

DRAFT AIA® Document A141™ - 2014

Standard Form of Agreement Between Owner and Design-Builder

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

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

«City of Gladstone » «an Oregon municipal corporation »
«18505 Portland Avenue »
«Gladstone, OR »
«97027 »

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

« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

The Project will be designed and constructed in two steps using the progressive design-build delivery method. The Design-Builder will provide services in two distinct phases for a new municipal Public Works Building. In Phase One, Design-Builder will perform preconstruction services and develop, with Owner's input, pricing-level design documents and information such that the Design-Builder can prepare and provide a Design-Builder Proposal to be reviewed and approved by the Owner. Such services will generally consist of preconstruction services including preliminary engineering, geotechnical investigations, and the design development required for preparation of a Project GMP proposal and schedule. If the Design-Builder's Proposal prepared during the course of Phase One is approved by the Owner, the Design-Builder will proceed to Phase Two. In Phase Two, Design-Builder will include complete design, permitting, construction, move-in and post-construction tasks, including operation and maintenance manuals for the building systems and relevant performance testing. If Design-Builder is authorized to proceed to Phase Two by Owner, in its sole discretion, the Phase Two services to be provided will generally encompass completing the Project's final design, construction, commissioning and transfer to City. All required permitting activities are included in each Phase.

The Owner and Design-Builder agree as follows:

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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

{00797399; 5 } **ELECTRONIC COPYING** of any portion of this AIA® Document to another electronic file is prohibited and constitutes a violation of copyright laws as set forth in the footer of this

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner’s Criteria

This Agreement is based on the Owner’s Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as “not applicable” or “unknown at time of execution.” If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert “see Owner’s design documents” where appropriate.)

§ 1.1.1 The Owner’s program for the Project:

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

On behalf of the Owner, a preliminary program evaluation has been prepared for the Project. Documents associated with the evaluation are included in Attachment 2.3 to the City of Gladstone, Oregon Public Works Project

Progressive Design-Build Procurement Request For Proposals (RFP). Attachment 2.3 of the RFP is incorporated into this Agreement by reference. The Owner expects to further develop the program with the Design-Builder.

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

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

The Public Works Department is responsible for the City's streets, water systems, sanitary sewer system and stormwater systems. As a designated "Critical Facility", the Department needs to be operable and able to respond immediately to the impacts on the City's infrastructure by any natural disaster. In November of 2021, Gladstone voters approved Measure 3-570, authorizing the City to construct and incur debt to finance an upgrade, remodel and/or construction of new Public Works building. Design and construction must conform to the building code and other regulatory standards applicable to such facilities. Other project background documents are included in Attachment 2 to the RFP.

§ 1.1.3 The Project's physical characteristics:

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

«Contained in Attachment 2 of the RFP. »

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

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

«The Project shall incorporate sustainable systems, which must meet or exceed the State Department of Energy requirements and specifications per ORS 279C.528. Owner is interested in carrying sustainability-related improvements in excess of these standards as additional alternates through Phase One for inclusion with the Design-Builder's scope of work as appropriate. »

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

«While Owner is not pursuing LEED certification for the Project, there are other incentive programs or grants the Owner may, in its sole discretion and in consultation with the Design-Builder, choose to pursue for the Project. »

« »

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

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

«The budget for the Work is \$ 4,400,000_ to accommodate the Program and Site elements listed in the City of Gladstone, Oregon Public Works Project Progressive Design-Build Procurement Request For Proposals including but not limited to:

Building Program:

- Vestibule/Reception/Waiting
- Work Room
- Meeting/Conf Room
- Offices
- Lunchroom
- Locker Rooms (men's and women's)
- Laundry

- Fire/Mechanical/Elect/Phone
- Janitor and Storage
- Restroom (unisex)
- Mud Room

Site Improvements:

- Onsite landscaping, utility, and site improvements as required by Clackamas County (to be confirmed by DB team)
- Offsite street improvements to City standards (to be confirmed by DB team)
- Parking
 - (20) Employee parking spaces minimum
 - (TBD) Public/HC Parking

§ 1.1.7 The Owner’s design and construction milestone dates provided by the Design-Builder include:

.1 Design phase milestone dates:

« »

.2 Submission of Design-Builder Proposal:

« »

.3 Phased completion dates:

« »

.4 Substantial Completion date:

« »

.5 Other milestone dates:

« »

§ 1.1.8 The Design-Builder shall retain the following Architect, Consultants and Contractors at the Design-Builder’s cost.:

(List name, legal status, address and other information.)

.1 Architect

« »

.2 Consultants

« »

.3 Contractors

« »

The Owner reserves the right to review, comment on and approve in its reasonable discretion the Design-Builder’s agreement with the Architect, Consultants and Contractors prior to executing this Agreement.

§ 1.1.9 Additional Owner’s Criteria upon which the Agreement is based:

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

«The Design-Builder shall work with Owner to finalize a plan that maximizes participation of state-certified disadvantaged, minority and woman-owned and emerging small businesses (“DMWESB”) on the Project. The Owner’s goal is to have at least 10% participation from DMWESB entities. »

§ 1.1.10 The Design-Builder shall confirm and be responsible to the Owner to ensure that the information included in the Owner’s Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner’s Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict as soon as practicable.

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

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

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

«Kim Knox, Project Maanger
Shiels Oblatz Johnsen »
«421 SW 6th Avenue, Suite 750, Portland, OR 97204»
«knox@sojpdx.com »
«503.807.5177»
« »
« »

§ 1.2.2 The persons or entities, in addition to the Owner’s representative, who are required to review the Design-Builder’s Submittals are as follows:
(List name, address and other information.)

«Gladstone Public Works Director»
»

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

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

«Materials Testing and Inspections Consultant: To be determined

Despite the identification of specific consultants and contractors, the Owner reserves the right to retain those consultants and separate contractors as it deems appropriate. Design-Builder agrees to cooperate and coordinate with all of Owner’s consultants and separate contractors, regardless of whether they are identified in the Contract»

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

« »
« »

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§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party. Notwithstanding any contrary language in the Contract, Design-Builder shall not change its representative unless good cause exists and in every event must secure Owner's written approval prior to the change.

§ 1.3 Binding Dispute Resolution

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

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

[] Arbitration pursuant to Section 14.4

[] Litigation in a court of competent jurisdiction

[] Other: *(Specify)*

<< >>

§ 1.4 Definitions

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

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. Unless agreed to by the parties through a Modification, any proposed special terms or conditions proposed by Design-Builder, Architect, Consultants or Contractors (including, but not limited to, any limitations of liability or remedy or disclaimers of liability or remedy) whether in a warranty or otherwise shall expressly not be part of this Contract and shall not otherwise apply to the Project even if such terms and conditions are attached as an Exhibit or otherwise. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

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

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

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

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

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

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

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

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

§ 1.4.11 Contractor. A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential" or "trade secret" and that the Oregon Public Records Act or other applicable law permits Owner to treat as exempt from public disclosure.

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

§ 1.4.14 Day. The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

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

§ 1.4.16 Final Completion. Final Completion means the completion of all Work required by, and in strict compliance with, the Design-Build Documents, including start up, testing, obtaining regulatory approvals from all applicable authorities, and all preparations necessary to operate and maintain the Project.

§ 1.4.17 Site. The term "Site" or "Project site" refers to that portion of the property on which the Work is to be performed or which has been otherwise designated for use by the Design-Builder.

§ 1.4.18 Approved, Satisfactory or as Directed. When the words "approved," "satisfactory," "proper" or "as directed" are used, this refers to approval, satisfaction, determination, or direction by the Owner, unless the context otherwise requires.

§ 1.4.19 Provide. The word "provide" and its forms and derivatives means to properly fabricate, complete, transport, deliver, install, erect, construct, test, and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the

Specifications.

§ 1.4.20 Knowledge, Recognize and Discover. The words "knowledge," "recognize" and "discover," their respective forms and derivatives, and similar terms in the Design-Build Documents, as used in reference to the Design-Builder, shall mean that which the Design-Builder knows or should know, recognizes or should recognize and discovers or should discover in exercising the care, skill, and diligence required by the Design-Build Documents. The expression "reasonably inferable" and similar terms in the Design-Build Documents shall mean reasonably inferable by a design-builder familiar with the Project and exercising the care, skill and diligence required of the Design-Builder by the Design-Build Documents.

§ 1.4.21 Construction Documents. All design and construction documents, including but not limited to, drawings, specifications, engineering reports, site assessments and other related project documentation necessary and, in a form sufficiently complete, that such documents could be reasonably relied upon by a prudent general contractor having experience constructing similar projects in order to satisfactorily complete the Project.

§ 1.4.22 Subcontractor. The term "subcontractor(s)" refers to any person(s) or legal entity with which the Design-Builder contracts directly for any of the Work to be performed under this Contract. Unless the context clearly suggests otherwise, the term subcontractors shall include the Architect, Consultant, and Contractor.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

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

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

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

«Total not to exceed amount shown in Design-Builder's RFP response. »

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

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

« Total not to exceed amount shown in Design-Builder's RFP response.»

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

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

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

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of « five » percent (« 5 » %) of the expenses incurred.

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

§ 2.1.4.1 Payments are due and payable « thirty » (« 30 ») days from the date the Owner receives the Design-Builder's invoice and Owner deems it accurate and complete. Documentation of reimbursable expenses must be included with each invoice. Undisputed amounts unpaid after the date on which payment is due shall bear simple interest at three percent (3%) per year.

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

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

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, if applicable, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment subject to the Guaranteed Maximum Price ("GMP") established in the Design-Build Amendment.

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

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the State of Oregon.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project and who is authorized to bind the Design-Builder in its performance under the Contract.

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

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. The standard of care for design services provided by the Design-Builder shall equal or exceed the degree of care and skill used by members of the architectural/engineering profession performing design services for projects of comparable scale and complexity in the Portland, Oregon metro area. The standard of care for construction services provided by the Design-Builder shall equal or exceed the degree of care and skill used by members of the construction profession performing construction services for projects of comparable scale and complexity in the Portland, Oregon metro area. If the Design-Builder performs Work contrary to the Construction Documents applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction. Without limiting the generality of the first sentence, the Design-Builder:

- .1 Shall promptly pay all Persons supplying labor or material; contribute to Industrial Accident Fund; comply with provisions regarding liens and withholding taxes (ORS 279C.505).
- .2 Shall demonstrate that an employee drug testing program is in place (ORS 279C.505).
- .3 Shall salvage or recycle construction and demolition debris, if feasible and cost-effective (ORS 279C.510).
- .4 Acknowledges that Owner may, at its sole discretion, pay claims by those providing labor, services or materials to Design-Builder (ORS 279C.515).
- .5 Acknowledges its liability and that of its first-tier subcontractors for late payment to laborers and material suppliers (ORS 279C.515).
- .6 Acknowledges a person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515).
- .7 Shall comply with hours of labor requirements pursuant to ORS 279C.520.

- .8 Shall comply with environmental and natural resources regulations (ORS 279C.525).
- .9 Shall make payment for medical care for its employees in accordance with ORS 279C.530.
- .10 Shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless Design-Builder is exempt pursuant to ORS 656.126. Design-Builder shall ensure that each of its subcontractors complies with these requirements.
- .11 Shall comply with ORS 279C.540 regarding maximum work hours, holidays and overtime.
- .12 Acknowledges ORS 279C.545 and its limitations on overtime claims.
- .13 Shall compensate workers in accordance with ORS 279C.800 to 279C.870 regarding prevailing wage rates. The applicable rates of prevailing wages will be set out in the Design-Build Amendment or, if the parties agree that Design-Builder will provide construction services prior to the parties entering into the Design-Build Amendment, in a written agreement establishing the scope and cost of the pre-Design-Build Amendment construction services.
- .14 Shall possess and maintain a BOLI Public Works bond (ORS 279C.830).
- .15 Shall comply with ORS 279C.550 to 279C.570 regarding retainage of subcontractor earnings.
- .16 Shall comply with ORS 279C.570 regarding prompt payments, progress payments and rate of interest on unpaid amounts to subcontractors.
- .17 Shall comply with ORS 279C.580 regarding relations with subcontractors.
- .18 Certifies that all subcontractors performing construction Work will be registered will be registered with the Construction Contractors Board before the subcontractors commence such Work under the Agreement.
- .19 In accordance with ORS 305.385, represents and warrants that it is not delinquent in the filing or payment of any Oregon income taxes, Oregon personal property taxes, Oregon municipal taxes or Oregon real property taxes and that it has otherwise complied with all Oregon tax laws and all tax laws of those Oregon municipalities to which Design-Builder is subject.

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

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

§ 3.1.5 General Consultation. The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work. Design-Builder shall cause its representatives, and representatives of Architect, Consultants and Contractors at all tiers to attend and participate in weekly progress meetings, except as Owner otherwise permits. The Owner or Owner's Representative shall prepare and distribute to all attendees minutes of such progress meetings. The Design-Builder shall be responsible for reviewing these minutes and promptly forwarding comments regarding errors or missing information. Progress meetings may be utilized to review the Design-Builder's design and construction schedules, requests for information, or to address any delays, unusual conditions, or critical items that have affected or could affect the progress of the Work, and to consider any other matter or subject of relevance to the Work as determined by Owner. Design-Builder shall be responsible for preparing and distributing meeting minutes for all other meetings with Owner and project team.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. Each agreement with Architect, Consultants and Contractors at every tier shall provide that the Owner is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the Owner shall have the right, but not the obligation, to assert claims directly against the Architect, Consultants and Contractors for breach of contract, breach of express warranties, breach of implied warranties including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The purpose of

this Section is to enable the Owner at its discretion, in addition to the Design-Builder, to assert claims for damages and indemnification directly against Architect, Consultants and Contractors that are or may be responsible for breach of the contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project.

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

§ 3.1.8 Progress Reports

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

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

§ 3.1.8.2 In addition, the Design-Builder shall include the following additional information in its progress reports:

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

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, within 30 days of the execution of this Agreement, or within a longer time period as Owner in its sole discretion may allow, shall prepare and submit for the Owner's approval a Project Schedule (Critical Path Method or "CPM Schedule") for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project. The approval of any CPM Schedule by the Owner shall not relieve the Design-Builder of its sole responsibility to complete the Project within the Contract Time.

- .1 The CPM Schedule shall be a critical path method schedule created and maintained on an industry-standard computer program.
- .2 The CPM Schedule to be prepared and submitted to Owner shall consist of a CPM network (diagram of activities) in a format acceptable to Owner.
- .3 The network must show the order and inter-dependence of activities and the sequence in which the Design-Builder will complete the Work.
- .4 CPM schedule must include tasks and activities that are the responsibility of the Owner. The Design-Builder shall promptly notify the Owner if a delay in any such task or activity will delay construction.
- .5 The Design-Builder shall provide regular monitoring of the schedule as design and construction progresses, identify potential variances between scheduled and desired completion dates, review the schedule for Work not started or incomplete, review the status of submittals and delivery of long-lead time deliveries, review the Owner's occupancy priorities, and take the action necessary to meet the required completion date.

- .6 In the weekly report submitted pursuant to 3.1.8, the Design-Builder shall show the actual Work completed to date in comparison with the original amount of Work scheduled. If the Work is behind schedule, the Design-Builder must indicate in writing what measures are being taken to bring the Work back on schedule and ensure that the Contract completion date is not exceeded. If the Work is greater than five (5) days behind schedule, then the Design-Builder shall prepare and submit to the Owner a recovery schedule for Owner's review and approval and provide the proposed recovery schedule to Owner in the next weekly progress report.

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

§ 3.1.9.3 If the Contract Time is extended in accordance with the Contract, any "float" or "slack" time for the whole or any part of the Work shall not be for the exclusive use or benefit of either the Owner or the Design-Builder but shall be reserved and apportioned by the Owner and Design-Builder in accordance with the needs of the Project. The Design-Builder shall not be entitled to make and waives any claim based upon an alleged inability to complete the Project early. In the event that Design-Builder experiences a delay caused by Owner and begins pacing the Work to mitigate its damages, Design-Builder shall give written notice of pacing to the Owner within seven calendar days of such pacing of the Work.

§ 3.1.9.4 If the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Design-Builder's schedule or recovery schedule, the Owner, without waiving any other right it may have, shall have the right to order the Design-Builder to take corrective measures as necessary to restore the progress of the Work to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) furnishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Design-Builder pursuant to this Section shall be paid by the Design-Builder.

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

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Within 30 days of the execution of this Agreement, or within a longer time period as Owner in its sole discretion may allow, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in its compensation, the GMP or an extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

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

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

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

§ 3.1.12 **Warranty.** The Design-Builder makes the following representations and warranties in order to induce the Owner to execute this Agreement. The Design-Builder recognizes that, in making these representations and warranties, Owner is entitled to rely upon the Design-Builder's representations and warranties and is relying upon them in entering into this Contract. In addition to other representations and warranties, the Design-Builder, by executing this Agreement, makes the following express representations and warranties to the Owner:

- .1 The Design-Builder is fully qualified to act as the Design-Builder and perform the Work for the Project and has, and shall maintain, any and all licenses, permits or other authorizations necessary to act as the Design-Builder.
- .2 The Design-Builder has become familiar with the Project site, the local conditions under which the Project is to be constructed and operated and its surrounding territory and is informed regarding all of the conditions affecting the Work to be done and labor and materials to be furnished for the completion of this Contract, including the existence of poles, wires, pipes, and other facilities and structures of municipal and other public service corporations on, over, or under the site and that its information was secured by personal and other investigation and research.
- .3 The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.
- .4 The Design-Builder has received, reviewed and carefully examined all of the documents which make up this Contract and has found them in all respects to be complete, accurate, adequate, consistent, coordinated and sufficient for design and construction of the Work for the Project. Design-Builder is responsible for performing Work shown on the Design-Build Documents, including reasonably implied or inferred Work from the Design-Build Documents, which a reasonably prudent Design-Build Design-Builder of Design-Builder's reputation, expertise and experience would conclude were inferable from the Design-Build Documents. The Design-Builder is obligated to conduct a careful and thorough pre-Bid. review of all of the Design-Build Documents and to inform the Owner prior to execution of the Design-Build Amendment of any errors, omissions, or conflicts or other issues in the Design-Build Documents which will either increase the Contract Sum or extend the Contract Time. Design-Builder's performance with respect to its review of the Design-Build Documents shall be that of an experienced Design-Build Design-Builder performing work of a similar nature in the locale of the Project. Design- Builder will not be compensated for the performance of any additional or change order work or for any delays or cumulative impact, lost efficiency, or lost productivity arising from any errors, omissions or conflicts or other issues in Design-Build Documents which Design-Builder or a reasonably prudent design-builder of Design-Builder's reputation, expertise and experience should have discovered as a result of such review.

§ 3.1.13 Royalties, Patents and Copyrights

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

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall defend, indemnify, and hold harmless Indemnitees from and against all Charges that arise in any manner from, in connection with, or out of, performance of the Work as a result of acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, a Subcontractor or anyone directly or indirectly employed by them or any one of them. In performing its indemnification duties, the Design-Builder shall at its sole expense defend Indemnitees with legal counsel reasonably acceptable to the Owner. "Charges" means third-party claims, judgments, costs, damages, losses, demands, liabilities, obligations, fines, penalties, royalties, settlements, and expenses, including interest and reasonable attorney fees associated with a Charge. "Indemnitees" means City of Gladstone, its officers, officials, employees, agents and volunteers but does not include the Design-Builder, Architect, a Consultant, a Contractor, a Subcontractor or anyone directly or indirectly employed by them. Nothing in Section 3.1.14 will affect any warranties in favor of the Owner. This Section 3.1.14.1 is in addition to and will be construed separately from any other indemnification provisions that may be in the Contract. Section 3.1.14 shall remain in force despite termination of this Contract (whether by expiration of the term or otherwise) and termination of the services of the Design-Builder under this Contract.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

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

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

If the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon an assignment under this Section 3.1.15, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

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

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in AIA A141 – 2014 Exhibit B – Insurance and Bonds.

§ 3.1.16.1 Design-Builder 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 GMP and be adjusted as the GMP may be adjusted pursuant to the Design-Build Documents.

§ 3.1.16.2 Any Change Order, Construction Change Directive, order for a minor change in the Work 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.

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

§ 4.1 General

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

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

§ 4.2 Evaluation of the Owner's Criteria

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

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

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

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

(List additional information, if any, to be included in the Design-Builder's written report.)

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

§ 4.3 Preliminary Design

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

- .1 Confirmation of the allocations of program functions;
- .2 Site plan including but not limited to utility connections, landscaping and fencing;
- .3 Building plans, sections and elevations including acoustical separation between spaces and door and window schedules;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems;
- .6 Outline specifications or sufficient drawing notes describing construction materials;
- .7 An interior space plan showing all furniture and equipment to accommodate program functions;
- .8 A list of furniture, equipment, communication, security and data systems and their associated costs, and.
- .9 Demolition plan including materials recycling, soil removal volume and dump location/fee assumptions.

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

§ 4.3.2 Without limiting any of Design-Builder's obligations identified in the Contract, during the preparation of the Preliminary Design, the Design-Builder's Proposal and as applicable the Construction Documents, Design-Builder shall perform the following services for Owner:

1. Review design documents for constructability and propose revisions to reduce cost and time.
2. During the design process, participate in sustainability reviews of costs and life-cycle analyses for sustainable practices, as requested by Owner.
3. Prepare and submit to Owner, at periodic intervals acceptable to Owner, construction cost estimates during the Preliminary Design phase, Design-Builder's Proposal phase and, as applicable, the Construction Documents phase. Design-Builder shall use the Construction Specifications Institute ("CSI") or other estimating format acceptable to Owner. At the Preliminary Design phases and Design-Builder Proposal phases, the Design-Builder shall identify value engineering and cost reduction options, including projected cost savings offset with any additional design costs, if necessary to bring its construction cost estimate within Owner's construction budget. If the Design-Builder's cost estimate at 90% Construction Document phase is greater than the approved construction budget, the Design-Builder shall work with the Owner to identify a list of add-back alternates and cost reduction strategies to achieve scope and budget alignment.
4. Work with Owner to develop a Contracting Plan for accomplishment of all construction. Recommend divisions of the work to facilitate bidding and award of trade contracts. Recommend which work, if any, should be procured through value-based competitive selection in lieu of low bid. Identify Work that the Design-Builder proposes to self-perform and how competitive pricing will be accomplished. Identify the plan to manage any subcontractor who is not performing in accordance with the Project's requirements for budget control, on-time schedule performance, safety and/or quality control.
5. Develop a Hazardous Materials Plan that addresses the handling of unanticipated hazardous materials that may be encountered during construction. Work with the Owner to develop a strategy for site remediation, if indicated by the Phase 1 Environmental Site Assessments and/or other environmental reports.
6. Develop a job-specific Safety Plan that addresses the Project location, resident and public safety and worker safety.
7. Provide a Quality Control Plan for use during construction.

8. Prepare bid packages, solicit and receive bids.
9. After receipt of subcontractor bids, prepare an estimate for review by Owner. If the initial construction cost estimate exceeds Owner's approved construction cost estimate, the Design-Builder shall notify Owner and propose how to complete the Work within budget.

§ 4.3.3 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. If the Preliminary Design is not acceptable to the Owner, the Owner shall provide in writing to the Design-Builder comments requesting modification(s) to the Preliminary Design. The Design-Builder shall re-submit the Preliminary Design to reasonably satisfy the concerns and comments of the Owner. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's proposal shall illustrate and describe the development of the approved Preliminary Design and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design-Builder's Proposal shall include preliminary specifications that identify major materials and systems and establish in general their quality levels. The Design-Builder's Proposal shall also include the following:

- .1 [INTENTIONALLY OMITTED].
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed, all subsurface site conditions for the Work and all applicable federal, state and local statutes, laws, regulations, ordinances and orders. Design-Builder will be responsible for all such site conditions and subsurface conditions and all statutes, laws, regulations, ordinances and orders it becomes aware of or should have become aware of.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement. It is the intent of the Owner to accept a reasonable proposal which purports to deliver the Project within the Owner's established budget and delivery schedule for the Project. Notwithstanding the foregoing, the Owner may terminate this agreement after receiving the Design-Builder's Proposal for any reason pursuant to Section 13.1.5.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 If the parties execute the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall be consistent with the Design-Builder's Proposal and set forth in detail the requirements for construction of the Project and shall include all items necessary for the proper execution and completion of the Work and reasonably inferable from the Design-Build Documents, including but not limited to the Owner's Criteria, as being necessary to produce the indicated results. The Construction Documents shall include drawings and specifications that establish the quality levels of materials and systems required and include documents customarily required for regulatory agency approvals. Deviations, if any, from the Design-Build Documents shall be disclosed in writing and subject to the written approval of Owner. Unless the Owner and Design-Builder execute a Modification specifically identifying the particular deviation and Owner's agreement with

such deviation, the Design-Builder shall correct the deviation in accordance with Article 11 at its sole cost and expense.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's approval. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall notify the Design-Builder of such deviations and objections in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The Design-Builder shall address the Owner's objections to the Design Construction Documents before commencement of any Work, except as permitted in Section 5.2.2. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.1.3 Without limiting the Design-Builder's duties under Article 5, and except as permitted in Section 5.2.2, Design-Builder may not apply for or receive approval of any permit to begin construction of the Work unless it has: (1) presented Owner with ninety percent (90%) complete Construction Documents; and (2) received Owner's written approval of same.

§ 5.1.4 Design-Builder's duties under Article 5 also include acting on Owner's behalf with respect to procurement, receipt and installation of FF&E and assisting Owner with moving from the current location of city hall and the police department and moving into the building resulting from the Work.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention consistent with its standard of care obligations. The Design-Builder 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, unless the Design-Build Documents give other specific instructions concerning these matters.

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

§ 5.3 Labor and Materials

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

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

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

§ 5.4 Taxes The Design-Builder shall pay all applicable sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. Without limitation, this includes any applicable "corporate activity tax" obligation imposed pursuant to ORS Chapter 317A, as amended. All such taxes shall be taken

consideration as part of the cost of the performance of Design-Builder's obligations under the terms of this Agreement, including the Design-Build Amendment.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project. All such costs and fees shall be included in the Design-Build Amendment.

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

§ 5.5.3 Concealed or Unknown Conditions. If the Design-Builder encounters conditions that it could not have discovered from a diligent surface and subsurface site investigation at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or observable from the required inspections or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide written notice to the Owner before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14. As a condition precedent to the Owner having any liability to the Design-Builder due to concealed and unknown conditions, the Design-Builder must give the Owner written notice of, and an opportunity to observe, such condition prior to disturbing it. The failure by the Design-Builder to give the written notice in accordance with this section and make a claim as provided in Article 14 shall constitute a waiver by the Design-Builder of any rights arising out of or relating to a concealed and unknown condition.

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

§ 5.6 Allowances

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

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

- .1** allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual

costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review.

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

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

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

§ 5.9.1 The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, applicable permits, and shall not unreasonably encumber the site with materials or equipment.

§ 5.9.2 The Design-Builder shall not store any materials or equipment on the Site except those which are to be used directly in the Work. After equipment is no longer required for the Work, the Design-Builder shall promptly remove it from the Site. The Design-Builder shall provide suitable protection of materials and equipment stored at the Site from adversity of the kinds that may be reasonably expected including, without limitation, those from weather, theft, and other damage.

§ 5.9.3 The Design-Builder shall not permit any workers to use any existing facilities at the Site, including lavatories, toilets, entrances, and parking areas, other than those designated by the Owner. Without limitation of any other provision of the Design-Build Documents, if the Owner is using or occupying areas adjacent to the Work, the Design-Builder shall comply with all regulations promulgated by the Owner in connection with the use and occupancy thereof, as amended from time to time. The Design-Builder shall immediately give notice to the Owner if during the performance of the Work, the Design-Builder finds compliance with any portion of such regulations to be impracticable, setting forth the problems of such compliance. The Owner shall use reasonable efforts to

accommodate the Design-Builder's concerns, if in the Owner's discretion it is reasonably practical to do so. The Design-Builder shall also comply with all insurance requirements applicable to use and occupancy of the Site.

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, according to terms and conditions the Owner deems appropriate. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Design-Builder shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with the Owner's personnel and separate contractors. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

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

§ 5.14 Mutual Responsibility

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

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to

the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's failure to coordinate properly with the Owner's own forces or separate contractors, delays, improperly timed activities or defective construction.

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

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

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up or cause the premises and surrounding area to be cleaned up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents. Except as permitted in Section 6.3, a change in the GMP or the Contract Time shall be accomplished only by Change Order. Accordingly, none of the following shall be grounds for any increase in the Contract Sum or in the Contract Time: (a) course of conduct or dealings between the parties; (b) express or implied acceptance of alterations or additions to the Work; or (c) any unjust enrichment accruing to the Owner by any alteration or addition to the Work.

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

§ 6.1.3 The Owner, unilaterally and at any time, may have changes made in the Work covered by the Contract, including but not limited to changes: (1) in the specifications or drawings; (2) in the sequence, method or manner of performance of the Work; (3) in the Owner-furnished facilities, equipment, materials, services or site; or (4) directing acceleration in the performance of the Work. Furthermore, it is understood and agreed that refinement and detailing may be accomplished from time to time with respect to the drawings and specifications. The Design-Builder's entitlement to an increase in the Contract Sum or an extension of time, or both, if any, for such changes shall be determined in accordance with this Contract.

§ 6.1.4 The Owner may, from time to time, order or authorize additions, deletions, and other changes in the Work by Change Order or Construction Change Directive, without invalidating the Contract, and without notice to Surety. Absence of such notice shall not relieve such surety(s) of any of its obligations to the Owner. The Design-Builder shall notify the Surety of any such changes.

§ 6.1.5 Except in an emergency endangering life or property, no change shall be made by the Design-Builder except upon receipt of approved change order or written Change Directive from the Owner. No claim for increases in the Contract Sum shall be honored or valid unless this procedure is followed. A Change Directive, transmitted by fax or hand-delivered, may be used where the change involved impacts the critical path of the Work. A formal Change Order shall be issued within the time stated on the Change Directive.

§ 6.1.6 All Change Orders shall be supported by a breakdown showing method of arriving at net cost as defined

below. The Owner will review the Design-Builder's analysis and cost data and advise the Design-Builder of its findings. The Design-Builder will provide such supporting data in suitable format. Within fourteen (14) days after receipt of the Design-Builder's proposal, the Owner shall prepare the Change Order and forward to the Design-Builder for its signature or otherwise respond, in writing, to the Design-Builder's proposal. Within seven (7) days after receipt of the Change Order, the Design-Builder shall return the Change Order to the Owner for the Owner's signature. The Owner shall endeavor to execute the Change Order within seven (7) days of receipt, or in accordance with the Owner's standard procedures. Upon approval by the Owner, a copy of the Change Order will be sent to the Design-Builder. In case of emergency or extenuating circumstances, approval of Change Orders may be obtained verbally by telephone or field orders approved by all parties, then shall be substantiated in writing as outlined under normal procedure.

§ 6.1.7 The Owner reserves the right to reject the Design-Builder's proposal for a change in the Work and to elect to perform said Work using a separate subcontractor. Under such circumstances, the Design-Builder shall coordinate the performance of the Work.

§ 6.1.8 If the Owner requests a Change Order and the Design-Builder's terms are unacceptable, the Owner may require the Design-Builder to perform such Work on a time and material basis. If the Owner elects to have the change in the Work performed on a time and material basis, the Design-Builder shall submit to the Owner daily time and material tickets, to include the identification number assigned to the change in the Work, the location and description of the change in the Work, the classification of labor employed (and names and social security numbers), the materials used, the equipment rented (not tools) and such other evidence of cost as the Owner may require. The Owner may require authentication of all time and material tickets and invoices by persons designated by the Owner for such purpose. The failure of the Design-Builder to secure any required authentication shall constitute a waiver by the Design-Builder of any claim for the cost of that portion of the change in the Work covered by a non-authenticated ticket or invoice.

§ 6.1.9 In the event that the parties are unable to agree as to the reasonable cost and time to perform the change in or addition to the Work based upon the Design-Builder's proposal and the Owner does not elect to have the change in the Work performed on a time and material basis, Owner has the right to direct in writing that the Design-Builder perform the change in the Work. Failure of the parties to reach agreement regarding the cost and time of the performing the change in the Work, regardless of any pending protest or claim, shall not relieve the Design-Builder from performing the change in the Work promptly and expeditiously.

§ 6.2 Change Orders

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

- .1** The change in the Work;
- .2** The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3** The extent of the adjustment, if any, in the Contract Time.

No party may reserve a right to additional compensation or time for the change in the Work incorporated into a Change Order without the written consent of the Owner. Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. If a Change Order increases the Contract Sum, the Design-Builder shall include the Work covered by such Change Orders in Applications for Payment.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build 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 6.3.7.

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

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

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

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

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

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. 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.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the

Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 [INTENTIONALLY OMITTED].

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization. The Owner in its sole discretion may designate a successor to the representative identified in Section 1.2.1.

§ 7.1.2 The Owner shall render decisions in a timely manner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

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

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

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

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. Unless otherwise specified in the Design-Build Documents, the Design-Builder shall be responsible for securing all building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents, the Design-Builder shall not be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

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

§ 7.2.7 [INTENTIONALLY OMITTED].

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

§ 7.2.9 The Design-Builder shall furnish the services of geotechnical engineers or other consultants at the Design-Builder's expense. The Design-Builder shall coordinate all geotechnical services with the Owner who shall have the right to approve the dates and locations of all geotechnical tests.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. Owner will review Submittals solely for its own benefit and is not responsible for any errors or omissions in those documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's review of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers and recognizes as not conforming with the Design-Build Documents.

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

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

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

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

§ 7.8 Owner's Right to Stop Work

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

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a 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 or Change Directive shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of

correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

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

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

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending resolution dispute resolution process or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. Increases to Contract Time will be permitted for a delay only to the extent such delay adversely affects the critical path of the Project and is not caused, or could not have been anticipated, by the Design-Builder, could not be limited or avoided by the Design-Builder's timely notice to the Owner of the delay and is of a duration not less than one (1) day.

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

§ 8.2.3 **Liquidated damages for delays.** Owner and Design-Builder agree that if Substantial Completion is not achieved by the Substantial Completion date, the amount of the Owner's actual damages for delay will be difficult, impractical or impossible to determine. Accordingly, the Owner and Design-Builder agree that in the event Design-Builder fails to achieve Substantial Completion by the Substantial Completion date, Design-Builder shall pay to the Owner as liquidated damages to compensate the Owner for damages related to delay five hundred dollars per day (\$500/day) for every day Design-Builder fails to meet the Substantial Completion date. The parties agree that the liquidated damages represent a reasonable estimate of Owner's damages for delay and do not constitute a penalty against Design-Builder. Owner may withhold liquidated damages from any payments otherwise due Design-Builder. The Contract does not liquidate any other damages except for those resulting from Design-Builder's delay in achieving Substantial Completion.

§ 8.2.4 Despite anything to the contrary in the Contract, the Design-Builder's sole remedy for any (1) delay in the commencement, prosecution or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity or acceleration; or (4) other similar claims (collectively "Delays"), whether or not such Delays are foreseeable, shall be an extension of Contract Time if permitted under Section 8.2.1 and, to the extent permitted under this Section 8.2.3, an adjustment in the GMP. In no event will Design-Builder be entitled to any other compensation or recovery of any damages in connection with Delays, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration.

- .1 The Design-Builder shall be permitted an adjustment in the Contract Sum if any Delays, either individually or in the aggregate, cause the Contract Time to be increased by more than thirty (30) days (the "Elimination Period"). Any adjustment in the GMP under this section will be limited to the increase, if any, of direct costs incurred by the Design-Builder in performing the Work as a result of that portion of any Delay or Delays that cause the Contract Time to be increased in excess of the Elimination Period. Direct costs for purposes of this section are those items set forth in Exhibit A but in all cases do not include profit or home office overhead.

- .2 The Elimination Period shall not apply to a Delay caused solely by the Owner. Any extension in the Contract Time in connection with an Owner-caused Delay shall not be considered in determining whether or not the Design-Builder has incurred Delays that, in the aggregate, exceed the Elimination Period.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

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

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

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

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.1.3 Each Application for Payment must be accompanied by (1) a summary showing payments that will be made to the Architect, Consultant, subconsultant, Contractor, Subcontractor, material supplier, or other persons or entities covered by such application and conditional waivers and releases of claims and stop notices, (2) certified payroll in accordance with Oregon law of Design-Builder, Architect, Consultant, subconsultant, Contractor, Subcontractor, material supplier, or other persons or entities covered by such application, and (3) unconditional waivers and releases of claims and stop notices from the Architect, Consultant, subconsultant, Contractor, subcontractor, material supplier, or other persons or entities listed in the preceding application for payment covering sums disbursed pursuant to that preceding application for payment. Design-Builder warrants that, upon submittal of an application for payment, all Work for which certificates for payment have been previously issued and payment has been received from Owner, shall be free and clear of all claims, stop notices, security interests, and encumbrances in favor of Architect, Consultant, subconsultant, Contractor, subcontractor, material supplier, or other persons or entities entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.

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

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

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered. The Design-Builder and such Architect, Consultant, subconsultant, Contractor, or subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. Any such joint payment shall constitute payment to the Design-Builder, in the full amount of the joint payment, as if such joint payment were made to the Design-Builder alone. In no event shall any joint payment be construed to create any contract between the Owner and any Architect, Consultant, subconsultant, Contractor, or subcontractor of any tier, obligations for the Owner to such Architects, Consultant, subconsultant, Contractors or subcontractors, or any rights in such Architects, Consultant, subconsultant, Contractors or subcontractors against the Owner.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

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

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

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

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

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

§ 9.7 Failure of Payment

If the Owner is entitled to reimbursement or payment from the Design-Builder under or pursuant to the Design-Build Documents, such payment shall be made promptly upon demand by Owner. Notwithstanding anything contained in the Design-Build Documents to the contrary, if the Design-Builder fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Design-Builder or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Design-Builder from the Owner, or issue a written notice to the Design-Builder reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents, including testing, approval by any applicable regulatory authority, and receipt of all the certificates of occupancy and other permits, approvals, licenses, and other documents from all governmental authorities that are necessary for the beneficial occupancy and use of the portion to be occupied or utilized such that the Work and the Project are functionally and legally usable by Owner for the purpose for which they are intended. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment ("Punch List"). Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

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

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

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

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.8.7 The acceptance of Substantial Completion payment shall constitute a waiver of all claims by the Design-Builder and the Architect, Consultant, subconsultant, Contractor, and subcontractors, except those previously made in writing and identified by the Design-Builder as unsettled at the time the Design-Builder submits the application for payment for substantial completion, and except for the retained sums due at final acceptance.

§ 9.8.8 The Design-Builder shall indemnify and hold the Owner harmless against any claims by the Architect, Consultant, subconsultant, Contractor, and subcontractors that are waived because they were not made in writing and identified by the Design-Builder as unsettled when the Design-Builder submitted the application for payment for substantial completion.

§ 9.8.9 The Owner shall have the option to correct or complete any and all Punch List items not completed by the Design-Builder to the satisfaction of the Owner within ninety (90) days from the actual date of Substantial Completion for the Project by utilizing its own forces or by hiring others. The cost of such correction of remaining Punch List items by the Owner or others shall be deducted from the final payment to the Design-Builder.

§ 9.8.10 If the Design-Builder does not complete certain Punch List items within the required time period, all warranties and guarantees for such incomplete Punch List items shall become effective upon Design-Builder submitting to the Owner certification of the date such items were completed and approval by the Owner's representative. The issuance of the certificate of Substantial Completion does not indicate final acceptance of the individual Project by the Owner, and the Design-Builder is not relieved of any responsibility for the individual Project except as specifically stated in the certificate of Substantial Completion.

§ 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 Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, guarantees, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

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

§ 9.10.4 [INTENTIONALLY OMITTED].

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections. The Design-Builder shall also be responsible, at the Design-Builder's sole cost and expense, for all measures necessary to protect all property outside the Site against all hazards arising out of the Work. Any damage to property or improvements outside the Site attributable to Design-Builder shall be promptly repaired by the Design-Builder.

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

§ 10.2.8 When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.2.9 The Design-Builder shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or message to the Owner.

§ 10.2.10 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

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

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

§ 10.3.3 To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, and only to the extent the hazardous substances or materials are not addressed in the Design-Build Documents, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the area affected by such hazardous substances or materials, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 [INTENTIONALLY OMITTED].

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense. If prior to the date of Substantial Completion, the Design-Builder, the Architect, Consultants, Contractors, subconsultants, Subcontractors or others directly or indirectly under their employment or authority use or damage any portion of the Work, including mechanical, electrical, plumbing, or other building systems, machinery, equipment, or other mechanical device, the Design-Builder, at no expense to the Owner, shall cause such portion, system, device, or item to be restored (whether by replacement, repair, or otherwise) to the condition the item was required to be in, if such use or damage had not occurred. Nothing herein shall reduce the duty of the Design-Builder with respect to such item in order to obtain a final Certificate for Payment.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. Such a written acceptance is not effective as an acceptance unless it specifically describes the condition that is not in accordance with the Design-Build Documents and contains substantially the following statement: "The Owner accepts [such condition] despite its not being in accordance with the Design-Build Documents." During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 [INTENTIONALLY OMITTED].

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

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

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

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 All drawings, specifications, models and other documents or expressions arising out of or related to the Work, including those in electronic form, prepared by the Design-Builder, its Architects, its Consultants or any other person or entity performing Work on its behalf and those prepared by and furnished by the Design-Builder, are Instruments of Service. All Instruments of Service are and shall be deemed the property of the Owner when provided to the Owner and the Owner will and shall be deemed to hold the copyright to the Instruments. The Design-Builder will include in any contracts and subcontracts arising out of or related to the Work that produce or yield an Instrument of Service a provision or provisions that the copyrights for all such Instruments of Service are the exclusive property of the Owner and the Owner shall hold the copyrights to all of them regardless of form. The Owner's obligation to pay the Design-Builder is expressly conditioned upon the Design-Builder including such provisions in such contracts and subcontracts. The Owner may use the Instruments of Service in any manner it deems appropriate. If this Agreement is terminated for any reason, the Owner shall be at most liable to the Design-Builder and its Architects and Consultants only for the value of the actual time spent by the Design-Builder, its Architects and its Consultants in preparing the Instruments of Service and for which the Owner has not already paid Design-Builder in accordance with this Agreement. The Owner, in return, hereby grants the Design-Builder, Architect, Consultants and Contractors a revocable, nonexclusive license to reproduce the documents for purposes relating directly to the Design-Builder's performance of its obligations under this Agreement for the Design-Builder's archival records, and for the Design-Builder's reproduction of drawings and photographs in the Design-Builder's marketing materials, provided that the Project-related contents of those materials are approved by Owner. This nonexclusive license shall terminate automatically upon the occurrence of either a breach of this Agreement by the Design-Builder or the accused commission by the Design-Builder of a tort or a crime affecting the Owner or the Project or upon termination of this Agreement. This nonexclusive license is granted to the Design-Builder alone and shall not be assigned by the Design-Builder to any other person or entity, except that the non-exclusive license granted in this Agreement to the Design-Builder for purposes of the Design-Builder's performance hereunder may be sub-licensed to the Architect, Consultants, and Contractors (with the same limitations). Subject to the foregoing, this nonexclusive license shall terminate automatically upon a Design-Builder's assignment of this nonexclusive license to another or its attempt to do so.

§ 12.2 [INTENTIONALLY OMITTED].

§ 12.3 [INTENTIONALLY OMITTED].

§ 12.3.1 [INTENTIONALLY OMITTED].

§ 12.3.2 [INTENTIONALLY OMITTED].

§ 12.3.3 Except for the license granted in this Article 12, no other license or right shall be deemed granted or implied under this Agreement. No other Project-related data, expression, or documents may be reproduced by the Design-Builder, Architect, Consultants or Contractors for any other purposes without the express written permission of the Owner.

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner fails to make undisputed payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination. If the Owner suspends the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the Owner's suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all undisputed sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work.

§ 13.1.2 [INTENTIONALLY OMITTED].

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons that are solely due to a breach of the Design-Build Documents by the Owner, the Design-Builder may terminate this Agreement by giving not less than ten (10) days' written notice.

§ 13.1.4 The Owner may terminate this Agreement upon not less than seven days' written notice should the Design-Builder fail substantially to perform in accordance with the terms of this Agreement through no fault of the Owner.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated only the actual costs incurred by the Design-Builder and approved by the Owner for Work performed prior to termination, together with Reimbursable Expenses already incurred and approved by the Owner for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder be entitled to any additional compensation under Section 13.1.6, including but not limited to lost profits or consequential damages of any kind.

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

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the good-faith basis for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or

interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ **13.2.1.3** The notices referred to in this Article 13 shall state the reasons and grounds for the termination. The reasons and grounds for termination by the Design-Builder set forth in Article 13 are exclusive. In all instances, those reasons and grounds shall not constitute reasons or grounds for termination by the Design-Builder if a substantial cure occurs within ten (10) days after the Owner receives notice of proposed termination.

§ **13.2.1.4** If an extension of Contract Time has been granted because of a circumstance set forth in Section 13.2.1.1, the period of that extension shall be not be counted towards the 60-day period created in the first clause of Section 13.2.1.1.

§ **13.2.2 Termination by the Owner For Cause**

§ **13.2.2.1** The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .5 becomes insolvent or is declared bankrupt or commits any act of bankruptcy or insolvency;
- .6 fails to make satisfactory progress as defined in Section 13.2.2 on the Project; or
- .7 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ **13.2.2.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

The Owner's failure to exercise its rights under this Subparagraph 13.2.2.2 shall not be considered a failure to mitigate damages, nor shall it be the grounds for any claim against the Owner. In the notice, the Owner may specify when the termination is effective or it may state that the termination shall be effective upon additional notice as specified in the notice.

