



PUBLIC IMPROVEMENT PROJECT

INVITATION TO BID

Solicitation No: 18-0008

Health and Science Highschool Classroom Re-flooring

**ITB Closing (Due Date & Time):
March 14, 2018 at 2:00 PM Pacific Time**

Issued by:
Beaverton School District 48J
16550 SW Merlo Road
Beaverton, Oregon 97003
February 7, 2018

PUBLIC IMPROVEMENT
INVITATION TO BID
Solicitation No: ITB 18-0008
Summary

The purpose of this Invitation to Bid (Solicitation) is to obtain competitive Bids from qualified General Contractors (Bidder) interested in the provision of Health and Science Highschool Classroom Re-flooring for the Beaverton School District.

This is a public works project subject to ORS 279C.800 to 279C.870.

A NON-MANDATORY pre-Bid conference will be held on February 14, 2018 at 3:00 PM at Health and Science High School - Main Lobby, 18640 NW Walker Road, Beaverton, OR

Bidders must submit their Bid pursuant to the provisions of this Solicitation to Michael Mathews, Purchasing Manager, or designee, at the District Administration Center, Facilities Development Main Portable, 16550 SW Merlo Road, Beaverton Oregon 97003, **PRIOR** to the Closing:

SOLICITATION CLOSING: March 14, 2018 at 2:00 PM Pacific Time
LATE BIDS WILL NOT BE ACCEPTED

Timely submitted Bids will be opened in public and read aloud immediately after Closing at the address above.

Bidders are solely responsible for ensuring that the Beaverton School District receives its Bid.

Bidders must submit a **First-Tier Subcontractor Disclosure Form** *EITHER* with the sealed Bid submission *OR* in a separate envelope no later than:

DISCLOSURE DEADLINE: March 14, 2018 at 4:00 PM Pacific Time

Prospective Bidders must register with ORPIN – <http://orpin.oregon.gov/> to obtain the Solicitation documents and plan sets. Bidders must familiarize themselves with the entire Solicitation.

**All questions and comments about this solicitation must be directed ONLY IN WRITING to
Michael Mathews, Purchasing Manager, by e-mail to: contracts@beaverton.k12.or.us**

THE DISTRICT MAY REJECT ANY BID NOT IN COMPLIANCE WITH ALL PRESCRIBED REQUIREMENTS.

SECTION I - INTRODUCTION
Solicitation No: ITB 18-0008

1. INTRODUCTION:

This Solicitation is issued pursuant to ORS 279A, ORS 279C and the Oregon Attorney General Model Rules Divisions 46 and 49.

2. DEFINITIONS:

The term "District" or "Owner" throughout this document means the Beaverton School District. The term "Bidder" means the person or firm that submits a Bid in response to this Solicitation. The term "Bid" or "Offer" means a written response to provide services in response to this Solicitation. The term "Contractor" or "Supplier" means the Bidder awarded a contract as a result of this Solicitation.

3. SOLICITATION REVIEW:

Bidders must carefully review the Solicitation documents and are responsible for knowing and understanding all terms and conditions. Unless defects, ambiguities, omissions, or errors are brought to the District's attention by protest pursuant to REQUEST FOR CLARIFICATION OR CHANGE; SOLICITATION PROTESTS (Section III, Paragraph 5), protests or appeals based on such defects, ambiguities, omissions or errors received after issuance of the Notice of Intent to Award may not be favorably considered.

4. BACKGROUND:

- a. The Beaverton School District encompasses approximately 57 square miles in northwestern Oregon in Washington County. The District, located in the Portland, Oregon metro area, is the third largest School District in Oregon.
- b. The Beaverton School District has approximately 4,550 employees. The District is responsible for educating approximately 40,570 students in kindergarten through grade 12 at thirty-three (33) Elementary Schools, eight (8) Middle Schools, five (5) High Schools, five (5) Options Schools, and nineteen (19) Options Programs. Over the next five (5) years the District will add one (1) High School, one (1) Middle School, and one (1) Elementary School.

5. SCOPE OF WORK:

Replace the existing flooring in 16 classrooms and 3 offices at Health and Science High School located in the Capital Center building at 18640 NW Walker Road, Beaverton, OR.

6. CONTRACT:

The successful Bidder, selected by the District, will receive an AIA A101 Owner Contractor Agreement with AIA A201 General Conditions. A sample is enclosed herein (see Attachments). The provisions of the sample AIA A101 Owner Contractor Agreement and AIA A201 General Conditions are in addition to the requirements set forth in this Solicitation.

- a. Bidders are advised to thoroughly review and familiarize themselves with the standard contract. Certain contract terms reflect state statute and may not be altered.
- b. The Contractor will be expected to promptly sign a contract including all standard terms and conditions contained in the sample contract.
- c. Personnel substitution – if the contractor must substitute personnel included in the original bid they must obtain written District approval of substituted personnel, prior to substitution.

7. AMENDMENTS:

The District may amend a Contract without additional competition pursuant to OAR 137-049-0910.

8. DISTRICT REPRESENTATIVE:

The District Representative for the project is Alex Santa, Maintenance Project Lead.

SECTION I - INTRODUCTION
Solicitation No: ITB 18-0008

9. SOLICITATION SCHEDULE:

The milestones for the selection process are set forth below. The dates are specific and will be followed to the extent reasonably possible. The purpose of this schedule is for Bidder information only. Required dates for Contract period milestones, submittals and any other activities are provided elsewhere in this Solicitation. The District reserves the right to deviate from this schedule.

<u>Project Milestone</u>	<u>Completion Date</u>
Pre-Bid conference	February 14, (Non – Mandatory) 3:00PM PDT
Deadline for Questions	February 28, 2018, by 2:00PM
Bids due	March 14, 2018 before 2:00PM
Notice of Intent to Award (NOI) on or about March 19, 2018	

10. CONTACT DURING SOLICITATION:

Questions must be submitted in writing via email to contracts@beaverton.k12.or.us as indicated on the Summary page of this Solicitation. No other contact regarding this solicitation during the solicitation process is permitted. Unauthorized contact regarding this solicitation may subject the offender's Bid to rejection.

SECTION I - INTRODUCTION

Solicitation No: ITB 18-0008

1. PURPOSE AND INTRODUCTION:

This solicitation is for retaining a general contractor (GC) to furnish, install, manage, and coordinate all work as shown in the attached documents on behalf of the Beaverton School District. The goal of this project is to replace the existing flooring in 16 classrooms and 3 offices at Health and Science High School located in the Capital Center building at 18640 NW Walker Road, Beaverton, OR. A certified asbestos contractor will complete existing carpet removal, demolition, and abatement. Classrooms will be completed in polished concrete or new carpeting. Please see attached flooring matrix details for project scope for each space. The full project is described in summary terms below and in the attached documents.

2. BACKGROUND:

This project will take place in the Health and Sciences High School located in the Capital Center Building. The building was constructed in 1970 and consists of interior drywall metal stud construction with carpeted floors over concrete subfloor.

3. OPERATIONAL ATTRIBUTES:

The District requires the project to be completed during the summer break between 6/25/2018 and 8/17/2018. Coordination with a District HVAC project may be required. See project milestones below for further information. Coordination with summer maintenance activities will be required.

4. GENERAL REQUIREMENTS:

Please refer to attached plans and specifications. The contractor shall provide a complete project and coordinate work with the District, Contractors and Consultants hired by the District, and all applicable agencies having authority.

- a. Work to include supplying, storing and handling of all required materials.
- b. Work includes protection of neighboring finishes and replacement/repair of any damaged surfaces including but not limited to wall board, paint, insulation, concrete block, etc.
- c. Contractor shall provide all labor, materials, equipment, transportation, and other facilities and services as necessary and/or required to execute all of the Work.
- d. All work areas will be cleaned of any construction debris on a daily basis. General Contractor is responsible for material removal and disposal. Provide dust control and HVAC protection as required to protect the rest of the school from construction debris. Upon completion of the project, the General Contractor is to provide final cleaning of all work installed, replaced or repaired.

5. SPECIFIC REQUIREMENTS:

- a. Work anticipated to begin approximately 06/25/2018, with substantial completion by 08/17/2018.
- b. Existing classrooms to be re-floored measure approximately 25,540 sq. ft. in total floor area.
 - 1) Please refer to attached floor plan and flooring Index for details for each space.
- c. A certified contractor will complete all demolition, carpet and cove base and mastic removal, and necessary asbestos abatement prior to the start of this project. All abatement work will be reviewed, and post air sampling completed by a certified asbestos testing contractor.

SECTION I - INTRODUCTION
Solicitation No: ITB 18-0008

- d. Contractor shall furnish all materials necessary for making electrical connections required for equipment used to complete work as outlined.
 - 1) Includes all cables, plugs, breakers, spider boxes and other parts and equipment required to power floor grinding equipment.

e. **Classrooms to be completed in polished concrete:**

- 1) Polish concrete in classrooms: #1029, #1045, #1207 as specified in blue on attached site map. (total 4,258 sq. ft.)
- 2) Repair any cracks, holes or damage in existing concrete and encapsulate moisture as required.
 - i) Repairs should include filling holes from metal thresholds which have been removed at all doorways from indicated classrooms above to hallways.
- 3) Grind existing concrete surface with 30 grit for best exposure and flat grade.
- 4) Ensure grade is flat and even before proceeding with grinding.
- 5) Grind existing surface with 60 grit to remove scratches.
- 6) Grout and fill all small holes, imperfections, and sand with 120 grit.
- 7) Harden grinded concrete with a liquid Densifier/Hardener applied by broom.
- 8) Remove excess Densifier/Hardener using grit polishing pads.
- 9) Apply a second coat of Densifier/Hardener.
- 10) Remove Densifier/Hardener with 100 grit-polishing pads.
- 11) Apply a third coat of Densifier/Hardener if necessary.
- 12) Remove Densifier/Hardener with 200 grit-polishing pads.
- 13) Polish concrete surface with 400 grit.
- 14) Install 4 ½ " inch black cove base in all classrooms referenced above (approximately 450' linear ft.) as indicated on the attached site map per District standards found at the link below:
<https://www.beaverton.k12.or.us/depts/facilities/development/Pages/Technical%20Standards.aspx>

f. **Classrooms to be completed in carpet:**

- 1) Install new carpet in the following classrooms; 1003, 1004, 1026, 1031, 1043, 1100, 1303/1304, 1305, 1306, 1307, 1308, 1310, Staff Lounge / 1311 / 1312, 1315, 1316, 1318A, 1411W, as specified in purple on attached site map and detailed in the attached flooring index. (total 16,278 sq. ft.).
 - i) Install new carpet (Mannington – Carthage Legacy – Onyx - #15168) with Integra HP backing, installed with Mannington Integra adhesive or equal with lifetime warranty and stain resistance per district standards found at the link below.
<https://www.beaverton.k12.or.us/depts/facilities/development/Pages/Technical%20Standards.aspx>
- 2) Install 4 ½ -inch black cove base in classrooms referenced above per District specifications (1,955 linear ft.)
- 2) Reinstall 34 mechanically fastened, non-ferrous metal transition strips between classroom doorways and polished concrete hallway as specified in attached flooring index. Demolition and abatement contractor will save all existing transition strips which were installed during phase #1 last summer (total approximately 115 linear ft.)
- 3) Install new stair toe cap on steps and tiered seating in classroom 1307.

g. **Add-alternate Classrooms:**

Please provide **separate** pricing on the “*Alternate #1*” line on page #4 for all labor and materials listed below.

- 1) Install new carpet in the following classrooms; 1100, 1101, 1102, 1201 (total 4,617 sq. ft.)
 - i) Install new carpet (Mannington – Carthage Legacy – Onyx - #15168) with Integra HP backing, installed with Mannington Integra adhesive or equal with lifetime warranty and stain resistance per district standards found at the link below.
<https://www.beaverton.k12.or.us/depts/facilities/development/Pages/Technical%20Standards.aspx>

SECTION II – STATEMENT OF WORK
Solicitation No: ITB 18-0008

- 2) Install 4 ½ -inch black cove base in classrooms referenced above per District specifications (546 linear ft.)
 - 3) Reinstall 8 mechanically fastened, non-ferrous metal transition strips between classroom doorways and polished concrete hallway as specified in attached flooring index. Demolition and abatement contractor will save all existing transition strips which were installed during phase #1 last summer.
- h. Restore all disturbed surfaces to original or better condition.
 - i. The Beaverton School District's refuse/recycling containers may not be used for disposal of any materials. It is the contractor's responsibility to remove and dispose of all materials off-site.
 - j. Security fencing or other temporary barriers should be installed for securing work area, staging area, and equipment for the duration of the project.
 - k. All personnel on site must pass a current background check in compliance to BSD standards and be badged at all times.
 - l. This is a prevailing wage (BOLI) project. Certified payroll will be required on a weekly basis.
 - m. If the total project cost exceeds \$50,000 this will be an AIA contract, performance and payment bonds will be required. The awarded contractor will need to comply with all insurance requirements in the terms and conditions of the issued contract.

6. PROJECT SCHEDULE:

The project milestones are set forth below. The dates are approximate but will be followed to the extent reasonably possible. The purpose of this schedule is for information only.

<u>Project Milestone</u>	<u>Completion Date</u>
Contract Award	on or about March 23, 2018
Substantial Completion	August 17, 2018
Final Completion	August 22, 2018

7. BONDS AND INSURANCE:

The Contractor awarded this solicitation must, within Five (5) calendar days after receipt of the Contract for signature:

- a. Provide the required Performance Bond and Payment Bond;
- b. Provide proof that the Statutory Public Works Bond has been filed with the CCB;
- c. Provide Insurance Certificate(s) (see enclosed sample contract for requirements) and any guarantees and/or other required item(s).
- d. Sign the Contract issued by the District Purchasing Department.
- e. If these items are not received as specified then the Contract may not be executed, the Bid bond may be executed, and the Contract may be awarded to the next lowest Bidder.

8. NOTICE TO PROCEED:

- a. The Contractor must not begin work until a Notice to Proceed is issued by the District Representative.
- b. The District reserves the right to cancel the Contract at no penalty if it is in the best interest of the public to do so, if:
 - i. A protest was received that overturns the award of this Contract, or
 - ii. Funding for the project is not available.

9. ADDITIONAL REQUIREMENTS:

- a. The District has implemented the e-Builder Project Management software platform for coordination of efforts, approvals, and expedited communication. All prime project team members will be required to

SECTION II – STATEMENT OF WORK
Solicitation No: ITB 18-0008

- utilize the program. Each Contractor will be provided a seat (license) and a minimum of four (4) hours training.
- b. All persons involved in the project who will have a physical presence on site at any time during the course of the project will need to clear a background check. The basic criteria of clearance and refusal offenses will be provided by the District Project Representative. Contractors and sub-contractors must provide a report of who has cleared the background check by an approved agency.
 - c. If the Work is not Substantially Complete by the applicable required Substantial Completion date, the Contractor shall pay to the Owner liquidated damages in the amount of \$500.00 for each and every day of delay in achieving Substantial Completion.

10. BUSINESS EQUITY:

The Bidder understands that the District maintains a goal of engaging minority, women, emerging, service-disabled veteran and socially or economically disadvantaged businesses (MWSDVE) as service providers in delivering services necessary to implement our bond program. The District aspires to a goal of ten (10) percent MWSDVE content, by contract value, in completing our capital bond work, and the Contractor shall expend reasonable efforts to reach this content in the total value of their contracts with the District.

11. NO WAIVER OF CONDITIONS:

Failure of the Owner to insist on strict performance will not constitute a waiver of any of the provisions of this Contract or waiver of any other default of the Contractor.

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

1. FORMAL SELECTION PROCEDURE:

The District will solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 and 279A.030.

2. ELIGIBILITY TO BID. Pursuant to OAR 137-049-0230:

- a. **Construction Contracts.** The District will not consider a Person's Offer to do Work as a Contractor, as defined in ORS 701.005(2), unless the Person has a current, valid certificate of registration issued by the Construction Contractor's Board at the time the Offer is made.
- b. **Landscape Contracts.** The District will not consider a Person's Offer to do Work as a landscape Contractor as defined in ORS 671.520(2), unless the Person has a current, valid landscape Contractor's license issued pursuant to ORS 671.560 by the State Landscape Contractors Board at the time the Offer is made.
- c. **Non-complying Entities.** The District will deem a Bid received from a Person that fails to comply with this rule nonresponsive and will reject the Bid as stated in ORS 279C.365(1)(k), unless contrary to federal law or subject to different timing requirements set by federal funding agencies.
- d. **Asbestos Abatement Work.** The Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 for work regarding asbestos abatement projects.

3. PRE-BID CONFERENCE. Pursuant to OAR 137-049-0240:

- a. **Purpose.** The District may hold pre-Bid conferences with prospective Bidders prior to Closing, to explain the procurement requirements, obtain information, and/or to conduct site inspections.
- b. **Required Attendance.** The District may require attendance at the pre-Bid conference as a condition for submission of a Bid. A mandatory attendance requirement is considered to have been met if, at any time during the mandatory meeting, a representative of an offering firm is present.
- c. **Notice.** The Summary page of this solicitation indicates the pre-Bid conference scheduled date and time, and whether the pre-Bid conference is mandatory or non-mandatory.
- d. **Statements Not Binding.** Statements made by the District's representatives at the pre-Bid conference do not change the Solicitation unless the District confirms such statements by Written Addendum.

4. ADDENDA. Pursuant to OAR 137-049-0250:

- a. **Issuance; Receipt.** The District may change this Solicitation only by Written Addenda. A Bidder must provide written acknowledgement of receipt of all issued Addenda with their Bid on the Bidder Certification.
- b. **Notice and Distribution.** The District will publish notice of all Addenda on the ORPIN (Oregon Procurement Information Network) Website. Addenda may be downloaded from the ORPIN website. It is the Bidders' responsibility to inquire about Addenda. Bidders should frequently check the ORPIN website until Closing about any Addenda issued, i.e., at least once weekly until the week of Closing and at least once daily the week of the Closing.
- c. **Timelines; Extensions.** The District will issue Addenda within a reasonable time to allow prospective Bidders to consider the Addenda in preparing their Bid. The District may extend the Closing if the District determines prospective Bidders need additional time to review and respond to Addenda. Except to the extent required by public interest, the District will not issue Addenda less than 72 hours before the Closing unless the Addendum also extends the Closing.
- d. **Request for Change or Protest.** Unless a different deadline is set forth in the Addendum, a Bidder may submit a Written request for change or protest to the Addendum, as provided in OAR 137-049-0260, by the close of the District's next business day after issuance of the Addendum, or up to the last day allowed to submit a request for change or protest under OAR 137-049-0260, whichever date is later. The District will consider only a Bidder's request for change or protest to the Addendum; the District will not

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

consider a request for change or protest to matters not added or modified by the Addendum, unless the Bidder submits the request for change or protest before the deadline for the District's receipt of request for change or protests as set forth in OAR 137-049-0260(2) and (3).

5. REQUEST FOR CLARIFICATION OR CHANGE; SOLICITATION PROTESTS. Pursuant to OAR 137-049-0260:

- a. **Clarification.** Prior to the deadline for submitting a written request for change or protest, a Bidder may request that the District clarify any provision of the Solicitation. The District's clarification to a Bidder, whether orally or in Writing, does not change the Solicitation and is not binding on the District unless the District amends the Solicitation by Addendum.
- b. **Request for Change.**
 - i. **Delivery.** A Bidder may request in writing a change to the Specifications or Contract terms and conditions. A Bidder must deliver the Written request for change to the District by NOON ten (10) Days prior to Closing to the address listed on the Summary page. (Bidder is responsible for ensuring receipt by the District.)
 - ii. **Content of Request for Written Change:**
 - A. A Bidder's Written request for change must include a statement of the requested change(s) to the Contract terms and conditions, including any Specifications, together with the reason for the requested change.
 - B. A Bidder must mark its request for change as follows:
 - I. "Contract Provision Request for Change"; and
 - II. Solicitation number.
- c. **Protest.**
 - i. **Delivery.** A Bidder may protest Specifications or Contract terms and conditions. A Bidder must deliver a written protest on those matters to the District Construction Purchasing Manager by NOON ten (10) Days prior to Closing;
 - ii. **Content of Protest.**
 - A. A Bidder's Written protest must include:
 - (i) A detailed statement of the legal and factual grounds for the protest;
 - (ii) A description of the resulting prejudice to the Bidder; and
 - (iii) A statement of the desired changes to the Contract terms and conditions, including any Specifications.
 - B. A Bidder must mark its protest as follows:
 - (i) "Contract Provision Protest"; and
 - (ii) Solicitation number.
- d. **District Response.** The District is not required to consider a Bidder's request for change or protest after the deadline established for submitting such request or protest. The District will provide notice to the applicable Person if it entirely rejects a protest. If the District agrees with the Person's request or protest, in whole or in part, the District will either issue an Addendum reflecting its determination under OAR 137-49-0260 or cancel the Solicitation under OAR 137-49-0270.
- e. **Extension of Closing.** If the District receives a written request for change or protest from a Bidder in accordance with this Rule, the District may extend Closing if the District determines an extension is necessary to consider the request or protest and issue an Addendum, if any, to the Solicitation.

6. CANCELLATION OF SOLICITATION. Pursuant to OAR 137-049-0270:

Cancellation in the Public Interest. The District may cancel a Solicitation for good cause if the District finds that cancellation is in the public interest. The District's reasons for cancellation will be made part of the Solicitation file.

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

- 7. BID SUBMISSIONS.** Pursuant to OAR 137-049-0280:
- a. **Offer and Acceptance.** The submitted Bid is the Bidder's offer to enter into a Contract. The Offer is always a "Firm Offer," i.e., the Bid must be held open by the Bidder for the District's acceptance for sixty (60) days. The District may elect to accept the Bid at any time during the specified period, and the District's Award of the Contract to a Bidder constitutes acceptance of the Offer and binds the Bidder to the Contract.
 - b. **Responsive Bid.** The District may award a Contract only to a Responsible Bidder with a Responsive Bid.
 - c. **Contingent Bids.** A Bidder must not make a Bid contingent upon the District's acceptance of any terms or conditions (including Specifications) other than those contained in this Solicitation.
 - d. **Bidders Acknowledgement.** By signing and submitting a Bid, the Bidder acknowledges they have read and understand the terms and conditions contained in the Solicitation and that they accept and agree to be bound by the terms and conditions of the Solicitation.
 - e. **Instructions.** A Bidder must submit and sign their Bid. A Bidder must initial any corrections or erasures to their Bid.
 - f. **Forms.** Bidders must submit their Bid on the form(s) provided.
 - g. **Documents.** Bidders must provide the District with all documents and descriptive literature requested.
 - h. **Facsimile or Electronic Submissions.** The District will not accept facsimile or electronic Bids.
 - i. **Product Samples and Descriptive Literature.** The District may require product samples or descriptive literature if it is necessary or desirable to evaluate the quality, features or characteristics of the offered items. The District will dispose of product samples or return or make available for return product samples to the Bidder.
 - j. **Identification of Bids.**
 - i. To ensure proper identification and handling, Bids must be submitted in a **sealed envelope** appropriately marked with the Bidder's name and address **and the Solicitation number in large block numbers**.
 - ii. The District is not responsible for Bids submitted in any manner, format or to any delivery point other than as required in the Solicitation.
 - k. **Receipt of Bids.** Bidders are responsible for ensuring that the District receives their Bid at the required delivery point prior to the closing due date and time, regardless of the method used to submit or transmit the Bid. Bids must be mailed, or hand delivered and received prior to the closing due date and time to the person indicated on the Summary page of this Solicitation, or designee, at the Beaverton School District Administration Center, Facilities Development Main Portable, 16550 SW Merlo Road, Beaverton, OR 97003.
 - l. Failure to submit Bids in accordance with the provisions of this Section will be grounds to declare the Bid as nonresponsive.
 - m. **Certification.** Bidders must (on the Bidder Certification enclosed):
 - i. Identify whether the Bidder is or is not a "resident Bidder," as defined in ORS 279A.120(1);
 - ii. Indicate that the Bidder will comply with Prevailing Wage Laws ORS 279C.800 through ORS 279C.870 or 40 U.S.C. 3141 et seq;
 - iii. Provide certification of nondiscrimination in obtaining any required subcontractors in accordance with ORS 279A.110(4); and
 - iv. Provide written acknowledgment of receipt of all Addenda.
- 8. BID SECURITY.** Pursuant to OAR 137-049-0290:
- a. **Security Amount.** The District requires Bid security of 5% of the Bidder's Bid, consisting of the base Bid together with all additive alternates. The Bidder must forfeit Bid security after Award if the Bidder fails to execute the Contract and promptly return it with any required Performance Bond and Payment Bond and with any required proof of insurance (see enclosed sample contract for amount requirements).

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

- b. **Form of Bid Security.** The District may accept only the following forms of Bid security:
 - i. A surety bond from a surety company authorized to do business in the State of Oregon;
 - ii. An irrevocable letter of credit issued by an insured institution as defined in ORS 706.008; or
 - iii. A cashier's check or Bidders certified check.
- c. **Return of Security.** The District will return or release the Bid security of all unsuccessful Bidders after a Contract has been fully executed and all required bonds and insurance have been provided, or after all Bids have been rejected.

9. PRE-CLOSING MODIFICATION OR WITHDRAWAL. Pursuant to OAR 137-049-0320:

- a. **Modifications.** A Bidder may modify their Bid in writing prior to the Closing. A Bidder must prepare and submit any modification to their Bid to the District in accordance with OAR 137-49-0280. Any modification must include the Bidder's statement that the modification amends and supersedes the prior Bid. The Bidder must hand deliver or mail its modification and mark the envelope as follows:
 - i. "Bid Modification"; and
 - ii. Solicitation Number.
- b. **Withdrawals.**
 - i. A Bidder may withdraw its Bid by Written notice submitted on the Bidder's letterhead, signed by an authorized representative of the Bidder, hand delivered or mailed, and received by the District prior to the Closing. The Bidder or authorized representative of the Bidder may also withdraw its Bid in Person prior to the Closing, upon presentation of appropriate identification and satisfactory evidence of authority;
 - ii. The District may release an unopened, withdrawn Bid to the Bidder or its authorized representative, after voiding any date and time stamp mark;
 - iii. The Bidder must mark the Written request to withdraw a Bid as follows:
 - A. Bid Withdrawal; and
 - B. Solicitation Number.
- c. **Documentation.** The District will include all documents relating to the modification or withdrawal of Bids in the Solicitation file.

10. RECEIPT, OPENING, AND RECORDING OF BIDS; CONFIDENTIALITY OF BIDS.

Pursuant to OAR 137-049-0330:

- a. **Receipt.** The Bidder is responsible for ensuring that the District receives its Bid at the required delivery point prior to the Closing, regardless of the method used to submit or transmit the Bid. The District will electronically or mechanically time-stamp or hand-mark each Bid and any modification upon receipt. The Districts' official time clock is located behind the reception desk in the Facilities Development Main Portable of the District Administration Center at 16550 SW Merlo Road. In the event of a discrepancy between any clock and the official time clock, the official time clock stamped time prevails. In the event a Bid is too large to be time stamped a separate paper will be time stamped and attached to the Bid or marked by hand with the date and time it was received.
- b. **Opening and Recording.** The District will publicly open Bids including any modifications made to the Bid pursuant to OAR 137-49-0320. In the case of Invitations to Bid, to the extent practicable, the District will read aloud the name of each Bidder, the Bid price(s), and such other information, as the District considers appropriate.
- c. **Availability.** After Opening, the District will make Bids available for public inspection. The District may withhold from disclosure those portions of a Bid that the Bidder designates as trade secrets or as confidential proprietary data in accordance with applicable law. See ORS 192.501(2); ORS 646.461 to 646.475. To the extent the District determines such designation is not in accordance with applicable law, the District will make those portions available for public inspection. The Bidder must separate

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

information designated as confidential from other non-confidential information at the time of submitting its Bid. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment are not confidential, and will be publicly available regardless of a Bidder's designation to the contrary.

11. LATE BIDS, WITHDRAWALS AND MODIFICATIONS. Pursuant to OAR 137-049-0340:

Any Bid received after the Closing date and time is late. A Bidder's request for withdrawal or modification of a Bid received after Closing is late. The District will not consider late Bids, withdrawals or modifications except as permitted in OAR 137-049-0350 or OAR 137-049-0390.

12. MISTAKES. Pursuant to OAR 137-049-0350:

- a. **Generally.** To protect the integrity of the competitive Procurement process and to assure fair treatment of Bidders, the District will carefully consider whether to permit waiver, correction or withdrawal of Bids for certain mistakes.
- b. **District Treatment of Mistakes.** The District will not allow a Bidder to correct or withdraw an Offer for an error in judgment. If the District discovers certain mistakes in a Bid after Opening, but before Award of the Contract, the District may take the following action:
 - i. The District may waive, or permit a Bidder to correct, a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the Bid, or an insignificant mistake that can be waived or corrected without prejudice to other Bidders. Examples of minor informalities include a Bidder's failure to:
 - A. Return the correct number of signed Bids or the correct number of other documents required by the Solicitation;
 - B. Sign the Bid in the designated block, provided a Signature appears elsewhere in the Bid, evidencing an intent to be bound; and
 - C. Acknowledge receipt of an Addendum to the Solicitation, provided that it is clear on the face of the Bid that the Bidder received the Addendum and intended to be bound by its terms; or the Addendum involved did not affect price, quality or delivery.
 - ii. The District may correct a clerical error if the error is evident on the face of the Bid or other documents submitted with the Bid, and the Bidder confirms the District's correction in Writing. A clerical error is a Bidder's error in transcribing its Bid. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the Bid). In the event of a discrepancy, unit prices will prevail over extended prices.
 - iii. The District may permit a Bidder to withdraw an Offer based on one or more clerical errors in the Bid only if the Bidder shows with objective proof and by clear and convincing evidence:
 - A. The nature of the error;
 - B. That the error is not a minor informality under this subsection or an error in judgment;
 - C. That the error cannot be corrected or waived under subsection 12.b.ii above;
 - D. That the Bidder acted in good faith in submitting a Bid that contained the claimed error and in claiming that the alleged error in the Bid exists;
 - E. That the Bidder acted without gross negligence in submitting a Bid that contained a claimed error;
 - F. That the Bidder will suffer substantial detriment if the District does not grant the Bidder permission to withdraw the Offer;

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

- G. That the District's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on the District or the public it represents; and
 - H. That the Bidder promptly gave notice of the claimed error to the District.
- iv. The criteria in subsection 12.b.iii above will determine whether the District will permit a Bidder to withdraw its Bid after Closing. These criteria also will apply to the question of whether the District will permit a Bidder to withdraw its Bid without forfeiture of its Bid bond (or other Bid security), or without liability to the District based on the difference between the amount of the Bidder's Bid and the amount of the Contract actually awarded by the District, whether by Award to the next lowest Responsive and Responsible Bidder, or by resort to a new solicitation.
- c. **Rejection for Mistakes.** The District will reject any Bid in which a mistake is evident on the face of the Bid and the intended correct Bid is not evident or cannot be substantiated from documents submitted with the Bid.
 - d. **Identification of Mistakes after Award.** The procedures and criteria set forth above are Bidder's only opportunity to correct mistakes or withdraw Bids because of a mistake. Following Award, a Bidder is bound by its Bid, and may withdraw its Bid or rescind a Contract entered into pursuant to OAR 137 Division 49 only to the extent permitted by applicable law.

13. FIRST-TIER SUBCONTRACTORS; DISCLOSURE AND SUBSTITUTION. Pursuant to OAR 137-049-0360:

- a. **Required Disclosure.** Within two working hours after the Bid Closing, Bidders must submit the First-Tier Subcontractor Disclosure Form identifying any first-tier subcontractors (those Entities that would be contracting directly with the prime contractor) that will be furnishing labor or labor and materials on the Contract, if Awarded, whose subcontract value would be equal to or greater than:
 - i. Five percent of the total Contract Price, but at least \$15,000; or
 - ii. \$350,000, regardless of the percentage of the total Contract Price.
- b. **Bid Closing, Disclosure Deadline and Bid Opening.** For each ITB to which this rule applies, the District will:
 - i. Set the Bid Closing on a Tuesday, Wednesday or Thursday, and at a time between 2 p.m. and 5 p.m.;
 - ii. Open Bids publicly immediately after the Bid Closing; and
 - iii. Consider for Contract Award only those Bids for which the required disclosure has been submitted by the announced deadline on the form prescribed by the District.
- c. **Submission.** A Bidder must submit the disclosure form required by this rule either in its Bid submission, or within two working hours after Bid Closing in the manner specified by this Solicitation.
- d. **Responsiveness.** Compliance with the disclosure and submittal requirements of ORS 279C.370 and OAR 137-049-0360 is a matter of Responsiveness. Bids that are submitted by Bid Closing, but for which the disclosure submittal has not been made by the specified deadline, are not Responsive and will not be considered for Contract Award.
- e. **District Role.** The District will obtain, and make available for public inspection, the disclosure forms required by ORS 279C.370 and OAR 137-049-0360. The District will also provide copies of disclosure forms to the Bureau of Labor and Industries as required by ORS 279C.835. The District is not required to determine the accuracy or completeness of the information provided on disclosure forms.
- f. **Substitution.** Substitution of affected first-tier subcontractors must be made only in accordance with ORS 279C.585. The District will accept Written submissions filed under that statute as public records. Aside from issues involving inadvertent clerical error under ORS 279C.585, the District does not have a statutory role or duty to review, approve or resolve disputes concerning such substitutions. See ORS 279C.590 regarding complaints to the Construction Contractors Board on improper substitution.

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

14. BID EVALUATION CRITERIA. Pursuant to OAR 137-049-0380:

- a. **General.** A Public Improvement Contract, if awarded, will be awarded to the Responsible Bidder submitting the lowest Responsive Bid.
- b. **Bid Evaluation Criteria.** Invitations to Bid may solicit lump-sum Bids, unit-price Bids, or a combination of the two.
 - i. **Lump Sum.** If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the District elects not to award additive or deductive alternates, Bids will be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price will be calculated by adding to or deducting from the base Bid those alternates selected by the District, for the purpose of comparing Bids.
 - ii. **Unit Price.** If the Bid includes unit pricing for estimated quantities, the total Bid price will be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the District, for the purpose of comparing Bids. The District will specify within the Solicitation the estimated quantity of the Procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price will govern. See OAR 137-049-0350(2)(b).
- c. The District may reject any Bid not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Bids upon the District's finding that it is in the public interest to do so.

15. BID EVALUATION AND AWARD; DETERMINATION OF RESPONSIBILITY. Pursuant to OAR 137-049-0390:

- a. **General.** If Awarded, the District will Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract. See ORS 279C.375 (3)(a). The District may award by item, groups of items or the entire Bid provided such Award is consistent with the Solicitation and in the public interest.
- b. **Determination of Responsibility.** Bidders are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the District must have information that indicates that the Bidder meets the standards of responsibility set forth in ORS 279.375(3)(b). To be a Responsible Bidder, the District will determine that the Bidder:
 - i. Has available the appropriate financial, material, equipment, facility and Personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;
 - ii. Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Bidder's control, the Bidder stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. The District should carefully scrutinize a Bidder's record of contract performance if the Bidder is or recently has been materially deficient in contract performance. In reviewing the Bidders performance, the District should determine whether the Bidders deficient performance was expressly excused under the terms of Contract, or whether the Bidder took appropriate corrective action. The District may review the Bidders performance on both private and Public Contracts in determining the Bidders record of contract performance.
 - iii. Has a satisfactory record of integrity. A Bidder may lack integrity if the District determines the Bidder demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to the District. The District may find a Bidder not Responsible based on the lack

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

- of integrity of any Person having influence or control over the Bidder (such as a key employee of the Bidder that has the authority to significantly influence the Bidders performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-49-0370 may be used to determine Bidder's integrity. The District may find a Bidder non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Bidder's performance of a contract or subcontract;
- iv. Is qualified legally to contract with the District; and
 - v. Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Bidder fails to promptly supply information requested by the District concerning responsibility, the District will base the determination of responsibility on any available information, or may find the Bidder not Responsible.
- c. **District Evaluation.** The District will evaluate a Bid only as set forth in the Solicitation and in accordance with applicable law. The District will not evaluate a Bid using any other requirement or criterion.
- d. **Bidder Submissions.**
- i. The District may require a Bidder to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to award:
 - A. Demonstration, inspection or testing of a product prior to award for characteristics such as compatibility, quality or workmanship;
 - B. Examination of such elements as appearance or finish; or
 - C. Other examinations to determine whether the product conforms to Specifications.
 - ii. The District will evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation to determine that a product is acceptable. The District will reject a Bid providing any product that does not meet the Solicitation requirements. The District's rejection of a Bid because it offers non-conforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.
- e. **Evaluation of Bids.** The District will use only objective criteria to evaluate Bids as set forth in the Solicitation. The District will evaluate Bids to determine which Responsible Bidder submitted the lowest Responsive Bid.
- i. **Nonresident Bidders.** In determining the lowest Responsive Bid, the District will, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.
 - ii. **Clarifications.** In evaluating Bids, the District may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification must not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications will become part of the Bidder's Bid.
 - iii. **Negotiation Prohibited.** The District will not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to award.

16. NOTICE OF INTENT TO AWARD. Pursuant to 137-049-0395:

- a. **Notice.** At least seven (7) days before the Award of a Public Improvement Contract, the District will issue a Notice of the District's intent to Award the Contract.
- b. **Form and Manner of Posting.** The form and manner of posting notice will conform to customary practices within the District's procurement system and may be made electronically.
- c. **Finalizing Award.** The District's Award will not be final until the later of the following:
 - i. Seven (7) Days after the date of the notice, unless the Solicitation provided a different period for protest; or
 - ii. The District provides a written response to all timely-filed protests that denies the protest and affirms the Award.

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

- d. **Prior Notice Impractical.** Posting of notice of intent to award will not be required when the District determines that it is impractical due to unusual time constraints in making prompt Award for its immediate procurement needs, documents the Contract file as to the reasons for that determination, and posts notice of that action as soon as reasonably practical.

17. DOCUMENTATION OF AWARD; AVAILABILITY OF AWARD DECISIONS. Pursuant to OAR 137-049-0400:

- a. **Basis of Award.** After Award, the District will make a record showing the basis for determining the successful Bidder part of the District's Solicitation file.
- b. **Contract Document.** The District will deliver a fully executed copy of the final Contract to the successful Bidder.
- c. **Bid Tabulations and Award Summaries.** Upon request of any Person the District will provide tabulations of Awarded Bids.
- d. **Availability of Solicitation Files.** The District will make completed Solicitation files available for public review at the District.

18. NEGOTIATION WITH BIDDERS PROHIBITED. Pursuant to OAR 137-049-0420:

Except as permitted by ORS 279C.340 and OAR 137-49-0430 when all Bids exceed the cost estimate, the District will not negotiate with any Bidder prior to Contract Award. After Award of the Contract, the District and Contractor may modify the resulting Contract only by change order or Amendment to the Contract in accordance with OAR 137-49-0910.

19. NEGOTIATION WHEN BIDS EXCEED COST ESTIMATE. Pursuant to OAR 137-049-0430:

- a. **Generally.** In accordance with ORS 279C.340, if all Responsive Bids from Responsible Bidders on a competitively Bid Project exceed the District's Cost Estimate, prior to Contract Award the District may negotiate Value Engineering and Other Options with the Responsible Bidder submitting the lowest, Responsive Bid in an attempt to bring the Project within the District's Cost Estimate.
- b. **Rejection of Bids.** In determining whether all Responsive Bids from Responsible Bidders exceed the Cost Estimate, only those Bids that have been formally rejected, or Bids from Bidders who have been formally disqualified by the District, will be excluded from consideration.
- c. **Scope of Negotiations.** The District will not proceed with Contract Award if the scope of the Project is significantly changed from the original Bid. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change.
- d. **Discontinuing Negotiations.** The District may discontinue negotiations at any time and will do so if it appears to the District that the apparent low Bidder is not negotiating in good faith or fails to share cost and pricing information upon request. Failure to rebid any portion of the project, or to obtain subcontractor pricing information upon request, will be considered a lack of good faith.
- e. **Limitation.** Negotiations may be undertaken only with the lowest Responsive, Responsible Bidder pursuant to ORS 279C.340. That statute does not provide any additional authority to further negotiate with Bidders next in line for Contract Award.

20. REJECTION OF BIDS. Pursuant to OAR 137-049-0440:

- a. **Rejection of a Bid.**
 - i. The District may reject any Bid upon finding that to accept the Bid may impair the integrity of the Procurement process or that rejecting the Bid is in the public interest.
 - ii. The District will reject a Bid upon the District's finding that the Bid:
 - A. Is contingent on the District's acceptance of terms and conditions (including Specifications) that differ from the Solicitation;
 - B. Takes exception to terms and conditions (including Specifications);

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

- C. Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation or in contravention of applicable law;
 - D. Offers Work that fails to meet the Specifications of the Solicitation;
 - E. Is late;
 - F. Is not in substantial compliance with the Solicitation;
 - G. Is not in substantial compliance with all prescribed public Solicitation procedures.
- iii. The District will reject a Bid upon the District's finding that the Bidder:
 - A. Has not been prequalified under ORS 279C.430 and the District required mandatory prequalification;
 - B. Has been Disqualified;
 - C. Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;
 - D. Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;
 - E. Has not met the requirements of ORS 279A.105 if required by the Solicitation;
 - F. Has not submitted properly executed Bid or Proposal security as required by the Solicitation;
 - G. Has failed to provide the Certification of Non-Discrimination required under OAR 137-049-0440(3);
 - H. Is not Responsible. See OAR 137-049-0390(2) regarding District determination that the Bidder has met statutory standards of responsibility.
- b. **Form of Business.** The District may investigate any Person submitting a Bid. The investigation may include that Person's officers, Directors, Owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 137-049-0370.
 - c. **Certification of Non-Discrimination.** The Bidder must certify and deliver to the District as part of their Bid, written certification (see attached Bidder Certification) that the Bidder has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns, in obtaining any required subcontracts. Failure to do so will be grounds for disqualification.
 - d. **Rejection of all Bids.** The District may reject all Bids for good cause upon the District's Written finding it is in the public interest to do so. The District will notify all Bidders of the rejection of all Bids, along with the good cause justification and finding.
 - e. **Criteria for Rejection of All Bids.** The District may reject all Bids upon a Written finding that:
 - i. The content of or an error in the Solicitation, or the Solicitation process unnecessarily restricted competition for the Contract;
 - ii. The price, quality or performance presented by the Bidders is too costly or of insufficient quality to justify acceptance of the Bids;
 - iii. Misconduct, error, or ambiguous or misleading provisions in the Solicitation threaten the fairness and integrity of the competitive process;
 - iv. Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation;
 - v. The District cancels the Solicitation in accordance with OAR 137-049-0270; or
 - vi. Any other circumstance indicating that awarding the Contract would not be in the public interest.

SECTION III – INSTRUCTIONS TO BIDDERS:
PUBLIC IMPROVEMENT PROCUREMENT RULES
Solicitation No: ITB 18-0008

- 21. PROTEST OF CONTRACTOR SELECTION, CONTRACT AWARD.** Pursuant to OAR 137-049-0450:
- a. **Purpose.** An adversely affected or aggrieved Bidder must exhaust all avenues of administrative review and relief before seeking judicial review of the District's Contractor selection or Contract Award decision.
 - b. **Notice of Intent to Award.** Unless otherwise provided in the Solicitation, the District will provide written notice to all Bidders of the District's intent to award the Contract. The District's Award will not be final until the later of the following:
 - i. Seven (7) days after the date of the notice, unless the Solicitation provided a different period for protest; or
 - ii. The District provides a written response to all timely-filed protests that denies the protest and affirms the Award.
 - c. **Right to Protest Award.**
 - i. An adversely affected or aggrieved Bidder may submit to the District a Written protest of the District's intent to award within seven (7) days after issuance of the notice of intent to award the Contract, unless a different protest period is provided under the Solicitation.
 - ii. The Bidders protest must be in Writing and must specify the grounds upon which the protest is based.
 - iii. A Bidder is adversely affected or aggrieved only if the Bidder is eligible for Award of the Contract as the Responsible Bidder submitting the lowest Responsive Bid and is next in line for Award, i.e., the protesting Bidder must claim and state specific reasons why all lower Bidders are ineligible for Award:
 - A. Because their Bids were non-responsive; or
 - B. The District committed a substantial violation of a provision in the Solicitation or of an applicable Procurement statute or administrative rule, and the protesting Bidder was unfairly evaluated and would have, but for such substantial violation, been the Responsible Bidder offering the lowest Responsive Bid.
 - iv. The District will not consider a protest submitted after the time period established in this Rule or such different period as may be provided in the Solicitation.
 - d. **Authority to Resolve Protests.** The District's Purchasing Manager will settle or resolve a written protest submitted in accordance with the requirements of this Rule.
 - e. **Decision.** If a protest is not settled, the Superintendent, or designee, will promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.
 - f. **Award.** The successful Bidder must promptly execute the Contract after the Award is final. The District will execute the Contract only after it has obtained all applicable required documents and approvals.

22. BID COSTS: The District is not liable for any costs incurred by the Bidder in its Bid preparation.

SECTION IV – INSTRUCTIONS TO BIDDERS:
PUBLIC WORKS
Solicitation No. ITB 18-0008

1. PUBLIC WORKS REQUIREMENTS:

This solicitation will result in a Contract for a Public Work subject to ORS 279C.800 to 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq., if applicable). No Bid will be received or considered by the District unless the Bid contains a statement by the Bidder that the provisions of ORS 279C.800 to 279C.870 (prevailing wage rates paid to employees) or the Davis Bacon Act (40 U.S.C. 3141 et seq, if applicable) are to be complied with (see Bidder Certification).

2. REGISTRATION REQUIREMENTS:

Bidders must be currently registered with the Construction Contractors Board as required by ORS 701.021, licensed by the State Landscape Contractors Board, as required by ORS 671.530, or licensed by the Department of Environmental Quality, as required by ORS 468A.710 (Air Quality), if required, holding the proper registration for the work contemplated herein, at the time of Bid submittal. All Subcontractors participating in the project must be similarly registered with the Construction Contractors Board, State Landscape Contractors Board or Department of Environmental Quality, as required, at the time they propose to engage in subcontract work. The CCB registration requirements apply to all public works contracts unless superseded by federal law.

3. BOLI/PWR REQUIREMENTS. Pursuant to ORS 279C.800 to 279C.870:

All contractors and subcontractors will abide by the latest determination of the minimum wage rates as scheduled and published for this region by the U.S. Department of Labor and the Oregon Bureau of Labor and Industries and will abide by all amendments, decisions, and related regulations of these agencies. Specifically:

- a. The Contractor is required to pay workers not less than prevailing wage rates for the Region #2 through the contract period.
- b. If the Contractor fails to pay for labor and services the District can pay and will withhold these amounts from payments to the Contractor. OAR 839-025-0020(2)(a).
- c. The Contractor is required to pay weekly, holiday (including weekends) and daily overtime as required. OAR 839-025-0020(2)(b).
- d. The existing 'prevailing rate of wage' as published by the Oregon Bureau of Labor and Industries are the January 1, 2018 Prevailing Wage Rates for Public Works Contracts in Oregon. They may be found at the following website: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx, and are incorporated herein by this reference.

4. BONDS: PERFORMANCE, PAYMENT AND PUBLIC WORKS. Pursuant to OAR 137-49-0460 and ORS 279C:

a. Performance and Payment Bonds.

- i. Pursuant to ORS 279C.380, the Contractor must furnish bonds covering the faithful performance of the Contact and payment of obligations arising there under. Bonds are to be obtained through a company that is authorized and licensed by the Oregon Insurance Commissioner. The bonding company must be listed on the most current US Government Treasury list, Department Circular 570 or approved PRIOR TO BID SUBMISSION by the District. The cost of the Bonds must be included in the Contract Sum. The amount of each Bond must be equal to 100 percent of the Contract Sum. Performance and Payment Bonds must be the AIA A312 or as approved by the District.
- ii. Bonds must be effective from the Contract date through the Final Completion of the Contract.
- iii. Failure to adhere to these requirements may be grounds for rejection of the Bid.

b. Public Works Bond.

SECTION IV – INSTRUCTIONS TO BIDDERS:
PUBLIC WORKS
Solicitation No. ITB 18-0008

- i. Contractors who work on public works projects, subject to the PWR law, are required to file a \$30,000 Public Works Bond to be used exclusively for unpaid wages determined to be due by BOLI. Proof of this bond in effect must be provided to the District prior to Contract signing, after the award of this solicitation.
 - ii. General Contractors are required to verify that subcontractors have filed a public works bond before permitting a subcontractor to start work on a project.
 - iii. ORS 279C.836 provides exemptions from the bond requirements for certified disadvantaged, minority, women, service-disabled veteran owned or emerging small business enterprises. It is the Contractor's responsibility to notify the District if an exemption applies to the Contractor.
 - iv. The Public Works Bond must be furnished by a surety company authorized to do business in Oregon
- c. **Time for Submission.** The apparent successful Bidder must promptly furnish the required performance security upon the District's request. If the Bidder fails to furnish the security as requested, the District may reject the Bid and award the Contract to the Responsible Bidder with the next lowest Responsive Bid, and, at the District's discretion, the Bidder must forfeit its Bid Bond.

5. SUBSTITUTE CONTRACTOR. Pursuant to OAR 137-49-0470:

If the Contractor provided a performance bond, the District may afford the Contractor's surety the opportunity to provide a substitute Contractor to complete performance of the Contract. A substitute Contractor must perform all remaining contract Work and comply with all terms and conditions of the Contract, including the provisions of the performance bond and the payment bond. Such substitute performance does not involve the Award of a new Contract and will not be subject to the competitive procurement provisions of ORS Chapter 279C.

6. FOREIGN CONTRACTOR. Pursuant to OAR 137-49-0490:

If the Contract Price exceeds \$10,000 and the Contractor is a Foreign Contractor, the Contractor must promptly report to the Oregon Department of Revenue on forms provided by the Department of Revenue, the Contract Price, terms of payment, Contract duration and such other information as the Department of Revenue may require before final payment can be made on the Contract. A copy of the report must be forwarded to the District. The District will satisfy itself that the above requirements have been complied with before it issues final payment on the Contract.

7. CERTIFIED PAYROLL WITHHOLDING. Pursuant to ORS 279C.845:

- a. If a prime contractor does not file certified payroll as required (at least once per month), the District will withhold 25% of amounts due to the prime contractor, in addition to any other required Retainage.
- b. If a first-tier subcontract does not file certified payroll reports as required, the prime contractor must withhold 25% of amounts due the first-tier subcontractor.
- c. Once certified payroll reports are submitted, the District or prime contractor are to pay amounts withheld within 14 days.
- d. Neither the District nor the prime contractor is required to verify the accuracy of the contents of the certified payroll reports.

8. DRUG TESTING REQUIREMENT:

ORS 279C.505(2) requires that all public improvement contracts contain a provision requiring contractors to demonstrate that an employee drug-testing program is in place. Bidders are therefore required to certify that they have an employee drug-testing program in place that applies to all employees and will maintain a drug-testing program at all times during the performance of the awarded Contract. Failure to maintain a program will constitute a material breach of contract. The use of drugs, alcohol, or any tobacco products is prohibited on all District property.

SECTION IV – INSTRUCTIONS TO BIDDERS:
PUBLIC WORKS
Solicitation No. ITB 18-0008

9. OTHER TERMS AND CONDITIONS:

The Contractor must understand and agree to comply with the following:

- a. Provide prompt payment to all Persons supplying labor or material for the performance of the work; Pay all contributions or amounts due the Industrial Accident Fund; Not permit any lien or claim to be filed or prosecuted against the District; and Pay to the Department of Revenue all sums withheld from employees. (ORS 279C.505(1));
- b. Demonstrate that an employee drug testing program is in place. (ORS 279C.505(2));
- c. If the Contract calls for demolition Work described in ORS 279C.510(1), the Contractor is required to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- d. If the Contract calls for lawn or landscape maintenance, the Contractor is required to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- e. If the Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services provided to the contractor or a subcontractor, the District may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor, as set forth in ORS 279C.515(1);
- f. If the Contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from the contracting agency or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges. (ORS 279C.515(2));
- g. If the Contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. (ORS 279C.515(3));
- h. Abide by maximum hours of labor and overtime, as set forth in ORS 279C.520(1);
- i. Provide employer notice to employees of hours and days that employees may be required to work, as set forth in ORS 279C.520(2);
- j. Abide by environmental and natural resources regulations (ORS 279C.525);
- k. Make required payments for medical care and certain services related to sickness and injury to employees, as set forth in ORS 279C.530(1);
- l. Understand all employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon must comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor must ensure that each of its subcontractors complies with these requirements. (ORS 279C.530(2));
- m. Abide by maximum hours, holidays and overtime (ORS 279C.540);
- n. Abide by time limitation on claims for overtime (ORS 279C.545);
- o. Pay prevailing wage rates, including subcontractors (ORS 279C.800 to 279C.870);
- p. File required BOLI Public Works bond(s) including subcontractors, as set forth in ORS 279C.830(2);
- q. Follow Retainage rules (ORS 279C.550 to 279C.570);
- r. Abide by prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- s. Maintain relations with subcontractors (ORS 279C.580);
- t. Make notice of claim (ORS 279C.605);
- u. Provide Affidavit of Compliance with the Oregon tax laws in accordance with ORS 305.385; and
- v. Certify that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board, licensed by the State Landscape Contractors Board in accordance with ORS 701.021 to 701.050, or licensed under ORS 468A.720 (Air Quality), if required, before the subcontractors commence Work under the Contract.

SECTION IV – INSTRUCTIONS TO BIDDERS:
PUBLIC WORKS
Solicitation No. ITB 18-0008

- w. Assignment or Transfer Restricted. Unless otherwise provided in the Contract, the Contractor must not assign, sell, dispose of, or transfer rights, or delegate duties under the Contract, either in whole or in part, without the District's prior Written consent. Unless otherwise agreed by the District in Writing, such consent will not relieve the Contractor of any obligations under the Contract. Any assignee or transferee will be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If the District consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, must remain liable to the District for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless the District otherwise agrees in Writing.

SECTION V – ATTACHMENTS
Solicitation No. ITB 18-0008

1. BID PREPARATION:

- a. Bidder must complete and return as its Bid, the required Affidavit, Certifications and Forms included as Attachments to this Solicitation. (See Attached Bid Submission Checklist)
- b. Failure to complete and submit these and any other document(s) as requested or required in accordance with this Solicitation will be grounds to declare the Bid nonresponsive.

2. FORMS

- a. The attached forms are to be included in Bid.
- b. Copies of the included forms (See Attached Bid Submission Checklist) are to be completed and submitted by the Bidder along with other required documents as required by the Instructions to Bidders.

3. FORM OF AGREEMENT

The form of construction agreement to be used between the District and the General Contractor for the Project is the AIA Document A101-2007 and AIA Document A201-2007 as issued by the Beaverton School District. Any references and/or requirements of the General Contractor to the District must apply to subcontractors' requirements to the District and General Contractor. A sample Copy of the AIA Document A101-2007 and AIA Document A201-2007 as issued by Beaverton School District are included herein.

BID SUBMISSION CHECKLIST

ALL AFFIDAVITS, CERTIFICATIONS, FORMS AND BID CONTENT REQUIREMENTS AS SPECIFIED IN SECTION V MUST BE INCLUDED AS PART OF THE BID.

— REQUIRED AFFIDAVIT, CERTIFICATIONS AND FORMS

The following affidavit, certifications and forms must be completed and signed by the person authorized to represent the Bidder regarding all matters related to the Bid and authorized to bind the Bidder to the agreement. Failure to submit any of the required, completed and signed affidavits/certifications/forms will result in disqualification of the bidding firm.

- BIDDER CERTIFICATION. (Attachment A) This serves as the cover sheet for your Bid.
- BID SCHEDULE. (Attachment B)
- BID SECURITY (Bid Bond). (Attachment C)
- AFFADAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS. (Attachment D)
- NON-CONFLICT OF INTEREST CERTIFICATION. (Attachment E)
- BIDDER RESPONSIBILITY FORM – All Pages. (Attachment F)
- BIDDER REFERENCE FORMS – Include the # specified on the form. (Attachment G)
- FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM (Attachment H)

The following attachment(s) are **NOT** to be returned with the Bid. Bidders must review the content of these attachment(s).

ATTACHMENT I Sample AIA A101 Contract and AIA A201 General Conditions

ATTACHMENT J Specifications

ATTACHMENT K Drawings

Bidders are encouraged to use the following attachment to identify their Bid.

ATTACHMENT L Sealed Bid Label

This checklist is provided for the Bidder's convenience in assembling their Bid and is NOT required to be returned with the Bid.

BIDDER CERTIFICATION

(Bidder)

(physical address)

(city, state, zip)

1. The Bidder certifies that he or she has read and understands the Drawings, Specifications, Addenda, Contract and all other documents pertaining to this Project.
2. The Bidder, having become completely familiar with the local conditions and legal requirements affecting the cost of Work at the place where Work is to be executed, and having carefully examined the site conditions as they currently exist, agrees to provide all labor, materials, plant, equipment, transportation and other facilities and services as necessary and/or required to execute all of the Work described by the aforesaid documents will be provided and within the time specified.
3. The Bidder acknowledges that the Project Milestones in Section II – STATEMENT OF WORK includes certain specific dates. These dates must be adhered to unless modified by mutual agreement between Contractor and the Owner. All dates indicate 5:00 PM Pacific Time.

The Bidder agrees to complete the work within the number of calendar days as stipulated in the Contract and to meet the Milestones and Specific Dates set forth above and acknowledges that his/her failure to achieve Completion by these stipulated dates, or by any Owner authorized extension thereto, subjects the Bidder to liquidated damages for failure to perform, as further defined in the Contracts.

4. The Bidder agrees to execute the formal Contract within five (5) days from date of Notice of Acceptance of this Bid. In the event the undersigned fails or neglects to execute the Contract and the undersigned is considered having abandoned the Contract by the Owner, the Bid security will be forfeited.
5. The Bidder acknowledges that he or she that signs this Bid is fully authorized to sign on behalf of the firm listed and to fully bind the firm listed to all conditions and provisions thereof.
6. The Bidder certifies that Bidder has complied or will comply with all requirements of local, state, and national laws, and that no legal requirement has been or will be violated in making or accepting this Bid.
7. The Bidder is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, or licensed under ORS 468A.720 (Air Quality), if required.
License Number _____ . (The District will not receive or consider a Bid for a Public Improvement unless the Bidder is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board).
8. The Bidder, pursuant to ORS 279A.120 (1), (check one) is _____ /is not _____ a resident Bidder. If not, indicate State of residency _____ .
9. The Bidder certifies that the required Statutory Public Works Bond has been filed with the Construction Contractor's Board.



SECTION V – ATTACHMENTS

ATTACHMENT A

Solicitation No. ITB 18-0008

10. The Bidder agrees to be bound by and will comply with the provisions of Prevailing Wage Laws ORS 279C.800 through ORS 279C.870 or the Davis-Bacon Act (40 U.S.C. 3141 et seq., if applicable).
11. The Bidder certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns in obtaining any required subcontract.
12. The Bidder agrees to comply with Oregon tax laws in accordance with ORS 305.385.
13. Any Bid of a contractor or subcontractor listed on BOLI's List of Ineligibles will be rejected.
14. The Bidder acknowledges receipt of the following Addenda: (List by number and date appearing on Addendum.)

Addendum Number	Date	Addendum Number	Date
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Respectfully submitted this _____ day of _____, 20____.

Signature: _____

Name: _____ Phone: _____
(print/type)

Title: _____ Fax: _____

Email Address: _____

This solicitation will result in a Contract for a Public Work subject to ORS 279C.800 to 279C.870.



SECTION V – ATTACHMENTS

ATTACHMENT B

Solicitation No. ITB 18-0008

BID SCHEDULE

(Contractor)

TOTAL BASE BID: including the Work as defined in the Project Manual, Drawings and Addenda (if any), the TOTAL SUM OF:

_____ DOLLARS (\$ _____)

- Alternate #1:

_____ DOLLARS (\$ _____)

NOTES:

- Contractor will be required to develop a schedule of values for payment and accounting purposes prior to the initial request for payment in a form acceptable to the District.
- If any information submitted on this form is contradictory, words prevail over numbers.

The Contract is intended to be awarded to a single Contractor.



SECTION V – ATTACHMENTS

ATTACHMENT C

Solicitation No. ITB 18-0008

BID BOND

(Contractor)

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES: CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

KNOW ALL MEN BY THESE PRESENTS, that we _____
(Here insert full name and address or legal title of Contractor)

As Principal, hereinafter called the Principal, and _____
(Here insert full name and address or legal title of Surety)

a Corporation duly organized under the laws of the State of Oregon as Surety, hereinafter called the Surety, are held and firmly bound unto Beaverton School District No. 48J, 16550 SW Merlo Road, Beaverton, OR 97003, as Obligee, hereinafter called the Obligee, in the sum of five percent of dollars (\$) amount Bid (5%), for the payment of which sum well and truly to be made, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has submitted a Bid for _____.

NOW, THEREFORE, if the Obligee shall accept the Bid of the Principal and the Principal shall enter into a Contract with the Obligee in accordance with the terms of such Bid, and give such bond or bonds as may be specified in the Contract Documents with good and sufficient surety for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof, or in the event of the failure of the Principal to enter such Contract and give such bond or bonds, if the Principal shall pay to the Obligee the difference not to exceed the penalty hereof between the amount specified in said Bid and such larger amount for which the Obligee may in good faith contract with another party to perform the Work covered by said Bid, then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed and sealed this _____ day of _____, 20____.

(Witness)

(Principal)

(Seal)

(Title)

(Witness)

(Surety)

(Seal)

(Title)



SECTION V – ATTACHMENTS

ATTACHMENT D

Solicitation No. ITB 18-0008

AFFIDAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS

(Bidder)

I state that:

(1) The correct taxpayer identification numbers are:

A. Federal Employer ID Number (EIN): _____ B. Employer's Oregon ID Number: _____

- (2) Bidder is not subject to backup withholding because (i) Bidder is exempt from backup withholding, (ii) Bidder has not been notified by the IRS that Bidder is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified Bidder that Bidder is no longer subject to backup withholding;
- (3) The price(s) and amount of this Bid must be arrived at independently and without consultation, communication or agreement with any other Supplier, Bidder or potential Bidder, except as disclosed on the attached appendix.
- (4) That neither the price(s) nor the amount of this Bid, and neither the approximate price(s) nor approximate amount of this Bid, will be disclosed to any other firm or person who is a Bidder or potential Bidder, and they will not be disclosed before Contract award.
- (5) No attempt has been made or will be made to induce any firm or person to refrain from proposing on this Solicitation, or to submit any noncompetitive Bid or other complementary Bid.
- (6) The Bid of my firm is made in good faith and not pursuant to any agreement or discussion with, or inducement from, any firm or person to submit a complementary or other noncompetitive Bid.
- (7) _____ (name of firm), its affiliates, subsidiaries, officers, directors and employees are not currently under investigation by any governmental agency and have not in the last four years been convicted of or found liable for any act prohibited by State or Federal law in any jurisdiction, involving conspiracy or collusion with respect to proposing on any public contract, except as described in the attached appendix.

I state that _____ (name of firm) understands and acknowledges that the above representations are material and important, and will be relied on by the Beaverton School District in awarding the contract(s) for which this Bid is submitted. I understand and my firm understands that any misstatement in this affidavit is and will be treated as fraudulent concealment from the Beaverton School District of the true facts relating to the submission of Bids for this contract. I am authorized to act on behalf of Bidder, and have authority and knowledge regarding Bidder's payment of taxes, and to the best of my knowledge, Bidder is not in violation of any Oregon tax laws, including, without limitation, those tax laws listed in ORS 305.380(4); the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Oregon Department of Revenue under ORS 305.620.

(Affiant's Signature)

STATE OF OREGON

County of _____

Signed and sworn to before me on _____ by _____
(date) (Affiant's name)

Notary: _____

My Commission Expires: _____

NON-CONFLICT OF INTEREST CERTIFICATION

Issuing Agency: Beaverton School District

I, _____ hereby certify I have read the statement defining conflict of interest as quoted below; that I understand the statement; that no conflict of interest exists as therein defined, which precludes an impartial Bid/Proposal to be submitted by myself or the entity/company for which the Bid/Proposal is submitted, and that if such a conflict should arise, I will immediately notify the Beaverton School District and disqualify my Bid/Proposal.

"NO OFFICER, EMPLOYEE, OR AGENT OF THE BIDDER/POSER HAS ANY PERSONAL FINANCIAL INTEREST, DIRECT OR INDIRECT, IN THE OPERATION OF THE BEAVERTON SCHOOL DISTRICT OR WITH ANY PARTY CONNECTED WITH THE OREGON SCHOOL AND DISTRICT IMPROVEMENT NETWORK, DIRECTLY OR INDIRECTLY."

Bidder Name (signature)

Bidder Name (printed)

Bidder Title (printed)

Entity/Company Name (printed)

Date

**BIDDER RESPONSIBILITY FORM
(CONTRACTOR'S QUALIFICATIONS AND FINANCIAL INFORMATION)****DECLARATION AND SIGNATURES**

The undersigned hereby declares that he or she is duly authorized to complete and submit this Bidder Responsibility Form and that the statements contained herein are true and correct as of the date set forth below. Incomplete, incorrect or misleading information will be reason for a determination by the District of Bidder non-responsibility.

Date: _____

By: _____
(Signature of authorized official)Name: _____
(Please type or print)Title: _____
(Please type or print)For: _____
(Firm's name) (Please type or print)

CCB#: _____

Instructions

1. The information provided in this form is part of the District's inquiry concerning Bidder responsibility. Please print clearly or type.
2. If you need more space, use plain paper. Submit completed form with Bid response.
3. Answer all questions. Submission of a form with unanswered questions, incomplete or illegible answers may result in a finding that the Bidder is not a responsible Bidder.

CURRENT CONTRACTS IN FORCE

ITEM	CONTRACT 1	CONTRACT 2		
A. Work Location				
B. Scope of Work;				
Check box:	<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Construction	<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Construction
C. Contract Amount	\$	\$		
D. Change Order Amount	\$	\$		
E. % Completed	%	%		
F. Est. Completion Date				
G. Owner's Name				
H. Owner Contact				
I. Telephone	()	()		
J. E-Mail Address				
ITEM	CONTRACT 3	CONTRACT 4		
A. Work Location				
B. Scope of Work;				
Check box:	<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Construction	<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Construction
C. Contract Amount	\$	\$		
D. Change Order Amount	\$	\$		
E. % Completed	%	%		
F. Est. Completion Date				
G. Owner's Name				
H. Owner Contact				
I. Telephone	()	()		
J. E-Mail Address				

LARGEST SIMILAR JOBS YOU HAVE COMPLETED IN THE LAST FIVE YEARS AS THE PRIME CONTRACTOR

ITEM	CONTRACT 1		CONTRACT 2	
A. Work Location				
B. Scope of Work;				
Check box:	<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Construction	<input type="checkbox"/> New Construction	<input type="checkbox"/> Re-Construction
C. Contract Amount	\$			\$
D. Change Order Amount	\$			\$
E. % Completed			%	%
F. Completion Date				
G. Owner's Name				
H. Owner Contact				
I. Telephone	()		()	
J. E-Mail Address				

LIST COMPANIES FROM WHOM YOU OBTAIN SURETY BONDS

ITEM	SURETY COMPANY 1		SURETY COMPANY 2	
A. Company Name				
B. Contact's Name				
C. Telephone	()		()	
D. Fax	()		()	
E. E-Mail Address				
PRESENT AMOUNT OF BONDING COVERAGE (\$):	HAS YOUR APPLICATION FOR SURETY BOND EVER BEEN DECLINED (<i>If Yes, please provide detailed information in Remarks</i>) <input type="checkbox"/> YES <input type="checkbox"/> NO		DURING THE PAST 2 YEARS, HAVE YOU BEEN CHARGED WITH A FAILURE TO MEET THE CLAIMS OF YOUR SUBCONTRACTORS OR SUPPLIERS (<i>If Yes, please provide detailed information in Remarks</i>) <input type="checkbox"/> YES <input type="checkbox"/> NO	

RELIABILITY

Has your company ever been declared in breach of any contract for unperformed or defective work? Yes. No.

If "yes", explain.

Has any employee or agent of your company ever been convicted of a criminal offense arising out of obtaining, attempting to obtain, or performing a public or private contract or subcontract? Yes. No.

If "yes," explain.

Has any employee or agent of your company been convicted under state or federal law of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty? Yes. No.

If "yes," explain.

Has your company or any employee or agent of your company been convicted under state or federal antitrust laws?
 Yes. No.

If "yes," explain.

Has any Officer or Partner of your organization ever been an Officer or Partner of another Organization that failed to complete a construction contract? Yes. No.

If "yes," explain.



SECTION V – ATTACHMENTS
ATTACHMENT F
Solicitation No. ITB 18-0008

FINANCIAL RESOURCES

Indicate the Contractors total bonding capacity amount: \$_____.

What portion of this amount remains available at time of completion of this form? \$_____.

Has your firm ever been at any time in the last ten years the debtor in a bankruptcy case? Yes. No.

If "yes," explain.

Does your firm have any outstanding judgments pending against it? Yes. No.

If "yes," explain.

In the past ten years, has your firm been a party to litigation, arbitration or mediation where the amount in dispute exceeded \$10,000? Yes. No.

If "yes," explain.

(Include court, case number and party names.) _____

In the past ten years, has your firm been a party to litigation, arbitration or mediation on a matter related to payment to subcontractors or work performance on a contract? Check "yes" even if the matter proceeded to arbitration or mediation without court litigation. Yes. No.

If "yes," explain. (Include court, case number and party names.)

Have you or any of your affiliates discontinued business operation with outstanding debts? Yes. No.

If "yes," explain.

KEY PERSONNEL

List the principal individuals of your company, their current job title, the total years of experience they have in the construction industry and their current primary responsibility for your company. Corporations list current officers and those who own 5% or more of the corporation's stock. Limited liability companies list members who own 5% or more of company. Partnerships list all partners. Joint ventures list each firm that is a member of the joint venture and the percentage of ownership the firm has in the joint venture.

ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	
ITEM	Principal Individual
A. Name	
B. Position	
C. Years in Construction	
D. Current Primary Responsibility	

List the individuals who will be in the following roles if your company is awarded this Contract:

ITEM	Contractor's Representative	Project Manager	Project Superintendent
A. Name			
B. Position			
C. Years in Position	N/A		
D. Largest Project Supervised	N/A	\$	\$
E. Largest number of employees ever supervised	N/A		

BIDDER REFERENCE FORM

BIDDER REFERENCE FORM FOR _____
(Insert Name of Bidder)

Bidder must provide five (5) references and must use a separate copy of this form for each reference.

Date(s) Work Performed: _____

Name(s) of Project(s): _____

Value of Project(s): \$ _____

Name of Company: _____

Address: _____

Contact Name: _____

Telephone: _____

Email: _____

Method: Subjective Evaluation

Each reference may be checked for, but not limited to, adherence to contract terms and conditions, timelines, quality standards, overall customer service, project being of similar size, scope and complexity.



SECTION V – ATTACHMENTS

ATTACHMENT H

Solicitation No. ITB 18-0008

FIRST-TIER SUBCONTRACTOR DISCLOSURE FORM

(Contractor)

PROJECT NAME:	Health and Science Highschool Classroom Re-flooring		
---------------	---	--	--

BID #:	18-0008	BID CLOSING DATE:	March 14, 2018	BID CLOSING TIME:	2:00 PM Pacific Time
--------	---------	-------------------	----------------	-------------------	----------------------

DISCLOSURE DEADLINE:	DISCLOSURE DUE DATE:	March 14, 2018	DISCLOSURE DUE TIME:	4:00 PM Pacific Time
----------------------	----------------------	----------------	----------------------	----------------------

Bidders must submit this First-Tier Subcontractor Disclosure Form *EITHER* with the sealed Bid submission *OR* in a separate envelope no later than the Disclosure Deadline indicated above.

List below the name of each subcontractor that will be furnishing labor or will be furnishing labor and materials and that is required to be disclosed, the category of work that the subcontractor will be performing and the dollar value of the subcontract. Enter "NONE" if there are no subcontractors that need to be disclosed. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

SUBCONTRACTOR'S NAME	CATEGORY OF WORK	DOLLAR VALUE
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

The above listed first-tier subcontractor(s) are furnishing labor or labor and materials with a Dollar Value greater than or equal to:

- a) 5% of the total project Bid, but at least \$15,000 (including all alternates); or
- b) \$350,000 regardless of the percentage of the total project Bid.

FAILURE TO SUBMIT THIS FORM BY THE DISCLOSURE DEADLINE WILL RESULT IN A NON-RESPONSIVE BID. A NON-RESPONSIVE BID WILL NOT BE CONSIDERED FOR AWARD!

Contractor Contact Name: _____ Phone #: _____

Deliver Form To:	BEAVERTON SCHOOL DISTRICT FACILITIES DEVELOPMENT MAIN PORTABLE	
Person Designated to Receive Form:	Michael Mathews	Purchasing Manager
Agency's Address:	16550 SW Merlo Road, Beaverton OR 97003	

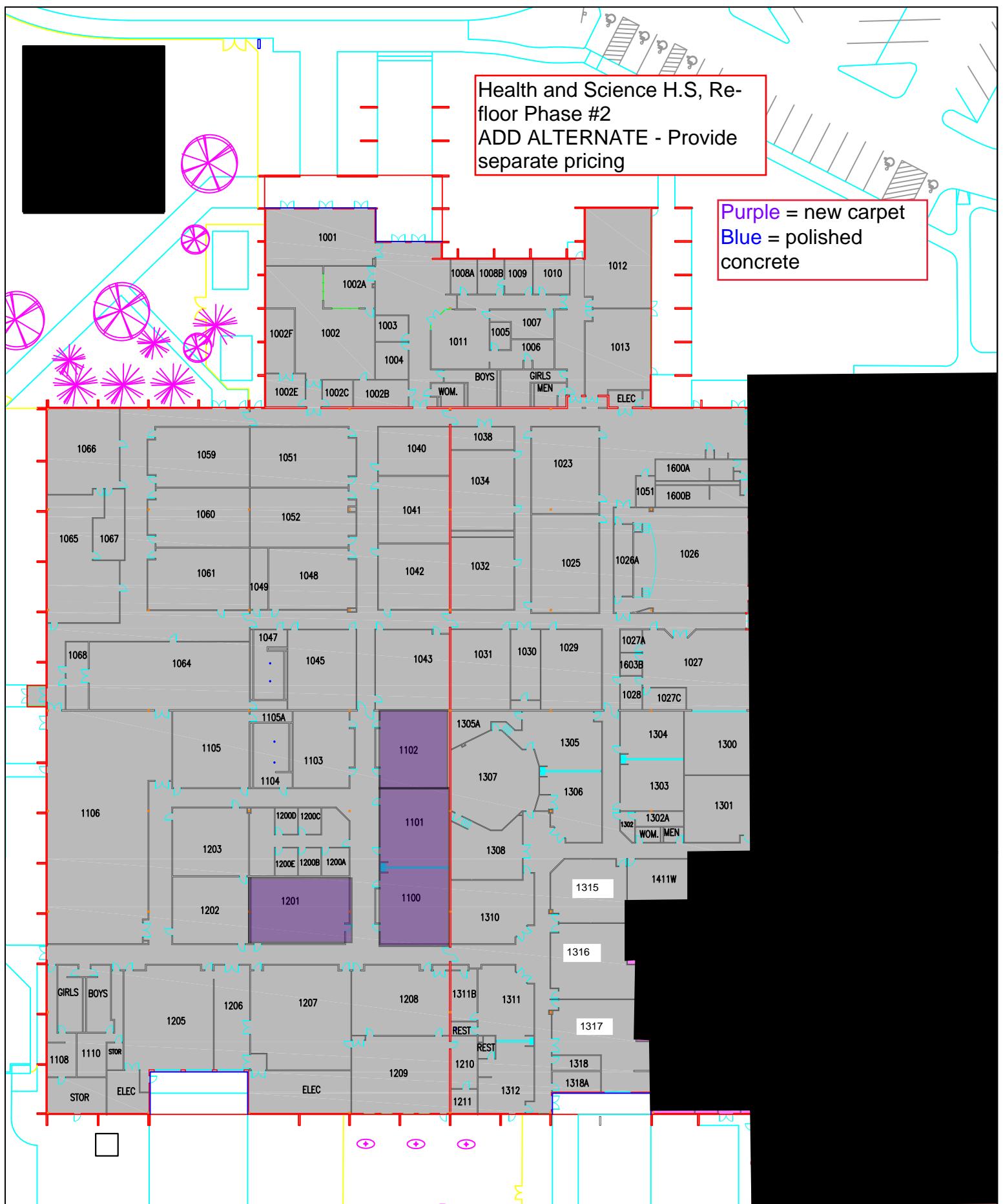
THIS DOCUMENT MUST NOT BE FAXED. IT IS THE RESPONSIBILITY OF BIDDERS TO SUBMIT THIS DISCLOSURE FORM AND ANY ADDITIONAL SHEETS, WITH THE BID NUMBER AND PROJECT NAME CLEARLY MARKED, AT THE LOCATION INDICATED BY THE SPECIFIED DISCLOSURE DEADLINE. SEE INSTRUCTIONS TO BIDDERS.

THE DISTRICT MUST REJECT A BID IF THE BIDDER FAILS TO SUBMIT THE DISCLOSURE FORM WITH THIS INFORMATION BY THE STATED DEADLINE (see OAR 137-049-0360).



Health and Science H.S., Re-
floor Phase #2
ADD ALTERNATE - Provide
separate pricing

Purple = new carpet
Blue = polished
concrete



	A	B	C	D	E	F	G	H	I	J	K	L
1	Health and Science Classroom Re-flooring Phase #1											
2												
3	Classroom #	Asbestos Present?	Present Floor covering	New Floor covering	Carpet selection if applicable	Room Dimensions L (ft.)	Room Dimensions W (ft.)	Room Sq Footage	Room perimeter (linear ft.)	# of door thresholds needing transition strips	Total length of thresholds (linear ft.)	Notes
4	1029	Yes	Carpet	Polished concrete	N/A	35.6	36.6	1302.96	144.4	1	3	
5	1045	Yes	Carpet	Polished concrete	N/A	31	35.25	1092.75	132.5	2	6.2	
6	1207	Yes	Carpet / VCT	Polished concrete	N/A	46	40.5	1863	173	5	6.7	
7												
8	1003	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	11	14.5	159.5	51	1	3	
9	1004	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	17	14.5	246.5	63	1	3	
10	1026	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	46.5	51	2371.5	195	4	18	
11	1031	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	35.5	26.5	940.75	124	1	3	
12	1043	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	35.6	33.7	1199.72	138.6	3	6	
13	1303/1304	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	25.3	36.5	923.45	123.6	2	6.6	
14	Staff Lounge / 1311 / 1312	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	66	36	2376	204	2	6.2	
15	1305	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	29.3	33	966.9	124.6	1	6.1	
16	1306	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	27.75	33.5	929.625	122.5	1	9.6	
17	1307	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	40	46	1840	172	1	6.5	Tiered seating in this room. Rubber/metal bullnose stairway tread required for tiered edges.
18	1308	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	19.5	30	585	99	1	6.4	
19	1310	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	28.5	36	1026	129	1	6	
20	1316	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	30	33	990	126	2	6.2	
21	1315	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	29	33	957	124	1	6.5	
22	1318A	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	21	9	189	60	1	3	
23	1411W	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	21	27.5	577.5	97	1	3	
24							New carpeted classrooms total square ft.	16278.445				
25							New polished concrete classrooms total square ft.	4258.71	Total # metal transition strips at doorways	32		
26							CLASSROOMS TOTAL SQUARE FT.	20537.155	Total linear ft. of metal transitions	115		
27							CLASSROOMS PERIMETER TOTAL LINEAR FT.	2403.2				
28	Health and Science Classroom Re-flooring Phase #1 - ADD Alternate - Please provide separate pricing											
29	Classroom #	Asbestos Present?	Present Floor covering	New Floor covering	Carpet selection if applicable	Room Dimensions L (ft.)	Room Dimensions W (ft.)	Room Sq Footage	Room perimeter (linear ft.)	# of door thresholds needing transition strips	Total length of thresholds (linear ft.)	Notes
30	1100	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	34	33	1122	134	2	3.3	
31	1101	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	34.75	31	1077.25	131.5	2	6.4	
32	1102	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	34.3	33	1131.9	134.6	2	6.5	
33	1201	Yes	Carpet	Carpet	Mannington - Carthage Legacy - Onyx, 15168	43.6	29.5	1286.2	146.2	1	6.5	
34							New carpeted classrooms total square ft.	4617.35				
35							New polished concrete classrooms total square ft.	0	Total # metal transition strips at doorways	7		
36							CLASSROOMS TOTAL SQUARE FT.	4617.35	Total linear ft. of metal transitions	22.7		
37							CLASSROOMS PERIMETER TOTAL LINEAR FT.	546.3				

DRAFT AIA® Document A101™ - 2007

Standard Form of Agreement Between Owner and Contractor
where the basis of payment is a Stipulated Sum

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.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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 document.

DRAFT AIA® Document A101™ - 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Date of full execution by the Owner.

BETWEEN the Owner:

Beaverton School District #48J
16550 SW Merlo Road
Beaverton, OR 97003

and the Contractor:

(Name, legal status, address and other information)

« >< »
« >
« >
« >

for the following Project:

(Name, location and detailed description)

« >
« >
« >

The Architect:

Insert Architect's name and address and delete the following statement, or include the following statement if there is no Architect:

[All references to and responsibilities of Architect are to be completed by Owner or Owner's contracted Engineering Firm.]

« >< »
« >
« >
« >

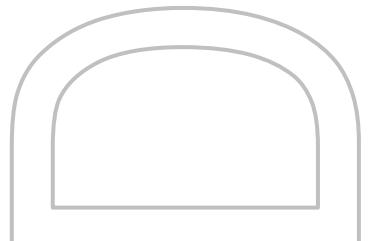
The Owner and Contractor agree as follows.

PORLAND-#932399-v5-A101-2007_Beaverton_School_District_FORM.doc

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.

AIA Document A201™-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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 document.

TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 4 CONTRACT SUM
- 5 PAYMENTS
- 6 DISPUTE RESOLUTION
- 7 TERMINATION OR SUSPENSION
- 8 MISCELLANEOUS PROVISIONS
- 9 ENUMERATION OF CONTRACT DOCUMENTS
- 10 INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

Work shall commence upon the receipt of a Notice to Proceed from Owner.

§ 3.2 The Contract Time shall be measured from the date of commencement.

§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () calendar days from the date of commencement, and Final Completion of the entire Work not later than () calendar days from the date of commencement or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Portion of Work	Substantial Completion Date	Final Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

«After negotiation, the parties agree that, if the Work is not Substantially Complete by the applicable required Substantial Completion date, the Contractor shall pay to the Owner liquidated damages in the amount of \$_____ for each and every day of delay in achieving Substantial Completion. »

«After negotiation, the parties agree that, if the Work is not Finally Complete by the applicable required Final Completion date, the Contractor shall pay to the Owner liquidated damages in the amount of \$_____ for each and every day of delay in achieving Final Completion. »

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price Per Unit

§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price
See Exhibit "B" Scope Clarifications, Allowances and Contingencies	

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month. Payments shall be made in accordance with the Oregon Prompt Payment Act, ORS 279C.570.

§ 5.1.3 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.4 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of «five» percent ($\frac{5}{100}$). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction;

- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of «five» percent («5»%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 5.1.6 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Upon Substantial Completion of the Work, adjust payment to a sum, if any, sufficient to increase the total payments to the full amount of the Contract Sum, less 150% of such amounts as the Architect shall determine for incomplete Work and unsettled claims, and less retainage; and
(Section 9.8.5 of AIA Document A201–2007 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007.

§ 5.1.7 Reduction or limitation of retainage, if any, shall be as follows: None

§ 5.1.7.1 Upon Final Completion of the Work, the Contractor will be paid unapplied and unreserved retainage.

§ 5.1.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

Deleted. There is no "Initial Decision Maker" under this Contract.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

Arbitration pursuant to Section 15.4 of AIA Document A201–2007

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate identified in the A201 General Conditions.

§ 8.3 The Owner's representative:

(Name, address and other information)

§ 8.4 The Contractor's representative:

(Name, address and other information)

§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

8.6.1 Contractor's Project Manager shall be _____.

Contractor's Project Superintendent shall be _____.

8.6.2 Contractor's CCB # _____.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below. Any Contractor or subcontractor proposals referenced as part of the Contract Documents are incorporated solely for: (i) any statement of fees and schedule that is otherwise consistent with the terms of this Agreement and (ii) any statement of services and scope of Work that is consistent with the remainder of this Agreement, or that provides additional Work without adjustment to the Contract Sum or Contract Time. No other provisions of any proposal are part of this Agreement, including without limitation any purported limitation on liability. To the extent that a proposal term otherwise conflicts with the other terms of this Agreement, such proposed conflicting terms are void and are expressly and wholly subject to the terms of this Agreement. In the event of overlap or inconsistency between the provisions of such proposals and the other terms of this Agreement, the provision that provides a better quality or quantity of service to Owner shall control.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 9.1.3 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
See Exhibit "A"	List of Contract Documents		

§ 9.1.4 The Specifications:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Title of Specifications exhibit: See Exhibit "A" List of Contract Documents

§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Title of Drawings exhibit: See Exhibit "A" List of Contract Documents

§ 9.1.6 The Addenda, if any: See Exhibit "A" List of Contract Documents

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- .1 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

See Exhibit "A" List of Contract Documents

See Exhibit "B" Scope Clarifications, Allowances and Contingencies

See Exhibit "C" Bond

See Exhibit "D" Insurance Certificate

[Include any other exhibits]

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007.)

Type of insurance or bond

See A201 General Conditions

Limit of liability or bond amount (\$ 0.00)

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

Beaverton School District

Contractor

District Representative

Date

Signature of Person Authorized to Bind Contractor - Date

Department Administrator

Date

Printed Name and Title

Executive Administrator for Facilities

Date

Telephone Number

Business Services Administrator

Date

e-Mail Address

Business Services Purchasing

Date

Federal Tax Identification Number

Not a valid contract until all signatures are complete.

DRAFT AIA® Document A201™ - 2007

General Conditions of the Contract for Construction

for the following PROJECT:

THE OWNER:

Beaverton School District
16550 SW Merlo Rd.
Beaverton OR 97003

THE ARCHITECT:

Insert Architect's name and address and delete the following statement, or include the following statement if there is no Architect:

[All references to and responsibilities of Architect are to be completed by Owner or Owner's contracted Engineering Firm.]

TABLE OF CONTENTS

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

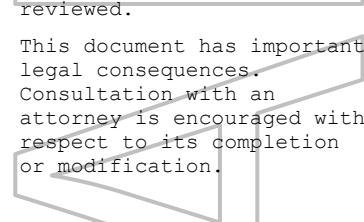
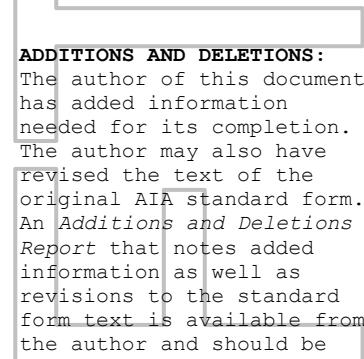
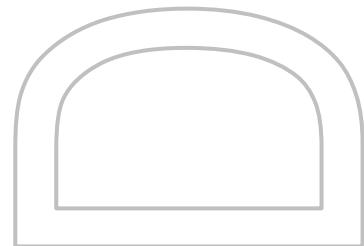
14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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.



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 document.

INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**
Acceptance of Work
9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention
10

Acts and Omissions
3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.4.2, 13.7, 14.1, 15.2

Addenda

1.1.1, 3.11

Additional Costs, Claims for
3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, 15.1.4

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10,
11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,
4.2.7, 9.3.2, 13.5.1

Arbitration

8.3.1, 11.3.10, 13.1, 15.3.2, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,
13.5.1, 13.5.2, 14.2.2, 14.2.4, 15.1.3, 15.2.1

Architect, Limitations of Authority and
Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,
4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,
9.4.2, 9.5.3, 9.6.4, 15.1.3, 15.2

Architect's Additional Services and Expenses

2.4, 11.3.1.1, 12.2.1, 13.5.2, 13.5.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.5.2, 15.2, 15.3

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,
3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,
4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, 13.5,
15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, 15.2.5, 15.2.6.1, 15.3.1,
15.3.2, 15.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit	Completion, Substantial
3.7.1	4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,
Capitalization	12.2, 13.7
1.3	Compliance with Laws
Certificate of Substantial Completion	1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2,
9.8.3, 9.8.4, 9.8.5	11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1,
Certificates for Payment	14.2.1.3, 15.2.8, 15.4.2, 15.4.3
4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4 , 9.5, 9.6.1, 9.6.6, 9.7,	Concealed or Unknown Conditions
9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3	3.7.4, 4.2.8, 8.3.1, 10.3
Certificates of Inspection, Testing or Approval	Conditions of the Contract
13.5.4	1.1.1, 6.1.1, 6.1.4
Certificates of Insurance	Consent, Written
9.10.2, 11.1.3	3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1,
Change Orders	9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2
1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8,	Consolidation or Joinder
5.2.3, 7.1.2, 7.1.3, 7.2 , 7.3.2, 7.3.6, 7.3.9, 7.3.10,	15.4.4
8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9,	CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
12.1.2, 15.1.3	1.1.4, 6
Change Orders, Definition of	Construction Change Directive, Definition of
7.2.1	7.3.1
CHANGES IN THE WORK	Construction Change Directives
2.2.1, 3.11, 4.2.8, 7 , 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1,	1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3 ,
11.3.9	9.3.1.1
Claims, Definition of	Construction Schedules, Contractor's
15.1.1	3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2
CLAIMS AND DISPUTES	Contingent Assignment of Subcontracts
3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15 , 15.4	5.4 , 14.2.2.2
Claims and Timely Assertion of Claims	Continuing Contract Performance
15.4.1	15.1.3
Claims for Additional Cost	Contract, Definition of
3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4	1.1.2
Claims for Additional Time	CONTRACT, TERMINATION OR SUSPENSION OF THE
3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5	5.4.1.1, 11.3.9, 14
Concealed or Unknown Conditions, Claims for	Contract Administration
3.7.4	3.1.3, 4, 9.4, 9.5
Claims for Damages	Contract Award and Execution, Conditions Relating to
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1,	3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1
11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6	Contract Documents, Copies Furnished and Use of
Claims Subject to Arbitration	1.5.2, 2.2.5, 5.3
15.3.1, 15.4.1	Contract Documents, Definition of
Cleaning Up	1.1.1
3.15 , 6.3	Contract Sum
Commencement of the Work, Conditions Relating to	3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1 , 9.4.2, 9.5.1.4,
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3,	9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4,
6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1,	15.2.5
15.1.4	Contract Sum, Definition of
Commencement of the Work, Definition of	9.1
8.1.2	Contract Time
Communications Facilitating Contract	3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4,
Administration	8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2,
3.9.1, 4.2.4	15.1.5.1, 15.2.5
Completion, Conditions Relating to	Contract Time, Definition of
3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1,	8.1.1
9.10, 12.2, 13.7, 14.1.2	CONTRACTOR
COMPLETION, PAYMENTS AND	3
9	

Contractor , Definition of 3.1, 6.1.2	Cutting and Patching 3.14, 6.2.5
Contractor's Construction Schedules 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2	Damage to Construction of Owner or Separate Contractors 3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4
Contractor's Employees 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1	Damage to the Work 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4
Contractor's Liability Insurance 11.1	Damages, Claims for 3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6
Contractor's Relationship with Separate Contractors and Owner's Forces 3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4	Damages for Delay 6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2
Contractor's Relationship with Subcontractors 1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8	Date of Commencement of the Work , Definition of 8.1.2
Contractor's Relationship with the Architect 1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1	Date of Substantial Completion , Definition of 8.1.3
Contractor's Representations 3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2	Day , Definition of 8.1.4
Contractor's Responsibility for Those Performing the Work 3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8	Decisions of the Architect 3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2
Contractor's Right to Stop the Work 9.7	Decisions to Withhold Certification 9.4.1, 9.5, 9.7, 14.1.1.3
Contractor's Right to Terminate the Contract 14.1, 15.1.6	Defective or Nonconforming Work, Acceptance, Rejection and Correction of 2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Contractor's Submittals 3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2	Definitions 1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1
Contractor's Superintendent 3.9, 10.2.6	Delays and Extensions of Time 3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5
Contractor's Supervision and Construction Procedures 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3	Disputes 6.3, 7.3.9, 15.1, 15.2
Contractual Liability Insurance 11.1.1.8, 11.2	Documents and Samples at the Site 3.11
Coordination and Correlation 1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1	Drawings , Definition of 1.1.5
Copies Furnished of Drawings and Specifications 1.5, 2.2.5, 3.11	Drawings and Specifications, Use and Ownership of 3.11
Copyrights 1.5, 3.17	Effective Date of Insurance 8.2.2, 11.1.2
Correction of Work 2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2	Emergencies 10.4, 14.1.1.2, 15.1.4
Correlation and Intent of the Contract Documents 1.2	Employees, Contractor's 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1
Cost , Definition of 7.3.7	Equipment, Labor, Materials or 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Costs 2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14	Execution and Progress of the Work 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3

Extensions of Time
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2, 10.4, 14.3, 15.1.5, 15.2.5

Failure of Payment
9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2

Faulty Work
(See Defective or Nonconforming Work)

Final Completion and Final Payment
4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's
2.2.1, 13.2.2, 14.1.1.4

Fire and Extended Coverage Insurance
11.3.1.1

GENERAL PROVISIONS

1

Governing Law
13.1

Guarantees (See Warranty)

Hazardous Materials
10.2.4, 10.3

Identification of Subcontractors and Suppliers
5.2.1

Indemnification
3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2, 11.3.7

Information and Services Required of the Owner
2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Initial Decision
15.2

Initial Decision Maker, Definition of
1.1.8

Initial Decision Maker, Decisions
14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority
14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Injury or Damage to Person or Property
10.2.8, 10.4

Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders
1.1.1

Instructions to the Contractor
3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2

Instruments of Service, Definition of
1.1.7

Insurance
3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery
11.3.2

Insurance, Contractor's Liability
11.1

Insurance, Effective Date of
8.2.2, 11.1.2

Insurance, Loss of Use
11.3.3

Insurance, Owner's Liability
11.2

Insurance, Property
10.2.5, 11.3

Insurance, Stored Materials
9.3.2

INSURANCE AND BONDS
11

Insurance Companies, Consent to Partial Occupancy
9.9.1

Intent of the Contract Documents
1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4

Interest
13.6

Interpretation
1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written
4.2.11, 4.2.12, 15.1.4

Judgment on Final Award
15.4.2

Labor and Materials, Equipment
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes
8.3.1

Laws and Regulations
1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Liens
2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of
12.2.5, 13.7, 15.4.1.1

Limitations of Liability
2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2, 11.2, 11.3.7, 12.2.5, 13.4.2

Limitations of Time
2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7, 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15

