered or claimed to be suffered in connection with or arising out of the performance of the Contract by the Principal or its subcontractors, and shall promptly pay all persons supplying labor, materials, or services to the Principal or its subcontractors for prosecution of the work provided in the Contract; and shall promptly pay all contributions due the State Industrial Accident Fund and the State Unemployment Compensation Fund from the Principal or its subcontractors in connection with the performance of the Contract; and shall pay over to the Oregon Department of Revenue all sums required to be deducted and retained from the wages of employees of the Principal and its subcontractors

pursuant to ORS 316.167, and shall permit no lien nor claim to be filed or prosecuted against the Oblige, the State, Project or the work of the Contract, on account of any labor, materials, or services; and shall do all things required of the Principal by the laws of this State, then this obligation shall be void; otherwise, it shall remain in full force and effect.

Surety hereby waives notice of all modifications and amendments to the Contract and agrees that the obligations undertaken by this Payment Bond shall not be impaired in any manner by reason of the same.

Surety hereby agrees this Payment Bond shall be deemed amended automatically and immediately, without formal or separate amendments hereto or notice to the Surety thereof, upon any amendment to the Contract, so as to bind the Principal and Surety, jointly and severally, to the full and faithful performance of the Contract as so amended or modified, provided only that the Surety shall not be liable for more than the Total Penal Sum of Bond.

Nonpayment of the bond premium will not invalidate this bond nor shall the Oblige, [or the above-referenced agency(ies)], be obligated for the payment of any premiums.

This bond is given and received under authority of ORS Chapter 279C, the provisions of which hereby are incorporated into this bond and made a part hereof.

This Payment Bond is made for the use and benefit of all persons and entities who may furnish materials or perform labor or services on account of the construction to be performed or supplied in accordance with the Contract, and each of them may sue hereon.

IN WITNESS WHEREOF, WE HAVE CAUSED THIS INSTRUMENT TO BE EXECUTED AND SEALED BY OUR DULY AUTHORIZED LEGAL REPRESENTATIVES:

*[Signature page follows]*

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

PRINCIPAL: \_\_\_\_\_

By \_\_\_\_\_  
Signature

\_\_\_\_\_  
Official Capacity

Attest: \_\_\_\_\_  
Corporation Secretary

SURETY: \_\_\_\_\_  
*[Add signatures for each surety if using multiple bonds]*

BY ATTORNEY-IN-FACT:  
*[Power-of-Attorney must accompany each surety bond]*

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone

**Exhibit P**

**Form of Change Order**

See attached.

**CHANGE ORDER**

PROJECT: \_\_\_\_\_ DATE: \_\_\_\_\_

CHANGE ORDER NUMBER: \_\_\_\_\_ CONTRACT NUMBER: \_\_\_\_\_

Contractor is authorized to make the following changes in the Project:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Subject to the following:

The original [Lump Sum] [GMP] was..... \$

Net change to [Lump Sum] [GMP] by previously authorized Change Orders..... \$

This Change Order is in the amount of..... \$

The current [Lump Sum] [GMP], including this Change Order, is ..... \$

The change in time for completion of the applicable Deliverable Portion of Work is [increased]  
[decreased] \_\_\_\_ ( ) days.

The date of Substantial Completion of the [insert name of Deliverable Portion of Work] as of the date of  
this Change Order is \_\_\_\_\_.

**By signing this Change Order, Contractor acknowledges and agrees it is fully-compensated for the changes in Work described above. All impact costs and changes in time as a result of this Change Order are included in this Change Order. All other terms and conditions of the Agreement remain in full force and effect. Contractor further acknowledges, as of the date of this Change Order, there are no Claims against Owner, except as otherwise previously identified to Owner by written notice in accordance with the Agreement.**

OWNER: [\_\_\_\_\_]

CONTRACTOR: [\_\_\_\_\_]

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit Q**

**Change Pricing**

1. Unless Owner otherwise previously approves in writing, an increase or decrease in the [Lump Sum] [GMP] by Change Order shall be determined by

[stipulated lump sum acceptable to Owner and Contractor, based on Contractor's estimated costs, with allowance for Contractor's profit and overhead, as set forth in Section 2 below. Contractor shall provide to Owner Parties supporting documentation of the increase or decrease in the [Lump Sum] [GMP] sufficient, in Owner Parties reasonable opinion, to evaluate Contractor's estimated costs.]

**OR**

[Unit Prices stated in the Contract Documents, including but not limited those identified in attached **Schedule 1**, or to which Owner and Contractor subsequently agree. Contractor shall submit to Owner Parties an itemized list of quantities and applicable unit price for each, in form and to the level of detail Owner Parties reasonably require. ]

**OR**

[actual Cost of the Work of the change, plus allowances for overhead and profit, all as set forth below and not to exceed a pre-determined maximum amount. Contractor shall provide to Owner Parties supporting documentation of the actual Cost of the Work of the change sufficient, in Owner Parties reasonable opinion, to support Contractor's costs.]

2. The allowable overhead and profit mark-up included in each Change Order shall be as follows; provided, however, if Unit Prices are used to determine Change Order pricing for all or a portion of the applicable Work, Contractor shall be entitled to only those Unit Prices and no additional mark-up for that Work:

	Overhead/ Profit
Contractor:	[4%] of Cost of the Work as defined in the Agreement
Subcontractor:	[7%] of costs as defined in this Exhibit [ ]

3. The percentages allowed for overhead and profit under Section 2 above pertaining to Subcontractors include all costs resulting from each Change Order, even if not expressly set forth as a cost in section 4 below.
4. The term “costs” in this Exhibit [ ] means: (a) actual, direct costs of labor, including social security, customary fringe benefits, and workers' compensation insurance; (b) actual, direct costs of Materials; (c) out of pocket rental costs of machinery and equipment at rates prevailing in the area where the Project is located; (d) out of pocket costs of premiums for all bonds and insurance, permit fees, and taxes related directly to the Work; and (e) actual, direct costs of Key Personnel directly attributable to the Change Order if the Substantial Completion date of the applicable Deliverable Portion of Work is changed.



5. Upon Owner's request, Contractor or Subcontractor shall submit evidence to substantiate all costs. Materials shall be quoted at prices including all discounts realized.
6. When additions and credits apply to a Change Order both increasing and decreasing the [Lump Sum] [GMP], the allowable overhead and profit, if applicable in accordance with Section 2 above, shall be determined based on a net increase or decrease to the [Lump Sum] [GMP].

## **Schedule 1**

### **Unit Prices**

In addition to those Unit Prices set forth in the Pricing Amendment dated \_\_\_\_\_, which are incorporated in this Schedule 1 by this reference, the following Unit Prices shall be used when determining this Change Order pricing: