

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)



THE OWNER:

(Name, legal status and address)

Oregon State University

THE DESIGN PROFESSIONAL:

(Name, legal status and address)



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents consist of the Standard Form of Agreement between the Owner and Contractor (the “Agreement”), the General Conditions, Drawings, Specifications, Addenda issued prior to execution of the Contract, Contractor’s Proposal, if attached (as to scope only, and only to the extent the stated scope of services is greater than stated in the other Contract Documents), other documents listed in the Agreement, and Modifications issued after execution of the Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Construction Change Directive.

§ 1.1.2 The Contract

The Contract Documents form the Contract for Construction (this or the “Contract”). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior or contemporaneous negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Design Professional or the Design Professional’s consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Design Professional or the Design Professional’s consultants, or (4) between any persons or entities other than the Owner and the Contractor. Nothing in this Section 1.1.2 shall be interpreted or applied so as to negate, abridge, or reduce the status or rights of the Owner as a third-party beneficiary of subcontracts, purchase orders and similar agreements between the Contractor and its Subcontractors and between Subcontractors at all tiers and their Sub-subcontractors.

§ 1.1.3 The Work

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor or Subcontractors to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including but not limited to plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.2 Correlation and Intent of the Contract Documents

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

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and

enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

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

§ 1.2.3.1 The Owner and Contractor agree that no additions, deletions or other revisions shall be made to these General Conditions except by means of a written Modification executed by the Owner and Contractor. With respect to any provision of the Contract Documents requiring written approval or written Modification by the Owner, Contractor expressly waives any argument or right, and agrees not to assert, that Owner's alleged knowledge of the circumstances, or other conduct of Owner (including, without limitation, making oral approvals) before, during or after the Project amounts to a waiver by Owner of the written Modification or written approval requirements of the Contract Documents.

§ 1.2.3.2 Reference in the Specifications to an article, device, or piece of equipment in the singular number shall apply to as many such articles as are shown on Drawings or required to complete the installation. Mention in the Specifications or indication on the Drawings of articles, products, materials, operations, or methods requires the Contractor to provide and install such items including but not limited to all necessary plants, labor and appurtenances. Notes on Drawings are considered Specifications, equal in force to those in the printed text.

§ 1.2.4 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Contract Documents, interpretations shall be based on the following order of precedence:

- .1 Modifications of the Contract with those of a later date having precedence over those of an earlier date.
- .2 All statutory contract provisions required by ORS chapter 352 and other applicable statutes and regulations and permits.
- .3 AIA A133-2019 Standard Form of Agreement between Owner and Construction Manager as Constructor as modified.
- .4 AIA A201-2017 General Conditions of the Contract for Construction as modified.
- .5 The Drawings with larger scale having precedence over smaller scale, and with notes and schedules thereon having precedence over the remainder.
- .6 Specifications.
- .7 Contractor's proposal (as to scope only, and only to the extent the stated scope of services is greater than stated in the other Contract Documents).

§ 1.2.5 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Drawings, or between or among the Specifications, remaining after application of Section 1.2.4. those Drawings or Specifications of later date shall have precedence over those of earlier date. If a conflict, inconsistency, discrepancy or ambiguity nonetheless remains, the Contractor shall provide written notice thereof to the Design Professional and Owner. Thereafter, the Contractor shall proceed as ordered in writing by the Design Professional. Thereafter, unless otherwise ordered in writing by the Design Professional, the Contractor shall provide the better quality of, and the

greater quantity of, the Work. The provisions of this Section 1.2.5 shall apply only to conflicts, inconsistencies, discrepancies or ambiguities in express requirements of the Drawings and Specifications and not to interpretations thereof by the Owner or Design Professional.

§ 1.2.6 The Owner and Contractor acknowledge their intent and agreement that there shall be no binding revisions to the provisions of the Agreement or of these General Conditions made in the Specifications or other Contract Documents as of the time of execution of the Agreement. The Owner and Contractor expressly agree that in the event of conflicts or inconsistencies between or among the Contract Documents, interpretations shall be based on the order of precedence set forth in Section 1.2.4.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Design Professional and the Design Professional’s consultants shall be deemed the authors and the Owner is the owner of the Instruments of Service, including but not limited to the Drawings and Specifications, and Owner owns all common law, statutory and other reserved rights in their Instruments of Service, including but not limited to copyrights. The Contractor, Subcontractors, and Sub-subcontractors shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner’s reserved rights.

§ 1.5.2 The Contractor and Subcontractors are authorized to use and reproduce the Drawings and Specifications provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor and Subcontractors may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, all notices given under the Contract Documents shall be in writing and shall be deemed properly given when delivered in person, delivered by commercial messenger or courier or four (4) days after it is sent postage prepaid by registered or certified mail return receipt requested, as follows:

- .1 if to the Owner:
- .2 if to the Contractor:
- .3 if to the Design Professional:

or to such other address, telecopy number or addressee as any party entitled to receive notice hereunder shall designate to all other parties in the manner provided herein for the service of notice.

§ 1.7 Relationship of the Parties

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, provided, however, that changes to the Contract involving Modifications to the Contract Time or Guaranteed Maximum Price must be signed by Owner's Designated Representative. The Design Professional does not have such authority.

§ 2.1.1.1 The Owner's Designated Representative initially shall be _____. The Owner shall provide prompt written notice to the Contractor of the designation of a different individual as the Owner's Designated Representative.

§ 2.2 [Intentionally deleted.]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor or Subcontractors under the Contract Documents or applicable law, including but not limited to those required under Section 3.7.1, the Owner shall secure and pay for the building permit and other necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

§ 2.3.3 If the employment of the Design Professional terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall, after receipt of written request, furnish to the Contractor surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. However, the Contractor shall confirm indicated dimensions and other aspects of existing conditions at the Project site as necessary for the proper performance of the Work.

§ 2.3.4.1 Notwithstanding the provisions of Section 2.3.4, the Contractor shall be responsible for determining, prior to commencement of the Work, the locations of all telephone, data, video and internet lines and cables, sewer lines, water pipes, gas pipes, electrical lines and other utility lines, cables, pipes and pipelines, including but not limited to all those that are buried, within and serving the Project site, utilizing utility locating services or other means. The Contractor shall coordinate with utility and other involved third-party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor shall make its requests for such information or services so as to allow the Owner a reasonable time to respond without delaying the performance of the Work. The Owner shall furnish to the Contractor one (1) reproducible copy of the Drawings and Specifications at no cost to the Contractor. The Owner also shall make available to the Contractor and Subcontractors copies of the Drawings and Specifications. The Contractor's cost of obtaining up to ten (10) additional copies of the Drawings and Specifications as is required for the performance of the Work shall be included in the Guaranteed Maximum Price; the Contractor's cost of obtaining any additional copies beyond the ten (10) copies shall be at the Contractor's expense without reimbursement by the Owner, unless the Owner provides prior written approval for additional copies.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.4.1 The Owner's exercise of its right to stop Work pursuant to Section 2.4 shall not relieve the Contractor from any of its responsibilities and obligations under the Contract Documents.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or substantially fails or neglects to carry out all or a portion of the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor for the reasonable cost of correcting such deficiencies, including, but not limited to the Owner's attorneys' fees and related costs, disbursements and expenses and compensation for the Design Professional's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.6 Extent of Owner's Rights

§ 2.6.1 In no event shall the Owner have control over, charge of, or any responsibility for the construction means, methods, techniques, sequences, or procedures or for the safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted to the Owner in the Contract Documents.

§ 2.7 Review or Approval by Others

§ 2.7.1 Review or approval by Owner or its agents of Contractor's means, methods, techniques, procedures or submittals, or of any other aspect of Contractor's work or services shall not relieve Contractor of its sole liability for any damages resulting from or arising out of defects or deficiencies in the Contractor's means, methods, techniques, procedures or submittals, or of any other aspect of Contractor's work or services.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

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

§ 3.1.4 The Contractor shall prepare and submit to the Owner and Design Professional, no less frequently than monthly, written reports on the progress of the Work in such form and in such detail as reasonably required by the Owner. Within seven (7) days of Owner's request, Contractor shall execute and deliver to Owner a certificate addressed to Owner concerning the compliance of the Work with the Contract Documents and applicable laws and regulations, the status of the completion of the Work, and the status of payments and defaults.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the GMP Amendment by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated

personal observations with requirements of the Contract Documents, and has notified the Design Professional of and obtained clarification of any discrepancies which have become apparent during the bidding or proposal period.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall notify the Design Professional and Owner in writing of any errors, inconsistencies, omissions, or ambiguities in the Contract Documents discovered by the Contractor. The Contractor shall be responsible for any additional costs to Owner resulting from the Contractor's failure to verify existing conditions related to any portion of the Work or to report to the Design Professional and Owner any errors, inconsistencies, omissions, or ambiguities in the Contract Documents discovered by, or which should have been discovered by, Contractor. The Contractor understands that it is obligated to review all Contract Documents during the Preconstruction Phase and that it is required to have noted any and all inconsistencies in the quality or quantity of the Work as indicated in the Contract Documents prior to executing the GMP Amendment. After Contractor executes the GMP Amendment, Contractor assumes the risk of any mistakes in its proposal and will not be entitled to an increase in the Guaranteed Maximum Price therefor. The Contractor shall not be entitled to receive any increase or adjustment in the Guaranteed Maximum Price or Contract Time due to the failure of the Contractor, or any of its Subcontractors, to fully and adequately review all Contract Documents, all soils reports, existing site conditions, and the complete nature and full scope of the Work as represented in the Contract Documents. Contractor acknowledges that it has had the opportunity to visit the site to ascertain existing conditions, that it has been provided full access to all Contract Documents, and that this provision is a material provision of the Contract.

§ 3.2.2.1 The Contractor shall notify the Design Professional and Owner in writing of materials, systems, procedures, or methods of construction either shown on the Drawings or specified in the Specifications that Contractor discovers are incorrect or inappropriate for the purpose intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. The Design Professional and Owner will make a determination of such matters in writing. The Contractor shall be responsible for any additional costs to Owner resulting from Contractor's failure to notify the Design Professional and Owner of incorrect or inappropriate materials, systems, procedures, and methods that Contractor knows or should know are incorrect or inappropriate. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Design Professional, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Design Professional issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 3.2.5 Neither the Owner nor the Design Professional assumes responsibility for an understanding or representation made by their agents or representatives prior to the execution of the Agreement unless such understanding or representation is expressly stated in the Contract Documents.

§ 3.2.6 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in the performance of the Work, then it shall be the duty of the Contractor to request interpretation or information from the Design Professional.

§ 3.2.7 The Contractor and designated Subcontractors shall attend and participate with the Owner, designated separate consultants or contractors of the Owner, Design Professional, designated consultants of the Design Professional and others deemed necessary by the Owner in a pre-construction meeting scheduled and conducted by the Owner.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor knows or should know that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Design Professional, and shall not proceed with that portion of the Work without further written instructions from the Owner or Design Professional. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Contractor shall not be responsible for any loss or damage resulting from its proper adherence to the written instructions.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. It is understood and agreed that the relationship of the Contractor to Owner shall be that of an independent contractor. Nothing contained in this Contract shall be deemed or construed to (1) make Contractor or any Subcontractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor or any Subcontractor.

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

§ 3.3.4 The furnishing of surveys and other information regarding the Project site by the Owner shall not relieve the Contractor from its duties under the Contract Documents.

§ 3.3.5 The Contractor and designated Subcontractors shall attend and participate with the Owner, designated separate consultants or Separate Contractors of the Owner, Design Professional, designated consultants of the Design Professional and others deemed necessary by the Owner in periodic construction meetings to be held at the Owner's discretion.

§ 3.4 Labor and Materials

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

§ 3.4.1.1 The Contractor's obligations under Section 3.4.1 shall include, without limitation, the obligation to pay all Subcontractors and any other person or entity having lien or bond rights regarding the Project due to their performance of the Contractor's obligations under the Contract. The Contractor agrees to keep the Project and the Project site free and clear of any and all Subcontractor claims (lien claims, bond claims or otherwise) filed or served by any person or entity at any tier performing the Work or the Contractor's obligations under the Contract.

§ 3.4.1.2 To the fullest extent permitted by law, the Contractor agrees to indemnify, defend, reimburse, and hold harmless (with counsel approved by the Owner) the Owner and the Design Professional from, for, and against any and all claims referenced in Section 3.4.1.1, and any actions, suits, or proceedings related to such claims, and any and all related costs and expenses incurred by the Owner or Design Professional, including, without limitation, attorneys' fees and expert witness and consultant fees.

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Design Professional and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 If the Contractor makes requests for substitutions, the Contractor thereby:

- .1 represents that the Contractor and involved Subcontractor(s) has (have) personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified:

- .2 represents that the Contractor and the involved Subcontractor(s) will provide the same warranties for the substitution as would have provided for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract, including but not limited to Design Professional's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;
- .4 agrees to coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects;
- .5 agrees to be responsible for any redesign costs related to the substitution;
- .6 will install all substantial products in accordance with applicable manufacturer's recommendations; and
- .7 agrees to be responsible for all other costs related to the substitution.

§ 3.4.3 The Contractor shall enforce strict discipline and good order and civil and appropriate conduct among the Contractor's and Subcontractors' employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. Contractor shall be responsible for labor peace on the Project and shall at all times make its best efforts and use its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3.1, Contractor shall be liable to Owner for all damages suffered by Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes. The Contractor shall not permit at the site of the Work the use of alcohol or tobacco, illegal use of drugs or other controlled substances, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, the personnel, visitors, customers, vendors, contractors or suppliers of any of them, or members of the public, or their respective contractors. The Contractor agrees to take prompt and effective corrective action in the event of violations of these standards of conduct. Nothing in this Section 3.4.8 shall establish or imply an employment relationship between the Owner, on the one hand, and the Contractor's and Subcontractors' employees and other persons performing the Work, on the other.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Design Professional that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that materials and equipment to be selected by the Contractor or its Subcontractors will be suitable for the purposes intended by the Contract Documents, that the Work will be performed in a workmanlike manner, and will conform to the standards and requirements of the Contract Documents and generally recognized standards of the construction industry, whichever provides the higher standard, and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit, and that all materials and equipment selected by the Contractor or any Subcontractor will be suitable for the purposes indicated in the Contract Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Design Professional, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.5.3 Contractor shall obtain for Owner's benefit the same warranty as is set forth in Section 3.5.1 from all Subcontractors. Warranties in the Contract Documents shall survive termination, completion, acceptance and final payment.

§ 3.5.4 The Contractor hereby assigns to the Owner, effective upon the written demand of the Owner, upon the insolvency, bankruptcy, dissolution or other incapacity of the Contractor, or automatically upon Final Completion of the Work, any and all Subcontractors' warranties relating to the Work, and further agrees to perform the Work in such manner so as to preserve any and all such warranties.

§ 3.5.5 In accordance with the Contract Documents, including but not limited to the Drawings and Specifications, the Contractor shall collect, assemble in an electronic folder, and submit to the Owner written warranties and related documents provided by Subcontractors, including but not limited to suppliers of equipment, appliances and other components of the Project, at all tiers. All benefits under such written warranties shall extend to the Owner.

§ 3.6 Taxes

The Contractor shall pay all sales, consumer, use, corporate activity, and other similar taxes that are applicable by law to the Work or the Contract or portions thereof.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Owner shall secure and pay for all plan review fees, building permits, system development charges, and other fees and permits required for issuance of building or right-of-way permits related to the use of the particular site for the Project and the construction of the Project as a whole. The Contractor and Subcontractors shall secure and shall pay for the mechanical, electrical, plumbing and other similar trade permits as well as licenses required for the performance of the Work by the Contractor and Subcontractors, including but not limited to any licenses required for the handling and disposal of asbestos-containing and hazardous materials. The Contractor's and Subcontractors' costs incurred under this Section 3.7.1, except for the cost of construction contractor registration and licensure fees incurred by the Contractor and Subcontractor, shall be included in the Guaranteed Maximum Price. Upon Final Completion, the Contractor shall deliver to the Owner all original permits, licenses and certificates related to the Work procured by the Contractor and Subcontractors, with photocopies to the Design Professional.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction and such other costs and damages to the Owner as would have been avoided if the Contractor had performed its obligations.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Design Professional before conditions are disturbed and in no event later than twenty-one (21) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will propose an equitable adjustment be made in the Guaranteed Maximum Price or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing, stating the reasons. If Contractor disputes the Owner's determination or proposal, Contractor may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Design Professional. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Guaranteed Maximum Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents, allowances shall cover:

- .1 the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; and
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, supervision not included in supervision and management line items of the initial schedule of values, and other direct expenses contemplated for stated allowance items.

Whenever such costs for allowance items are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order executed by both parties before any excess costs are incurred. With respect to allowances, the Contractor agrees (1) allowance costs must be separately tracked for each allowance item; (2) Contractor shall include in its monthly reporting an allowance cost log reporting costs incurred for all allowances in a form to be approved by Owner before any allowance Work is performed; (3) Contractor shall notify Owner in writing when the allowance costs exceed 90% of the amount of the allowance; (4) Contractor must obtain a Change Order increasing the amount of the allowance before incurring costs in excess of the allowance amount; and (5) Contractor must obtain Owner's written approval before including allowance amounts in any Application for Payment.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

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

§ 3.9.2 [Intentionally deleted.]

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's approval an initial Contractor's construction schedule for the Work. The schedule shall use the critical path method and contain detail appropriate for the Project, including but not limited to (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; and (4) identification of critical path(s), provide for the orderly progression of the Work to final completion and shall not exceed time limits current under the Contract Documents.. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. If approved by Owner, Contractor's Construction Schedule shall be attached to the GMP Amendment. The critical path(s) shall be continually monitored and reflected in the schedule throughout the duration of the Project. The Contractor's construction schedule shall be reviewed at each progress meeting, with any changes to the schedule or delays shall be identified. The Contractor shall promptly adjust the construction schedule to reflect the changes/delays, and implement recovery measures necessary to compensate for the changes/delays to bring back the Project milestone completion to original scheduled dates or dates otherwise approved by Owner. The Contractor is responsible for informing all Subcontractors to ensure they are ready to complete their part of the Work as scheduled. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, and shall provide for expeditious and practicable execution of the Work. During the course of the Work, and not less often than monthly, the Contractor shall submit to the Owner a current, updated version of the initial Contractor's construction schedule. Each updated Contractor's construction schedule shall be in the same form and provide the same detail as the initial Contractor's construction schedule, unless approved otherwise by the Owner. Contractor's schedules shall be

submitted in electronic format if requested by Owner. The Contractor's construction schedule shall not be modified without the written approval of the Owner, and otherwise shall conform to any changes in the Contract Time set out in Change Orders. For the purposes of whether any Change Orders or Construction Change Directives shall extend the contractual dates for Substantial Completion and Final Completion, any unused "float" or "slack" time for the whole or any part of the Work as provided in the Contractor's construction schedule shall belong to neither the Owner nor the Contractor but shall be equitably allocated in the interests of the Project. In no event will Contractor be entitled to make an "Early Completion" claim.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner and Design Professional's approval. The Owner and Design Professional's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Design Professional reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Guaranteed Maximum Price or extension of Contract Time based on the time required for review of submittals. The Contractor's submittal schedule shall assume that major materials/equipment submittals will require at least two submittals/review periods.

§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules approved by the Owner and Design Professional. Any updated schedule that provides for achievement of Substantial Completion of the Work beyond the date set forth in the Contract Documents shall not constitute a waiver or modification of the required Substantial Completion date unless so authorized by Owner in a Change Order.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall maintain at the Project site for the Owner and Design Professional one (1) copy of the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives and other Modifications in good order and marked currently to indicate field changes and selections made during construction, and otherwise marked to depict the as-built nature and configuration of the Work, and one (1) copy of approved Shop Drawings, Product Data, Samples, and similar required submittals. The Contractor also shall maintain at the Project site for the Owner and Design Professional one (1) current copy of all subcontracts with Subcontractors, RFIs, DCVRs, RFPs, Requests For Change Proposals and Change Proposals. All documents and items referenced in this Section 3.11 shall be available to the Owner and Design Professional and shall be delivered to the Owner and Design Professional and as a condition of, Final Completion of the Work as a record of the Work as constructed. Failure to deliver the complete, record copies shall result in Owner withholding Contractor's retainage until the complete, record copies are delivered.

§ 3.11.2 The marked record Drawings and Specifications referenced shall be marked to show field decisions and selections affecting the Work, including but not limited to information regarding (1) approved or directed deviations from the Drawings and Specifications made during construction, (2) details of Work not previously shown or indicated, (3) changes to existing conditions or existing conditions found to differ from those shown on the Drawings or Specifications and (4) other information that the Design Professional or Owner reasonably requests. The final set of marked Drawings shall be delivered to Owner in accordance with the Contract Documents, with each hardcopy sheet stamped "As-Built" and signed by the Contractor. The marked Specifications shall be delivered to Owner in accordance with the Contract Documents, with each hardcopy page stamped "As-Built" and signed by the Contractor.

§ 3.11.3 The Contractor shall duly note Addenda, Change Orders, Construction Change Directives and other Modifications in the appropriate referenced location in the Drawings and Specifications for ease of reference during construction.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Owner and Design Professional, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Design Professional without action.

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

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design Professional's or Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Design Professional and Owner in writing of such deviation at the time of submittal and a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Design Professional's and Owner's approval thereof.

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Design Professional. The Owner and the Design Professional shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Design Professional have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Design Professional will review, approve or take other appropriate action on submittals only for the limited purpose (unless Owner requests otherwise) of

checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents; however, the Contractor shall notify the Design Professional if additional performance or design criteria are required.

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

§ 3.12.11 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Design Professional for evaluation of any additional resubmittals by Contractor to the extent such resubmittals are not the fault of Owner or Design Professional.

§ 3.13 Use of Site

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

§ 3.13.1 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Owner before using any portion of the site.

§ 3.13.2 If Owner makes temporary facilities, including but not limited to power, water, sanitation, scaffolding, storage, and security available to Contractor, it is without representation or warranty as to their adequacy for Contractor's use, and Contractor shall indemnify, defend, and hold Owner harmless from and against any claims arising out of Contractor's use of such facilities.

§ 3.13.3 If the Owner intends to occupy parts of the site or existing building adjacent to the Project site, the Contractor is responsible, at its sole expense, for erection and maintenance of barriers between Work area and the Owner-occupied areas of the building, to protect safety of the occupants and to conform with all requirements of the Contract Documents. The Contractor shall maintain existing (new or temporary) building systems fully functional in the Owner-occupied areas for the duration of the Work according to the Contract Documents. These shall include, but not be limited to, the indoor environment quality suitable for occupancy, and in accordance with requirements of all applicable codes temperature control, building automation, fire alarm, fire protection, data network, phone and security systems. All costs associated with maintaining such building systems in fully functional condition for the duration of the Work are included in the Guaranteed Maximum Price and are not subject to further increase through the Change Order or claims processes.

§ 3.13.4 Contractor acknowledges that Owner may have ongoing activities involving students, academic and professional faculty, and other staff near the Project when the Work is being performed. Contractor shall schedule and perform its Work in such a manner as will avoid disruption to such activities.

§ 3.13.5 The Contractor shall reimburse the Owner for all costs and damages that the Owner incurs because of the Contractor's failure to comply with this Section 3.13 and its subsections.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area as well as contiguous roads, streets and sidewalks free from accumulation of waste and excess materials, rubbish, excavated materials and “tracking” caused by operations under the Contract. At completion of the Work, the Contractor shall remove from the surrounding area and contiguous roads, streets and sidewalks waste materials, rubbish, excavated materials, “tracking,” the Contractor’s and Subcontractors’ tools, construction equipment, machinery, and surplus materials from and about the Project.

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

§ 3.15.3 The Contractor’s obligations under this Section 3.15 shall include the proper disposal of all such waste materials, rubbish and disposable surplus materials consistent with and in compliance with all applicable laws, statutes, ordinances, codes, and rules and regulations, including without limitation those relating to hazardous materials and the environment.

§ 3.16 Access to Work

The Contractor shall provide the Owner and Design Professional and their consultants with access to the Work in preparation and progress wherever located.

§ 3.16.1 As used in Section 3.16, the term “Owner” shall mean and be limited to the Owner’s Designated Representative, Owner’s Contract Administrator, and Owner’s Project Manager and other persons and parties authorized by the Owner’s Designated Representative to have access to the Work.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify, reimburse, and hold harmless the Owner and Design Professional from, for, and against any loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Design Professional. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Design Professional and Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, reimburse and defend the Owner and Owner’s agents, employees, officers and directors from, for, and against suits, actions, awards, penalties, liabilities, claims, damages, losses and expenses, whether actual or merely alleged and whether directly incurred or from a third party, including but not limited to attorneys’ and expert witnesses’ fees, and related costs, disbursements, and expenses, arising out of or resulting from performance of the Work including, but not limited to, any such suit, action award, penalty, liability, claim, damage, loss, or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligence, breach of contract, or other wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they are responsible, or by failure of any such person or entity to perform as required by this Agreement; provided, however, to the extent that Contractor provides architectural, engineering, photogrammetric mapping, transportation planning or land surveying services or related services (as the term “related services” is defined under ORS 279C.100), Contractor has no duty to defend Owner against a claim for professional negligence and relating to the professional services provided by the Contractor, except to the extent that Contractor’s liability or fault is determined by adjudication or alternative dispute resolution or otherwise resolved by settlement agreement, and not to exceed the proportionate fault of the Contractor, the applicable Subcontractor(s), or anyone directly or indirectly employed by them.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 To the fullest extent permitted by law, the Contractor’s obligations under this Section 3.18 (i) shall apply

whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, (ii) shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18 and (iii) shall not be limited to Damages arising from third-party claims.

§ 3.18.4 Contractor shall require each Subcontractor, by subcontract or other agreement, to indemnify, hold harmless, reimburse and defend the Indemnitees to the same extent as required of the Contractor in this Section 3.18.

§ 3.19 Owner-Furnished-Contractor-Installed Items

Contractor acknowledges that the Owner may purchase certain materials, supplies and equipment as indicated in the Contract Documents and that the Contractor shall install such items, including but not limited to _____ . These items are referred to herein as "OFCI" items. Among other things, Contractor shall: (i) verify mounting and utility requirements for OFCI items; (ii) provide mounting and utility rough ins for OFCI items, including but not limited to rough-in locations, sizes, capacities and similar type shall be as indicated and required by product manufacturers; (iii) review and provide written comments on any vendor submittals, such as shop drawings, for OFCI items; (iv) coordinate delivery of OFCI items and provide any and all hoisting necessary to place the OFCI items in their final location; (v) receive OFCI items at site and give written receipt for product at time of delivery, noting visible defects and omissions; if such declaration is not given, the Contractor shall assume responsibility for such defects and omissions; (vi) store OFCI items until ready for installation and protect from loss and damage; (vii) uncrate, assemble and set OFCI items in place; (viii) install OFCI items in accordance with manufacturer's recommendations, instructions and shop drawings under supervision of manufacturer's representative where specified, supplying labor and material required and making mechanical, plumbing and electrical connections necessary to operate equipment; (ix) prior to commencing installation of OFCI items, Contractor shall verify that preceding Work has been properly completed and installed as specified to allow for the proper installation of all OFCI items (if unsatisfactory conditions exist, Contractor shall not commence installation until such conditions have been corrected); (x) commission and test or cooperate in the commissioning and testing of OFCI items in accordance with the manufacturer's recommendations, instructions and shop drawings.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

§ 4.1.2 Duties, responsibilities and limitations of authority of the Design Professional as set forth in the Contract Documents may be restricted, modified, or extended as provided or allowed under the agreement between the Owner and Design Professional.

§ 4.2 Administration of the Contract

§ 4.2.1 The Owner will provide such administration of the Contract as described in the Contract Documents during construction until Final Payment to the Contractor. The Contractor acknowledges that the Design Professional has no authority to act on behalf of the Owner.

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

§ 4.2.2.1 The Contractor acknowledges that the Design Professional does not have authority to make any decision or give any direction to the Contractor that would impact the Guaranteed Maximum Price or Contract Time.

§ 4.2.3 On the basis of the site visits, the Design Professional will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the

Contractor, and (3) defects and deficiencies observed in the Work. The Design Professional will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Design Professional will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration

The Contractor shall address all communications to the Owner's Designated Representative with copies to the Owner's Project Manager, Owner's Contract Administrator and Design Professional. The Design Professional's and Owner's communications by and with Subcontractors shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. Owner and Contractor may communicate with each other directly, provided they endeavor to keep the Design Professional informed and apprised of all communication. The Contractor shall copy the Owner on all correspondence from the Contractor to the Design Professional, and the Design Professional shall copy the Owner on all correspondence to the Contractor.

§ 4.2.5 [Intentionally deleted.]

§ 4.2.6 The Owner shall have and the Design Professional, after consultation with the Owner in each instance, has authority to reject Work that is defective or does not conform to the Contract Documents. Whenever the Design Professional considers it necessary or advisable, and after obtaining the Owner's permission in each instance, the Design Professional will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Design Professional nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Design Professional to the Contractor, Subcontractors, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Design Professional will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose (unless Owner requests otherwise) of checking for conformance with information given and the design concept expressed in the Contract Documents. The Design Professional's action will be taken in accordance with the submittal schedule approved by the Design Professional or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Design Professional's professional judgment to permit adequate review. Unless Owner requests otherwise, review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Design Professional's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Design Professional's review is undertaken solely to satisfy its obligations to the Owner and shall not give rise to any claim by the Contractor or Subcontractors against the Design Professional or Owner. The Design Professional's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Design Professional, of any construction means, methods, techniques, sequences, or procedures. The Design Professional's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Owner will prepare Change Orders and Construction Change Directives. The Owner and the Design Professional will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Design Professional will conduct observations to determine the date or dates of Substantial Completion and the date of final completion receive and forward to the Owner information sufficient for the Owner to issue a formal letter regarding Substantial Completion; and forward for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10.

§ 4.2.10 The Design Professional will review and respond to requests for information about the Contract Documents. The Design Professional's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Design Professional will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a contract with the Contractor to perform labor or services for all or a portion of the Work at the site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term “Subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term “Subcontractor” does not include a Separate Contractor or subcontractors of a Separate Contractor, but does include all subcontractors, suppliers and consultants of the Contractor at all tiers. A subsidiary, affiliate or related entity of Contractor, if it otherwise qualifies under this Section 5.1.1, may be a Subcontractor.

§ 5.1.2 For ease of reference only, as it is otherwise included within the definition of Subcontractor, a Sub-subcontractor is a person or entity who has a contract with a Subcontractor to perform labor or services for all or a portion of the Work at the site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 The Contractor, as soon as practicable after execution of the Agreement, shall furnish in writing to the Owner a list of the names of the persons or entities (including but not limited to those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the fourteen (14) day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. The Contractor shall only retain and employ qualified and competent Subcontractors who shall be fully insured and shall be properly licensed, if required, in the jurisdiction where the Project is located. The Contractor shall promptly remove all employees and Subcontractors or Subcontractor's employees, if the Owner provides a reasonable basis for the objection to the suitability of the same to continue on the Project.

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

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

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including but not limited to the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Design Professional, (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner, (3) include an express provision that such contract shall be assigned to the Owner, at the Owner's discretion, in the event the Owner terminates the Contract and takes over the Work pursuant to Article 14 and (4) state that the Owner is and shall be a third-party beneficiary of such contract. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Each subcontract shall state that the Subcontractor agrees to the contingent assignment of the subcontract to

the Owner, consistent with Section 5.4.

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Subcontractor's portion of the Work has been suspended for more than 30 days, through no fault of Subcontractor, that Subcontractor's Sub-subcontractors, or any of their respective agents or employees, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify in writing the Design Professional and Owner of any apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.2.1 If part of the Contractor's Work requires that any work being performed by the Owner or any of its Separate Contractors be performed before the Contractor can proceed, the Contractor shall give the Owner and Design Professional reasonable advance written notice of when such work must be done. In the absence of such written notice, the Contractor shall not be entitled to any additional costs or time arising out of delay caused by the Owner or its Separate Contractors in completing such Work.

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

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Design Professional will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only by Amendment, Change Order, or Construction Change Directive, subject to the limitations stated in this Article 7, and elsewhere in the Contract Documents. Any Change Order or Construction Change Directive changing the materials, layout, configuration or other physical characteristics of the Work as set out in the Construction Documents shall reference and be accompanied by a written modification of the Construction Documents prepared and issued by the Design Professional.

§ 7.1.1.1 The Owner and Contractor expressly and explicitly acknowledge and agree that no employee or consultant of the Owner or any other person or entity shall have authority to order, request, approve, cancel, disapprove or take any other binding action on behalf of the Owner with respect to Change Orders, Construction Change Directives and any other documents changing the Work, whether pursuant to this Article 7 or otherwise, except the Owner's Designated Representative named or determined pursuant to Section 2.1.1.1. This Section 7.1.1.1 shall not negate, abridge or reduce the authority of the Design Professional under Section 7.4.

§ 7.1.2 Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a Modification is properly and timely prepared and executed as required in the Contract Documents. Contractor hereby waives any argument that Owner's conduct (including, but not limited to, orally approving changes) amounts to a waiver of the prior, written change requirements of the Contract Documents. A Change Order shall be based upon agreement among the Owner, Contractor, and Design Professional; a Construction Change Directive requires agreement by the Owner and Design Professional and may or may not be agreed to by the Contractor.

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

§ 7.1.4 In determining the cost or credit to the Contractor in performing changed Work under this Article 7, a Subcontractor's compensation shall include markups for "general conditions" costs, overhead and profit of a total amount no greater than _____ percent (___ %) for direct Work performed by a Subcontractor and no more than _____ percent (___ %) for Work performed by a Subcontractor's lower-tier Subcontractor.

§ 7.2 Change Orders

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.
- .4 Any other changes to the Contract.

§ 7.2.2 The form of Change Orders shall be as set forth in Exhibit H. Contractor shall submit for review any proposed change (contingency change or Owner change) within a reasonable time not to exceed 30 days after

receiving any documentation of the change.

§ 7.2.3 The Change Order must include all changes to Guaranteed Maximum Price and Contract Time, whether direct or indirect. The Contractor must determine full impact of the change on the Contractor's construction schedule and the required date for achievement of Substantial Completion. If the Contract Time is not changed in the Change Order, no additional Contract Time will be allowed, and no additional cost will be added to maintain the Project schedule, after the Change Order is executed.

§ 7.3 Construction Change Directives

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

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

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the Owner shall determine the adjustment on the basis of reasonable cost expenditures and cost savings of those performing the Work attributable to the change, including, but not limited to, in case of an increase in the Guaranteed Maximum Price, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data.

§ 7.3.4.1 For the purpose of this Section 7.3.4, the term "costs" as applied to Subcontractors shall be limited to the following:

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

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

§ 7.3.6 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or Contract Time.

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including but not limited to adjustment in Guaranteed Maximum Price or Contract Time, or both, or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment accompanied by a Change Order indicating the parties' agreement, if any, with part or all of such costs. For any portion of such cost that remains in dispute, the Owner will make an interim determination for purposes of monthly payments for those costs. That determination of cost shall adjust the Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination concerning the adjustments in the Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, the Design Professional will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized as well. In no event will a change involving over \$1,000 be approved without such itemization.

§ 7.4 [Intentionally deleted.]

§ 7.5 LIMITATIONS ON ADJUSTMENTS IN GUARANTEED MAXIMUM PRICE AND CONTRACT TIME DUE TO CHANGES IN THE WORK

§ 7.5.1 Notwithstanding the provisions of Sections 7.1 through 7.4 and other provisions of the Contract, in no event shall the Contractor be entitled to adjustments in the Guaranteed Maximum Price or Contract Time as a result of changes in the Work to the extent such changes were made necessary by the negligent or other wrongful acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract.

§ 7.5.2 Nothing in Sections 7.1 through 7.4 or other provisions of these General Conditions shall excuse the Contractor from performing its obligations under (1) Article 15 related to Claims and disputes or (2) Article 8 related to adjustments in the Contract Time. Failure of the Contractor to perform its obligations under those provisions of these General Conditions when required shall result in a waiver of any right it may have to an adjustment in the Guaranteed Maximum Price.

§ 7.5.3 Notwithstanding the provisions of Sections 7.1 through 7.4 and other provisions of these General Conditions, Contractor hereby expressly and unconditionally waives any and all claims and remedies for additional, accumulated or cumulative impacts to the Guaranteed Maximum Price and Contract Times that arise from combining the impacts of one or more changes approved by the Owner.

§ 7.6 The Contractor shall keep full and detailed cost accounts and records of all Work compensated on a cost basis pursuant to Change Orders and Construction Change Directives, and shall maintain such accounts and records for ten (10) years after final payment or longer if required by law. Without limiting Owner's audit rights and remedies under the Agreement, the Owner and its personnel, consultants and accountants shall have full access to inspect or audit such accounts and records during the course of the Project and the period referenced in this Section 7.6. In the event an audit of such accounts and records determines that the Contractor was paid more or less than the amount actually due for such Work, the appropriate payment shall be made by the appropriate party together with accumulated interest. In the event an audit determines that the Contractor submitted one or more Applications for Payment that resulted in it being paid more than one hundred and two percent (102%) of the amount actually due, the Contractor also shall pay for the cost of the audit.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including but not limited to authorized adjustments, allotted in the Contract Documents for Substantial Completion and Final Completion of the Work.

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

§ 8.1.3 The dates of Substantial Completion and Final Completion are the dates satisfying the requirements of Section 9.8 and 9.10.

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

§ 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor agrees that absent proper justification for extensions of Contract Time properly issued under the provisions of the Contract in a Change Order, the Contractor shall not be entitled to any additional time to complete the Work. The Contractor understands that it may be required to, at its sole expense, employ extraordinary means, including overtime and second shifts, to timely complete the Work according to the Contract Documents. All costs associated with such extraordinary means are the Contractor’s responsibility, unless approved in writing by the Owner.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Design Professional, or of an employee of either, or of a Separate Contractor; by changes ordered in the Work; or by labor disputes not caused or contributed to by the Contractor, Subcontractors, or any person or entity for whose acts or omissions any of them are responsible; or fire, abnormally adverse weather conditions, cessation of the Work pursuant to Section 10.3.1, by delay authorized by the Owner pending mediation, or by other causes that the Owner agrees may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may agree. No adjustment in the Contract Time will be considered or granted by Owner if written notice of delay is not received from Contractor within 7 days of the delay or when the contractor should have known of the delay.

§ 8.3.1.1 No extensions of the Contract Time shall be allowed for delays or suspensions to the extent caused by the negligent or other wrongful acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract. No adjustment of Contract Time will be considered if not submitted with a Time Impact Analysis (TIA) showing that the impact was critical path. No adjustment of Contract Time will be made for delays that do not result in delay to the Project schedule’s critical path.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Construction Manager and Contractor must maintain at the Site, available to the Owner and the Design Professional for their reference during the progress of the Work, a copy of the approved Contractor’s construction schedule and any approved revisions thereto. The Contractor must keep current records of and mark on a copy of the approved construction schedule the actual commencement date, progress and completion date of each scheduled activity indicated on the construction schedule.

§ 8.3.2.1 The Contractor represents that its Guaranteed Maximum Price includes all costs, overhead and profit which may be incurred throughout the Contract Time and the period between Substantial Completion and Final Completion. Accordingly, the Contractor may not make any Claim for delay based in whole or in part on the premise that the Contractor would have completed the Work prior to the expiration of the Contract Time but for any claimed delay.

§ 8.3.2.2 If the Contractor's progress is not maintained in accordance with the approved construction schedule, or the Owner determines that the Contractor is not diligently proceeding with the Work or there is evidence reasonably indicating that the Contractor will not be able to conform to the most recently approved construction schedule, the Contractor must, promptly and without any increase in the Guaranteed Maximum Price, take all measures necessary to accelerate its progress to overcome the delay and ensure that there will be no further delay in the progress of the Work and notify the Owner, and the Design Professional.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Guaranteed Maximum Price

§ 9.1.1 The Guaranteed Maximum Price is stated in the Agreement and is subject to authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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

§ 9.1.2.1 Unit prices are inclusive of all costs for the unit price Work, including but not limited to costs of labor, services, materials, equipment, supervision, insurance, bonds and "general conditions," as well as applicable taxes and overhead and profit for that Work.

§ 9.2 Schedule of Values

§ 9.2.1 Promptly after execution of the Agreement, the Contractor shall deliver to Owner an initial schedule of values, allocating the entire Guaranteed Maximum Price to the various portions of the Work, including a separate allocation of the entire Guaranteed Maximum Price into Owner's asset categories. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner. The schedule of values shall be revised by the Contractor for the Owner's approval as necessary to reflect adjustments in the Guaranteed Maximum Price, allocations of contingencies and other changes in the allocations of the Guaranteed Maximum Price. The current, approved schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. If approved by Owner, the proposed initial schedule of values shall be attached to the GMP Amendment.

§ 9.2.2 Unless otherwise provided in the Contract Documents, the allocation of the Guaranteed Maximum Price under this Section 9.2 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 9.3 Applications for Payment

§ 9.3.1 If requested by Owner, at least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for completed portions of the Work based upon the percentage of Work performed pursuant to the current schedule of values approved by the Owner and submitted with the Application for Payment. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner may require, such as copies of requisitions, and releases and waivers of claims and liens from Subcontractors, and shall reflect retainage if provided for in the Contract Documents.

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

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor, unless such Work has been performed by others whom the Contractor intends to pay. The Contractor shall include a written notice, on Contractor's letterhead, stating the name of and amount owed to such Subcontractor which has requested payment but which has not been included on the Application for Payment.

§ 9.3.1.3 Each Application for Payment shall be accompanied by waivers and releases executed by Contractor and Subcontractors, using the forms attached as Exhibit D. The waiver and release forms shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment. If the Contractor is unable to obtain such executed waiver and release forms and satisfactions from particular Subcontractors, the Contractor as a condition of payment for such Subcontractors' performance of the Work shall provide the Owner with a bond or other form of security acceptable to the Owner to protect the Owner from claims of such Subcontractors. If any such claim remains unsatisfied after payments are made, upon the Owner's demand, and without waiver of any other remedies the Owner may have under the Contract or applicable law, the Contractor shall refund to the Owner all money that the Owner pays in discharging such claim, including but not limited to the Owner's attorneys' fees and costs and disbursements resulting therefrom.

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

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner upon physical incorporation into the construction at the site or upon Contractor's receipt of payment, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Owner's Review of Applications for Payment

§ 9.4.1 Within seven (7) days after receipt of the Contractor's Application for Payment, the Owner will either (1) review and recommend payment in the full amount of the Application for Payment; or (2) review and recommend for payment for such amount as the Owner determines is properly due, and notify the Contractor of the reasons for withholding payment in part as provided in Section 9.5.1; or (3) review and withhold payment of the entire Application for Payment, and notify the Contractor of the reason for withholding payment in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a payment will not be a representation that the Owner has (1) made exhaustive or continuous on-site inspections or observations to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Payment

§ 9.5.1 The Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner. The Owner may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including but not limited to loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective or nonconforming Work not remedied or incomplete Work;
- .2 third party claims, including but not limited to construction lien claims and bond claims, filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Contractor's employees or Subcontractors for labor, services, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;

- .5 damage or potential damage to the Owner that is caused by or is the responsibility of Contractor or any Subcontractor or other person or entity for which Contractor is responsible;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated or substantial failure to carry out the Work in accordance with the Contract Documents; or
- .8 determination that the Work has not progressed to the point indicated in Contractor's Applications for Payment and already paid by Owner.

§ 9.5.1.1 In withholding or nullifying payment pursuant to Section 9.5.1, the Owner shall designate one hundred fifty percent (150%) of the estimated cost to cure the reason for the withholding or nullification.

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

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

§ 9.5.4 Notwithstanding the issuance of a payment by the Owner, the Owner may withhold payment for those reasons set forth in Items .1 through .8 of Section 9.5.1 or for any other breach of the Contract; and the Owner shall not be deemed in breach by reason of withholding payment while any such circumstances or breaches remain uncured. If Owner withholds payment, Owner shall notify Contractor and in writing of Owner's reasons for withholding. Owner may withhold from a payment up to one hundred fifty percent (150%) of the estimated or actual cost associated with the reason for withholding. If the Owner withholds payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Contractor.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has reviewed an Application for Payment and the Owner has not yet withheld payment pursuant to Section 9.5.3, the Owner shall make payment in the manner and within the time provided in the Contract Documents, absent any material breaches by Contractor or Owner's good faith belief that a withholding of payment is necessary to protect Owner from Contractor's failure to perform its obligations hereunder.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 Should the Contractor withhold payment from a Subcontractor due to a bona fide dispute, the Contractor shall notify the Owner. The Owner shall then withhold such funds from the Contractor until the dispute is resolved; provided that this Section 9.6.2.1 shall not be construed or applied to prevent the Contractor from receiving payment from the Owner for Work performed by the Contractor or by another Subcontractor when such Work is the subject of a backcharge by the Contractor against the Subcontractor involved in the bona fide dispute.

§ 9.6.3 Neither the Owner nor Design Professional shall have an express or implied obligation to (1) pay or to see to the payment of money to a Subcontractor, or (2) track, monitor, or investigate Contractor's disbursement of Project funds for the benefit of any Subcontractor, surety, creditor, or any other person or entity. The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.4 Upon reasonable evidence of the unjustified nonpayment of one (1) or more Subcontractors by the Contractor, the Owner may, after giving reasonable notice and opportunity to cure to the Contractor, make payment of amounts due to Subcontractors by direct payments or by means of multiple-payee checks. Upon request of the Owner, the Contractor shall timely furnish to the Owner such information as the Owner reasonably will need to

make such direct or multiple-payee check payments, including but not limited to the names and addresses of the Subcontractor payees and the amounts due to each. In no event shall any direct or multiple-payee payment be construed to create (1) any contract between the Owner and Subcontractors or (2) rights of any Subcontractor against the Owner. In addition, should Contractor neglect or refuse to pay promptly any bill or charge legitimately incurred by it, Owner shall have the right, but not the obligation, to pay the bill directly, and Contractor shall immediately reimburse Owner for same, provided Owner notifies Contractor of its intent to pay such bill directly and Contractor fails to provide Owner, within seven (7) days following Owner's written notice, of an acceptable explanation in writing regarding Contractor's failure to promptly pay the bill or charge legitimately incurred by Contractor. If Contractor does not reimburse Owner prior to the next payment by Owner to Contractor, Owner may offset the amount of the bill against amounts owed by Owner to Contractor hereunder.

§ 9.6.5 [Intentionally deleted.]

§ 9.6.6 A progress payment, final payment or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work that is defective or not in accordance with the Contract Documents.

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including but not limited to reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Owner does not issue a payment, through no fault of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, within fourteen (14) days after receipt of the Contractor's Application for Payment the amount approved by the Owner or awarded by binding dispute resolution, then the Contractor may, upon seven (7) additional days' written notice to the Owner, stop the Work and thereby suspend or terminate the Contract, unless within such seven (7) additional days payment is made to Contractor of all undisputed amounts and Owner's good faith basis for contesting any disputed amounts is delivered to Contractor. If Contractor so terminates the Contract, Contractor's exclusive remedies will be governed by Article 14 below.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof, which the Owner agrees in writing to accept separately, is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use without any meaningful interference or disruption.

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees in writing to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Design Professional a written punch list of items to be completed or corrected prior to final payment. Failure to include an item on such punch list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof, which the Owner agrees in writing to accept separately, is substantially complete, the Owner will determine the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, shall include a punch list of items remaining to be completed or corrected notwithstanding achievement of Substantial Completion, and shall fix the time within which the Contractor shall finish all items on the punch list accompanying the formal letter from Owner. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof; provided that with respect to components or portions of the Work for which Substantial Completion is achieved after the date of Substantial Completion of the Work as a whole, such warranties shall commence on the dates of Substantial Completion of such components or portions.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a punch list to the Owner and Design Professional as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Design Professional.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt by the Owner of the Contractor's written notice that the Work, or designated portion thereof which the Owner agrees in writing to accept separately, is ready for final observation and acceptance and upon receipt of a final Application for Payment (including retention), the Owner, Contractor and Design Professional will promptly make such observation and, when the Owner and Design Professional find the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final payment. Should it become necessary for the Owner and Design Professional to conduct additional observations because of acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, the Owner and Design Professional will conduct such observations at the Design Professional's standard hourly rate and such costs will be deducted from monies due to the Contractor.

§ 9.10.1.1 For Final Completion of the Work or designated portion thereof to be achieved, (1) Substantial Completion of the Work or designated portion thereof must have been achieved, (2) the Owner must have received a final certificate of occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose, (3) the Contractor must have submitted all warranties, operating and maintenance manuals, As-Built Drawings and Specifications, keys and other submittals required for the Work or designated portion thereof and (4) the Contractor otherwise must have fully performed and

completed all of its other obligations required for Final Completion under the Contract Documents with respect to the Work or designated portion thereof. Notwithstanding the foregoing, Final Completion shall be deemed achieved if all construction, submittals and other performance by the Contractor required for issuance of the certificate of occupancy and other approvals have been completed but the certificate and approvals have not been issued solely because of factors beyond the reasonable control of the Contractor.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the Owner, (7) the grounds for Owner's withholding of payment under Section 9.5.1 or under Section 9.5.4 have been removed or no longer exist, and (8) completion of the Work in compliance with the Contract Documents. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such claims. If such claims remain unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such claims, including all costs, disbursements, expenses and reasonable attorneys' fees.

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

§ 9.10.3.1 The Owner shall retain an amount equal to two hundred percent (200%) of the estimated costs of finally completing the Work as determined by the Owner, if the Owner makes payment in advance of Final Completion pursuant to Section 9.10.3.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the entirety of the Work.

§ 10.1.1.1 The Contractor's safety obligations under this Article 10 shall apply, without limitation, to the areas of the Owner's property where the Work is performed, or which are used for any purpose in connection with the performance of the Work, by the Contractor or Subcontractors.

§ 10.1.1.2 The Contractor shall coordinate its safety program with the safety programs of the Separate Contractors and of any other contractors working at the site.

§ 10.2 Safety of Persons and Property

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

- .1 those performing labor or services or furnishing materials or equipment at the Work site and other persons who may be affected thereby, including, but not limited to, licensees, trespassers, and persons on adjacent or adjoining properties;
- .2 the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody, or control of the Contractor or Subcontractors;
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction;
- .4 other structures contiguous to the Work site and otherwise located at or contiguous to the premises, and trees, shrubs, lawns, walks, pavements, roadways and utilities serving such structures and premises; and
- .5 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Design Professional or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons, property damage, or contamination of air, water, soil, materials for the Work or other property resulting from a material or substance, including but not limited to asbestos, lead paint, mold, or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Design Professional by telephone or other appropriate means followed by prompt confirmation in writing.

§ 10.3.2 Upon receipt of the Contractor's notification, the Owner, in consultation with the Design Professional and Contractor, shall obtain the services of a licensed laboratory or other consultant to verify the presence or absence of the hazardous material or substance reported and, in the event such hazardous materials are found to be present, to

cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Design Professional the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such hazardous materials or who are to perform the task of removal or safe containment of such hazardous materials. The Contractor and the Design Professional will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Design Professional has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Design Professional have no reasonable objection. When the hazardous materials have been rendered harmless, Work in the affected area shall resume upon the directive of the Owner. By Change Order, the Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the hazardous materials present the risk of bodily injury or death as described in Section 10.3.1 and have not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent that such damage, loss or expense is not due to the fault or negligence or other wrongful acts or omissions of the party seeking indemnity.

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

§ 10.3.5 The Contractor shall indemnify, hold harmless, reimburse, and defend the Owner from, for, and against suits, actions, awards, penalties, liabilities, claims, damages, losses, and expenses, including but not limited to attorneys' fees and expert witness fees and related costs, arising out of or related to (1) remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) the Contractor's failure to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without fault or negligence or other wrongful acts or omissions on the part of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Spill Responsibility

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

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

- .1 properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;
- .2 be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials that the Contractor has brought onto the Work site; and

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

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

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

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

§ 10.5 Emergencies

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

§ 10.5.2 If Contractor does, or omits to do, anything where safety may be endangered or where damage or injury may result to person or property (including the Work itself), Owner may, in its sole discretion, after one (1) day written notice to the Contractor, or in case of imminent danger, immediately after delivery of written notice to Contractor, make good all Work, material, omissions, or deficiencies to remove the dangerous condition(s) and prevent damage or injury. Owner may deduct Owner's costs incurred under this Article 10 from the amount included in the Guaranteed Maximum Price due or which may thereafter become due to Contractor. No action taken by Owner under this Section 10.5 shall affect any of the other rights or remedies of Owner granted by the Contract or by law, or relieve Contractor from any consequences or liabilities arising from such acts or omissions. Contractor shall not be responsible for costs of emergency work, unless the emergency was due to the negligence or other misconduct of the Contractor or any Subcontractors, or anyone for whose acts any of them may be liable.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 Contractor and Subcontractors shall comply with the terms of Exhibit F.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. If requested by Contractor, Owner will provide to Contractor copies of all relevant policies.

§ 11.2.2 Property Insurance

§ 11.2.2.1 The Owner may purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis subject to self-insurance retention and deductibles. The Owner's property insurance coverage shall be no less than the amount of the initial Guaranteed Maximum Price, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. Such property

insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.2.2.1 to be covered, whichever is later. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ 11.2.2.1.1 The Contractor shall be responsible for property losses to the Work not paid by the insurance discussed in Section 11.2.2.1 due to self-insurance retention and deductibles, to a maximum of Twenty-Five Thousand Dollars (\$25,000) per occurrence, except to the extent such losses are caused by (1) the negligent or other wrongful acts or omissions of the Owner, Design Professional or its consultants, Owner's separate consultants or contractors, or their respective agents or employees or (2) Acts of God.

§ 11.2.2.3 Waiver of Subrogation

§ 11.2.2.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; and (2) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered and paid by property insurance obtained pursuant to this Agreement, if any, or other property insurance applicable to the Project, (a) except such rights as they have to proceeds of such insurance and (b) except to the extent such damages are covered by Commercial General Liability or other insurance of the Contractor or one or more Subcontractors. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, Subcontractors, and sub-Subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.2.2.3 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.2.2.4 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Design Professional and Contractor their just shares of insurance proceeds received by the Owner, the Contractor shall make payments to its Subcontractors, and by appropriate written agreements shall require its Subcontractors to make payment to their sub-subcontractors in similar manner.

§ 11.3 [Intentionally deleted.]

§ 11.4 [Intentionally deleted.]

§ 11.5 [Intentionally deleted.]

§ 11.6 Performance Bond and Payment Bond

§ 11.6.1 Contractor shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Guaranteed Maximum Price, and such amount shall be adjusted as the Guaranteed Maximum Price is adjusted pursuant to the Contract Documents. The form of the bonds and the identity of the surety shall be in the form attached as Exhibit G. The surety on such bonds shall be authorized to do business in the State of Oregon and shall have an A.M. Best Financial Strength Rating of A or better.

§ 11.6.2 The Contractor shall deliver the required bonds to the Owner before the Owner's execution of the GMP Amendment or an Early Work Amendment.

§ 11.6.3 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 11.6.4.1 Any Change Order, Construction Change Directive, or other Modification under the Contract shall not be subject to inspection or approval by any surety on any required bond. The surety on such bond, by issuing the bond, expressly waives its right to approve, and consents to, any such Change Order, Construction Change Directive, order or Modification.

§ 11.6.4.2 The surety on any required bond shall be bound to mediate and litigate any disputes between and among it, the Owner, Owner's separate consultants and contractors and their subconsultants and subcontractors, Contractor, Subcontractors, Subcontractors' sureties, Design Professional, Design Professional's consultants, and other persons or entities under contract or otherwise engaged to furnish labor, services, materials or equipment for the Project, in the same way and to the same extent that the Contractor shall be bound to mediate and litigate any disputes between and among such parties. The surety shall be bound by the decisions and award/judgment of the court in the same way and to the same extent that the Contractor shall be bound.

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

§ 11.6.6 With the Owner's prior written approval, the Contractor may require one (1) or more Subcontractors to furnish payment and performance bonds covering faithful performance of the particular subcontract and payment of obligations arising thereunder.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Owner or Design Professional has not specifically requested to examine prior to its being covered, the Owner or Design Professional may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Guaranteed Maximum Price and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Design Professional or Owner as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including but not limited to additional testing and inspections, the cost of uncovering and replacement, and compensation for the Design Professional's services and expenses and the Owner's attorneys' and consultants' fees and related costs, disbursements and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under the Contract Documents (including but not limited to Section 3.5), and without limiting Owner's other rights and remedies under the Contract Documents or at law, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof or which the Owner agrees in writing to accept separately, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. If the Contractor fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Design Professional, the Owner may correct it in accordance with Section 2.5 provided that if payment of the Contract Sum has already been made by the Owner then upon demand the Contractor shall reimburse the Owner pursuant to Section 2.5.

§ 12.2.2.2 The two (2) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion of the Work as a whole by the period of time between Completion of the Work as a whole and the actual completion of that portion of the Work.

§ 12.2.2.3 The two (2) year period for correction of Work performed by the Contractor pursuant to this Section 12.2 shall only be extended for that period of time that equals the amount of time after Substantial Completion of the

Work as a whole that the corrected portions of the Work were defective or nonconforming. Such extensions shall be applicable only to corrected portions of the Work.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents or applicable law. Establishment of the two (2) year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time nor shall otherwise be deemed to limit the time within which the obligation to comply with the Contract Documents or applicable law may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is defective or not in accordance with the requirements of the Contract Documents, the Owner may do so in writing instead of requiring its removal and correction, in which case the Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Contractor may not rely upon any non-written statements that purport to accept non-conforming Work.

§ 12.4 No earlier than twenty-two (22) months and no later than twenty-three (23) months after the date of Substantial Completion of the Work, the Owner, Design Professional and Contractor at a time reasonably determined by the Owner shall jointly observe the Project to identify defective or nonconforming Work to be corrected pursuant to Section 12.2, if any. Neither the Contractor's performance of its obligation under this Section 12.4 nor its correction of defective or nonconforming Work identified during the observation required by this Section 12.4 shall negate, abridge or reduce the Contractor's obligations to otherwise correct the same or other defective or nonconforming Work identified either before or after the observation required by this Section 12.4.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Contractor shall not assign its rights or obligations under the Contract as a whole without written consent of the Owner. If Contractor attempts to make such an assignment without such consent, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign its rights under the Contract to any person or entity (the "Assignee"). If Owner assigns all of its rights and delegates all of its duties and gives written notice of the assignment to Contractor, Contractor agrees: (a) to regard the Assignee as Owner's successor for all purposes of this Contract, with all of the rights and duties that Owner had before the assignment was made; (b) not to look further to Owner for payment under this Contract; (c) not to look further to Owner for satisfaction of any claims it may have asserted or will assert with regard to the Work; (d) without deleting Contractor's continuing indemnity obligation to Owner, Contractor will include the Assignee as a beneficiary of the indemnity obligations that Contractor owes to Owner under this Contract; and (e) without deleting Owner's additional insured status under this Contract, Contractor will include Assignee as an additional insured under Contractor's liability insurance policies. The Contractor shall execute all consents reasonably required to facilitate such assignment. If requested by Contractor, Owner will provide reasonable evidence that Assignee has made financial arrangements or otherwise has the ability to fulfill the payment obligations under the Contract.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law, in equity, or by any other agreement, and any such rights or remedies shall survive the acceptance of the Work and termination or expiration of the Contract.

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Owner and Design Professional timely notice of when and where tests and inspections are to be made so that the Owner and Design Professional may be present for such procedures. The Owner shall bear costs of all such tests, inspections, or approvals; provided that if defective or nonconforming Work or other fault of the Contractor or one or more Subcontractors results in repeat tests, inspections or approvals of portions of the Work, the contractor shall reimburse the Owner for the cost of such repeat tests, inspections, or approvals.

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

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

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

§ 13.4.5 [Intentionally deleted.]

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

§ 13.4.7 The conducting of any inspection, test, or observation and the receipt of any approval shall not operate to relieve the Contractor from its obligations under the Contract Documents unless specifically so stated by Owner, in writing. The Owner's and Design Professional's observations, reviews, or approvals of tests and inspections shall not relieve the Contractor from its responsibility for construction means, methods, and techniques, nor shall it relieve Contractor of its responsibility to strictly adhere to the Contract Documents.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 The Owner has not made a required payment within the time stated in the Contract Documents; or
- .4 The Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters critical to the progress of the Work.

§ 14.1.2 [Intentionally deleted.]

§ 14.1.3 If a basis for termination described in Section 14.1.1 exists, the Contractor may, upon seven (7) days' written notice to the Owner, and if the Owner fails to cure such reason during the seven (7) day period, terminate the Contract in whole or in part and recover from the Owner payment for Work executed at the Contract rate.

§ 14.2 Termination by the Owner for Cause

- § 14.2.1 The Owner may terminate the Contract, in whole or in part pursuant to Section 14.2.2, if the Contractor
- .1 substantially refuses or fails to supply enough properly skilled workers or enough proper materials or equipment;
 - .2 fails to make payment to its employees or fails to makes payment to its Subcontractors for materials, services, equipment or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
 - .3 substantially disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
 - .4 fails to carry out the Work pursuant to the Contract Documents;
 - .5 fails to comply with the current Contractor's construction schedule;
 - .6 submits one (1) or more Applications for Payment in which the Contractor overstates the amount to be paid, by the Owner, or fails to complete punch list and/or corrective work within reasonable time; or
 - .7 otherwise is guilty of material breach of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven (7) days' notice, terminate the Contract in whole or in part and may:

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

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

§ 14.2.4 If the unpaid balance of the Guaranteed Maximum Price exceeds costs of finishing the Work, including but not limited to compensation for the Design Professional's services and expenses made necessary thereby, and other damages incurred by the Owner, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall survive termination of the Contract. In no event, however, shall Contractor be entitled to payment of overhead, profit, markup, or any other payment on account of Work not performed.

§ 14.2.5 In the event the Owner terminates the Contract for cause and such termination subsequently is determined in a final judgment to have been wrongful, the termination shall automatically be converted to a termination for the Owner's convenience pursuant to Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and termination expenses as follows: (1) the actual cost incurred by the Contractor to the date of termination, (2) a reasonable amount of overhead and profit based on the actual cost incurred, and (3) reimbursement of the Contractor's reasonable demobilization costs and other costs directly incurred relating to the termination which are not otherwise included in the actual cost incurred under Item (1). In no event, however, shall Contractor be entitled to payment of overhead, profit, markup, or any other payment on account of Work not performed.

§ 14.5 TERMINATION AND SUSPENSION BY THE OWNER

§ 14.5.1 In the event the Owner terminates or suspends the Contract, the Contractor shall cooperate with the Owner and all other persons and entities performing work or services on the Project as necessary and required to facilitate the efficient and proper performance and completion of (1) the overall Project, if the Owner completes the entire Project, or (2) the portion of the Project the Owner completes, if the Owner completes less than the entire Project. In the event of a termination, whether for cause or convenience, Owner reserves the right to recover damages arising out of or related to Contractor's performance of the Contract, regardless of whether (a) such performance occurred before or after the effective date of termination or (b) Owner provided Contractor with the opportunity to cure.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. For all claims by Owner against Contractor, the applicable period of limitations shall not commence to run and any alleged cause of action shall not be deemed to have accrued, whether such claims or actions involve strict liability, indemnity, intentional tort or other tort, breach of contract, breach of implied or express warranty, or any other legal

or equitable theory, unless and until the party making the claim is fully aware of all three (3) of the following: (a) the identity of the party(ies) responsible; (b) the magnitude of the damage or the injury; and (c) the cause(s) of the damage or injury. The discovery rule provided herein applies in lieu of any other applicable statute or related case law. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by Contractor must be initiated by written notice to the Owner within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Contractor first recognizes or reasonably should have first recognized the condition giving rise to the Claim, whichever is later. Failure of Contractor to deliver the notice within the time set out in this Section 15.1.3.1 shall result in a complete and final waiver of the Claim and all rights and remedies arising therefrom.

§ 15.1.4 Continuing Contract Performance

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

§ 15.1.5 Claims for Additional Cost

If the Contractor knows or has a reason to know before performing a particular portion of the Work that it will have a Claim for an increase in the Guaranteed Maximum Price for performing that portion of the Work, written notice as provided herein shall be given by the Contractor before proceeding to execute that particular portion of the Work. Otherwise, a Claim for an increase in the Guaranteed Maximum Price shall be made as required by Section 15.1.3. Notice under this Section 15.1.5 shall contain sufficient detail and substantiating data to permit evaluation of the Claim by the Owner. No such Claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.5.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given to the Owner. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time, and a schedule analysis based upon the approved Contractor's construction schedule, showing the impact of the cause or event on the critical path of the approved Contractor's construction schedule. No Claim under this Section 15.1.6 shall be valid unless so made. If a Claim for additional cost related to this Claim is to be asserted, it shall be made as provided in Section 15.1.3.

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

§ 15.2 MEDIATION

§ 15.2.1 Any Claim, dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to institution of legal or equitable proceedings by either party.

§ 15.2.2 Request for mediation shall be filed in writing with the other party to this Contract. The request may be made concurrently with the institution of legal or equitable proceedings but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 15.2.3 If the parties cannot agree on the choice of a mediator, the parties shall apply to the local state court to appoint a mediator.

§ 15.2.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place specified in Section 15.4, unless another location is mutually agreed upon. Written and signed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3 LITIGATION

§ 15.3.1 If the parties are unable to resolve a dispute in accordance with Section 15.2, either party may pursue any rights or remedies it may have at law or in equity.

§ 15.4 Jurisdiction/Forum

Any mediation or trial court suit or action arising out of or relating to this Agreement shall be commenced and conducted in Benton County Circuit Court in Benton County, Oregon. Each party hereby consents to the exclusive jurisdiction of such court, waives any objection to venue, and waives any claim that such forum is an inconvenient forum.

§ 15.4.1 Notwithstanding Section 15.4, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon. This Section applies to a claim brought against the Owner only to the extent the United States Congress has appropriately abrogated the Owner's sovereign immunity and is not consent by the Owner to be sued in federal court. This Section is also not a waiver by the Owner of any form of defense or immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

§ 15.5 Attorneys' Fees

§ 15.5.1 Should any legal proceeding or court action be commenced in connection with any Claim, dispute or other matter in question arising out of or relating to the Contract or the breach thereof, to obtain a construction of or to enforce any provision of the Contract, to rescind the Contract, or to enforce or collect any judgment, order or decree of any court relating to the Contract, the prevailing party shall be entitled to recover its attorneys' and expert witnesses' fees and related costs, disbursements and expenses incurred prior to and during the trial, on review for appeal, on appeal, on review for or on reconsideration, regardless of when such reconsideration should be sought or granted, as the court shall adjudge reasonable.

§ 15.6 Miscellaneous

§ 15.6.1 Operation and Maintenance Manuals

As part of the Work, Contractor shall submit one (1) hard copy and two (2) electronic media copies (on memory stick, CD or DVD and in standard Microsoft or Adobe format) completed operation and maintenance manuals for review by the Owner's Project Manager prior to any pay request for retainage. No retainage payments will be made by the Owner until the O & M Manual has been received. The O & M Manual shall contain a complete set of all submittals; all product data as required by the Specifications; training information; a telephone list of consultants, manufacturers, installers and suppliers; manufacturer's printed data; balance reports; record and shop drawings; schematic diagrams of systems; appropriate equipment indices; warranties; bonds; and other information and documents relevant to operations or maintenance of the Project. The Owner's Project Manager shall review and return one (1) O & M Manual for any modifications or additions required. Prior to submission of its final Application for Payment, complete and approved sets of O & M Manuals shall be delivered to the Owner's Project Manager by the Contractor.

§ 15.6.2 Training

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Project Manager training sessions for all equipment and systems related to the Work, as required in the Specifications. The Contractor shall schedule training sessions at least two (2) weeks in advance of the date of training to allow the Owner's personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment or system is completely installed and operational in its normal operating environment.

§ 15.6.3 Other Contractor Responsibilities

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and, at Owner's discretion, may not be until Final Completion.