§ **13.2.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ **13.2.2.4** If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ **13.2.3 Suspension by the Owner for Convenience**

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

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

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

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Termination, whether for Owner's convenience or otherwise, shall not release either the Design-Builder or its surety from liability or responsibility for any default or other transaction or occurrence prior to the date of termination and demobilization from the Project.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, but in no event shall Design-Builder be entitled to recover from Owner, on its own account or on behalf of the Architect, Consultants, Contractors or subcontractors, lost profits or other consequential damages, whether its own or those of the Architect, Consultants, Contractors or subcontractors on account of a termination for convenience or an erroneous termination for cause.

§ 13.2.4.4 Designer-Builder hereby acknowledges Owner's right to terminate this Agreement for convenience pursuant to Section 13.2.4. Accordingly, to the maximum extent permitted under applicable law, Designer-Builder waives any and all claims against Owner for any termination pursuant to Section 13.2.4 including, without limitation: bad faith termination; breach of contract; breach of express or implied covenants; or unenforceability of Section 13.2.4. Designer-Builder agrees, acknowledges and understands that, in the event of such termination by Owner under Section 13.2.4, Designer-Builder shall not be paid on account of loss of anticipated overhead, profits, or revenue, or any other economic loss arising out of or resulting from such termination.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

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

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the dispute resolution process described in this Article 14, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Failure of the Design-Builder to provide the written notice of a Claim in the time permitted in this section results in a waiver of the Claim. The notice must set forth in detail all known facts supporting the claim.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder (assuming the claim has not been waived pursuant to Section 9.10.5) must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 Continuing Contract Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 Claims for Additional Cost. If Design-Builder seeks to make a claim for an increase in its compensation, or an adjustment of the Contract Sum, or both, then as a condition precedent to any liability of Owner, Design-Builder shall strictly comply with the requirements of paragraph 14.1.3 and 14.2 and such claim must be made by Design-Builder before proceeding to execute any additional or changed work. Failure to satisfy these conditions precedent will constitute a waiver by Design-Builder of any claim for additional compensation. Any liability of Owner for additional costs to Design-Builder will be strictly limited to actual and reasonable direct costs incurred by Design-Builder and will in no event include indirect costs or consequential damages of Design-Builder or others.. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If Design-Builder makes any claim for delay, Design-Builder shall specifically set forth how and why the delay in question affected the critical path, including submission of a time impact analysis based upon the most recently submitted schedule.

- .1** No Claim for an increase in the Contract Time shall be considered unless the Design-Builder includes with its Claim a time impact analysis of the critical path. If approved by Owner, the time extension requested by the Design-Builder shall be limited to the days of delay shown on the time impact analysis.
- .2** The Design-Builder is not entitled to any extension of the Contract Time unless the delay affected the end date or milestone as shown by a time impact analysis based upon the approved CPM schedule submitted with the Application for Payment immediately preceding the date of the delaying event or occurrence.
- .3** Each time impact analysis shall provide information justifying the request and stating the extent of the adjustment requested for each specific change or alleged delay. The time impact analysis shall be provided to the Owner at no cost. Each time impact analysis shall be in a form and content reasonably acceptable to the Owner, and shall include, but not be limited to, the general information set forth in this section appropriate to the type of request (i.e., change or alleged delay), plus the following:
 - .1** A fragmentary CPM network ("FRAGNET") illustrating how the Design-Builder proposes to have the change or alleged delay incorporated into the current project schedule and;
 - .2** Identification of the preceding and succeeding activities in the current project schedule to which the FRAGNET is to be connected, together with engineering estimates and other appropriate data justifying the proposal.
 - .3** The analysis must clearly show that the Design-Builder has used in full all the activity float time available for the work involved in this request.
 - .4** The time impact analysis must be based upon the dates when the alleged delay or delays began, the status of the work at that time, and shall include time computations for all affected activities.

- .4 Notwithstanding anything else contained in this Article or elsewhere, Design-Builder shall not be entitled to an extension of time unless it can show that the abnormal weather or site conditions specifically affected the critical path, and it meets all of the requirements for such a claim under this Agreement. Time extensions will not be granted for rain, wind, snow or other natural phenomena of normal intensity for the locality where Work is performed. For purpose of determining the extent of delay attributable to unusual weather phenomena, a determination shall be made by comparing the weather for the contract period involved with the average of the preceding twenty (20) year climatic range during the same time interval based on the National Oceanic and Atmospheric Administration National Weather Service statistics for the locality where Work is performed and on daily weather logs kept on the job site by the Design-Builder reflecting the effect of the weather on progress of the Work and initialed by the Owner.
- .5 Only delays that Owner determines extend the critical path of the schedule and are not the fault of Design-Builder will result in an extension of Contract Time. Neither the Owner nor the Design-Builder will be considered to own the schedule float time. Nothing in this provision, however, will entitle the Design-Builder to an additional time or compensation for a delay that prevents the Design-Builder from completing the project prior to the original contract period, as adjusted by Change Orders.

§ 14.1.6.2 [INTENTIONALLY OMITTED].

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within twenty (20) days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within twenty (20) days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within twenty (20) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to the dispute resolution process described in Section 14.3.

§ 14.2.6 [INTENTIONALLY OMITTED].

§ 14.2.6.1 [INTENTIONALLY OMITTED].

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

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

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.5 and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc. in accordance with its rules in effect on the date a party requests mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Clackamas County, Oregon, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc in accordance with its rules in effect on the date of a party's demand for arbitration. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or

statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

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

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

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by Oregon law without respect to conflict of laws principles. Any disputes that a party may bring outside of arbitration under Article 14 are subject to the exclusive jurisdiction of the Circuit Court of the State of Oregon, Clackamas County. No action may be commenced in nor removed to federal court. The parties consent to the personal jurisdiction of Clackamas County Circuit Court.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

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

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

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

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

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

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

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

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1 or, as applied to Owner, may be required under applicable law, including the Oregon Public Records Act.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental

entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

§ 15.9 Third Party Beneficiaries. There are no third-parties who benefit, or are intended to benefit, from this Contract.

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds
- .4 [INTENTIONALLY OMITTED].
- .5 [INTENTIONALLY OMITTED].
- .6 Other:

«Exhibits X Design-Builder Proposal for Phase 1 Services »

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

OWNER (Signature)

«Jacque Betz »« Gladstone City Administrator »

(Printed name and title)

DESIGN-BUILDER (Signature)

« »« »

(Printed name and title)