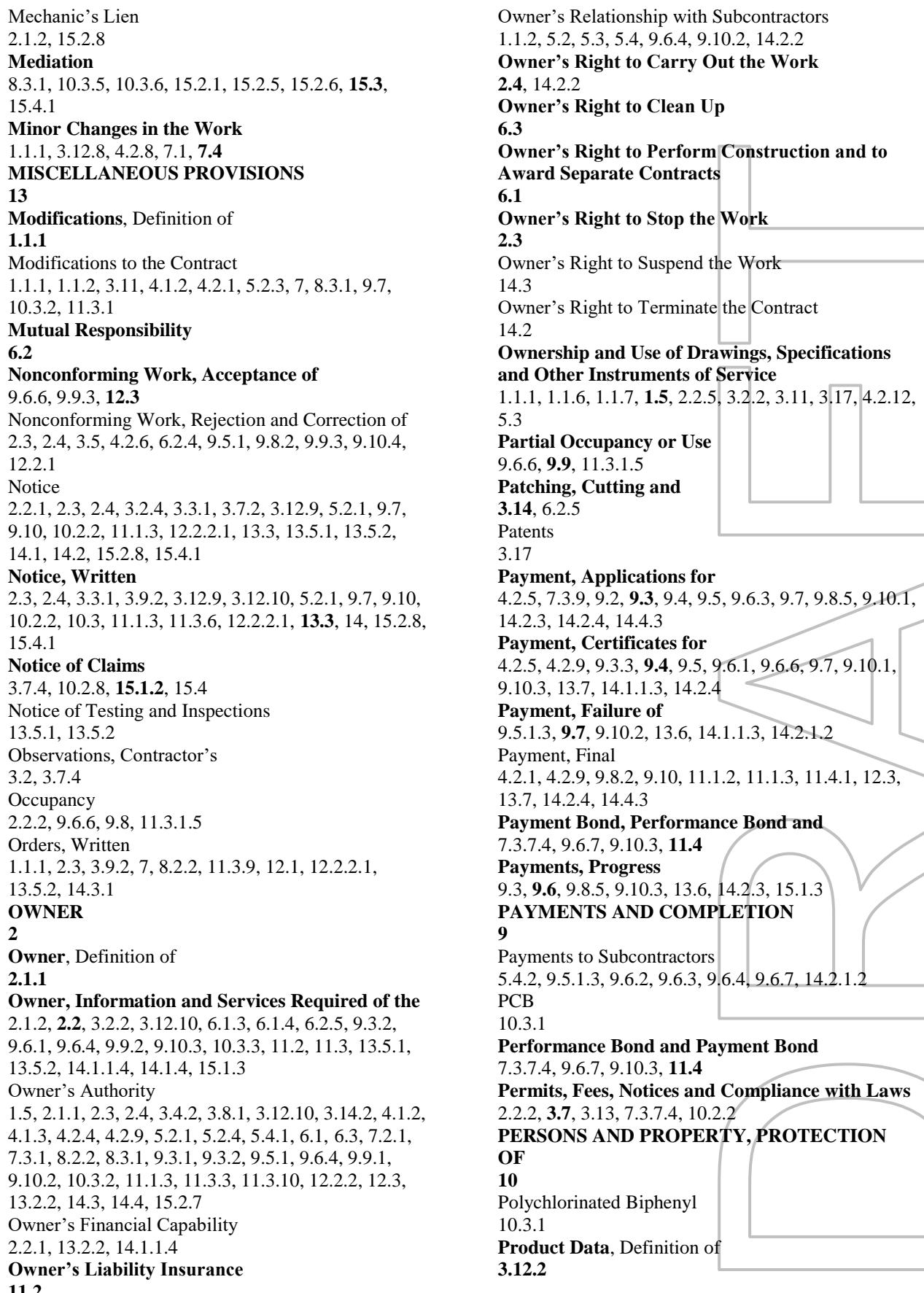
Loss of Use Insurance
11.3.3

Material Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

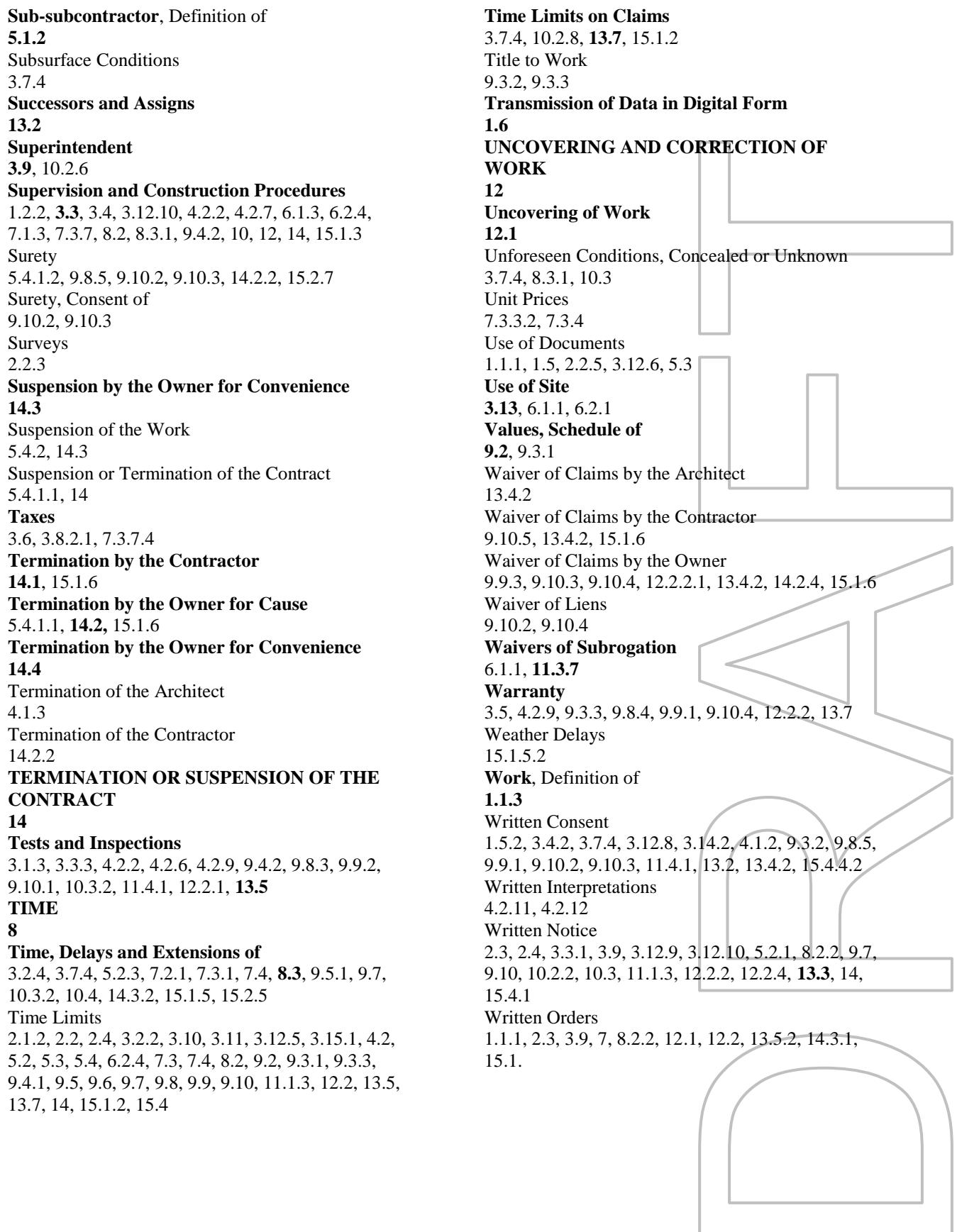
Materials, Hazardous
10.2.4, 10.3

Materials, Labor, Equipment and
1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and
Procedures of Construction
3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2







ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between Owner and Contractor (hereinafter the Agreement), and consist of the A101 Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is

- .1 a Change Order, signed by both parties
- .2 a Construction Change Directive (on BSD form CCD) or
- .3 a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind:

- .1 between the Architect and Contractor,
- .2 between the Owner and a Subcontractor or Sub-subcontractor (although the Owner retains any third party beneficiary rights it may otherwise have as to subcontractors of any tier),
- .3 between the Owner and Architect or
- .4 between any persons or entities other than the Owner and Contractor.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work includes all work performed by Contractor and its subcontractors at any tier on the Project prior to the date of this Contract, if any. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. The Work shall include all items set forth in, required by or reasonably inferable from Contract Documents in order to fully complete the Project and as reasonably inferable from the Contract Documents as being necessary to produce the indicated results, including, unless specifically excluded, all demolition and construction services, construction supervision, administration, coordination, acquisition of permits and approvals, tests, inspections, clean up, repairs, and other items that are necessary and appropriate to complete construction of the Work together with the additional collateral and incidental work and services required for completion of the Work as set forth in the Contract Documents. Contractor is responsible for performing and completing the Work in a manner that

provides a complete and functional Project for Owner, and the Work includes all materials and labor required for provision of such a Project.

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

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

§ 1.2.4 Conflicts or discrepancies among the Contract Documents shall be resolved in the following order of priority: (1) Change Orders, with Change Orders of a later date taking precedence over those of earlier date; (2) Amendment and revisions of later date take precedence over those of an earlier date; (3) The Supplementary General Conditions or Special Conditions; (4) The Agreement; (5) the General Conditions; (6) Drawings and Specifications. Drawings govern Specifications for quantity and location and Specifications govern Drawings for quality and performance. In the event of ambiguity in quantity or quality, the greater quantity and the better quality shall govern. Work described in the specifications that is not specifically located on the Drawings is nonetheless included in the Work. Items reasonably inferred from the Drawings but not in the Drawings (e.g., missing doorknobs, electrical connections to HVAC, etc.) shall be deemed part of the Drawings. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation. Figured or written dimensions govern scale dimensions, and large scale Drawings govern small scale Drawings; provided that where the Contract Documents provide for different or conflicting standards or requirements as to any portion of the Work, Contractor shall be obligated to provide the better quality, greater quantity, or comply with the more stringent requirements. In the event that work is shown on Drawings but not contained in Specifications or contained in the Specifications and not shown on the Drawings, it will be assumed the work as shown shall be provided at no change in the Contract Sum or Contract Time, according to the Drawings and/or Specifications. The Contractor shall not be entitled to an increase in the Contract Sum or Time arising out of an error or conflict where the Contractor failed adequately to review the Contract Documents and timely report the error or conflict to the Owner and the Architect.

§ 1.2.5 Where a conflict in Contract Document requirements occurs between the Specifications and Drawings or between Drawings only and clarification is not secured in writing prior to the Contractor's bid date or execution of this Agreement, whichever is earlier, the Contractor and its subcontractors at all tiers assume the responsibility and bear the risk that the bid assumption differs from the actual requirements of the Project. The Architect shall decide which of the conflicting requirements will govern based upon the most stringent of the requirements, and subject to the approval of the Owner, the Contractor shall perform the Work consistent with the Architect's decision without adjustment of the Contract Sum or Contract Time.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Reference in the singular to an article, device, item or piece of equipment shall include the larger of the number of such articles indicated in the Contract Documents or the number required to complete the installation.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor and its Sub-Contractors may retain one record set. Unless otherwise indicated, the Architect and the Architect's consultants shall be deemed the authors their respective Instruments of Service, including the Drawings and Specifications, and unless otherwise agreed with Owner will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or

distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's, Architect's or Architect's consultants' reserved rights. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

§ 1.6.1 If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall comply with Owner's protocols (or in the absence of such protocol shall endeavor to establish necessary protocols) governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.7 EXECUTION OF CONTRACT DOCUMENTS

The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Contractor is responsible for identifying such unsigned Document prior to initiating the Work.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate the person named as Owners Representative herein who shall have express authority to bind the Owner with respect to matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 3.2.1, the Architect does not have such authority. The only entity or person authorized to act for the Owner means the authorized representative outlined above. Teachers, staff, a principal, custodians or others at the school who are not the Owner's authorized representatives are not authorized to act for Owner as to any matter regarding this Contract. The Owner's Representative may execute Change Orders, Construction Change Directives, Payment Requests and other matters for which Owner's authorization or approval is required. Such matters shall not be effective unless signed by the above named individual. The Owner may change the person named above by written notice to the Contractor.

§ 2.1.2 Owner shall have the right, but not the obligation, to have a representative on-site (who need not be the Owner's Representative identified above) to observe the progress of the Work. The presence of the Owner's representative shall in no way relieve the Contractor of Contractor's obligations to supervise the Work so that the Work is in conformity with the Contract Documents. The presence of Owner's representative on-site shall not be deemed in any respect to constitute an approval or concurrence by Owner that any portion of the Work has been properly executed, installed or completed in accordance with the Contract Documents, nor an assumption of any duty for the means and methods of performance of the Work. Owner's representative shall be entitled to make notes or audio or video recordings of conditions and activities observed and shall have the right to inspect and review activity reports, Contractor's logs or other information available on-site, or at Contractor's offices, provided that Owner Representative shall not materially delay the progress of the Work in undertaking such activities.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner has furnished the information describing physical characteristics, legal limitations and utility locations for the site of the Project to the extent indicated in the Invitation to Bid. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments, and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 Other information or services specifically required of the Owner by the Contract Documents shall be furnished by the Owner upon written request with reasonable promptness.

§ 2.2.4 The Contractor will be furnished, free of charge, ten copies of Drawings and Project Manuals. The Contractor may obtain additional copies at the cost of reproduction.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to, and not in restriction of, Owner's other rights under this Agreement and at law, and its exercise shall not excuse the Contractor from damages caused by breach of this Agreement or its responsibility for full performance of this Agreement.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue to make reasonable progress to correct such default or neglect with diligence and promptness, the Owner may after such seven-day period and without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. The right of the Owner to correct the Work pursuant to this Subsection shall not give rise to any duty on the part of the Owner to exercise this right, not excuse any default by Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 NONWAIVER OF RIGHTS BY OWNER

No action or inaction on the part of the Owner at any time in the exercise of any right or remedies conferred upon it under this Contract shall be deemed to be a waiver on the part of the Owner of any of its rights or remedies.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, and shall cause all of its subcontractors at all tiers to be lawfully licensed when required for performance of their portion of the Work. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters requiring the Contractor's approval or authorization. The initial Contractor's Representative is designated in the A101 Agreement.

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

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

§ 3.1.4 The Contractor shall be and operate as an independent contractor under this Contract and in the performance of the Work and shall have complete control over and responsibility for all personnel performing the Work. In no event shall the Contractor be authorized to enter into any agreements or undertakings for or on behalf of the Owner or to act as or be an agent or employee of the Owner. The Contractor accepts the relationship of trust and confidence between Contractor and Owner and agrees to furnish its best professional skill, judgment and efforts to accomplish the Work in an expeditious manner consistent with the best interests of Owner. Contractor acknowledges that it has a relationship of special trust with Owner, and that Owner is relying on Contractor's expertise in entering into this Contract. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating Contractor as an agent for or joint venturer with Owner.

§ 3.1.5 The Contractor shall (a) record the progress of the Work; (b) submit to Owner a written progress report every month as further provided below; (c) submit to Owner such reports and notifications as Owner may reasonably request from time to time; and (d) keep a daily log of information reasonably relevant to the Work.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. Notwithstanding any other provision of the Contract, the Contractor hereby specifically acknowledges that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work therein in order to enter into the Contract, and that the Drawings, the Specifications and all Addenda and other Contract Documents are sufficient to enable the Contractor to perform the Work outlined therein in accordance with applicable laws, statutes, building codes and regulations and otherwise to fulfill all of its obligations hereunder. Except as otherwise expressly provided for herein, no Claim for unforeseen or unforeseeable conditions or limitations that exist or may arise affecting the Work or difficulties in performing the Work will be accepted, nor shall it give rise to a Claim, nor shall it constitute an excuse or basis for any failure or omission by the Contractor or for extra compensation, or as a basis for an extension of time in which to complete performance of the Contract.

§ 3.2.2 By executing this Contract, the Contractor represents and acknowledges that the Contract Sum is reasonable compensation for all the Work, that the Contract Time is adequate for the performance of the Work, and that it has carefully examined the contract documents and the Project site, including any existing structures, and that it has satisfied itself as to the nature, location, character, quality and quantity of the Work, the labor, materials, equipment, goods supplies, work, services and other items to be furnished and all other requirements of the Contract Documents, as well as the surface conditions and other matters that may be encountered at the Project site or affect performance of the Work or the cost or difficulty thereof, including but not limited to those conditions and matters affecting: transportation, access, disposal, handling and storage of materials, equipment and other items; availability and quality of labor, water, electric power, utilities, drainage; availability and condition of roads; normal climatic conditions and seasons; physical conditions at the Project site and the surrounding locality; topography and ground surface conditions; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of the Contractor to acquaint itself with any such condition or matter shall not in any way relieve the Contractor from the responsibility for performing the Work in accordance with the Contract Documents and within the Contract Time and the Contract Sum. The Contractor acknowledges that having carefully examined the jobsite and all Drawings, Specifications, and documents, the Contractor has satisfied itself that there are no discrepancies or omissions in the Contract Documents that a Contractor exercising professional General Contracting practices, skills, judgment, etc. would have reasonably recognized. Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2, shall take field measurements of any existing conditions and reference points, related to that portion of the Work and shall observe any conditions at the site affecting it and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing such activities. The Contractor shall prevent the dislocation or destruction of reference points and shall employ a registered land surveyor currently licensed in Oregon for, and be responsible for accuracy of layout and elevations for the Work. The Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. The Contractor shall do no work without applicable Drawings, Specifications, Architect's Supplemental Instructions, or written modifications or, where required, approved Shop Drawings, Product Data, or Samples, unless instructed to do so in writing by the Architect and the Owner. Where conflicts that the Contractor knew or reasonably should have known have not been brought to the Architect's attention in a timely manner, the Contractor will be deemed to have elected the method(s) or material (s) necessary in the Architect's opinion to reconcile the conflict as included in the Contract Sum and Contract Time. Any design errors or omissions noted by the Contractor during this review shall be reported promptly by Contractor to the Owner and the Architect but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, and rules and regulations, except for Design-Build Work (defined in Section 3.12.10), but the Contractor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to this Section 3.2, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, except for unreported observed deficiencies or those items related to Design Build Work unless the Contractor recognized or reasonably should have recognized such error, inconsistency, omission, nonconformity or difference and failed to report it to the Architect and Owner. If the Contractor performs any construction activity it knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents without such notice to the Architect and Owner, the Contractor shall be responsible for such performance and shall bear the attributable costs for correction.

§ 3.2.4 Any investigations of hidden or subsurface conditions have been made for design purposes. The results of these investigations may be bound into or referenced in the Contract Documents for the convenience of the Bidders and the Sub-bidders and are a part of the Contract Documents. There is no guarantee, express or implied, that the conditions indicated are representative of those existing throughout the site or that unforeseen developments not inferable from such investigations may not occur.

§ 3.2.5 Contractor shall confirm applicable requirements appearing in any easements, covenants and other record documents and in the event of any discovered conflict between any such requirement and the Drawings and Specifications shall immediately notify the Owner and Architect.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, assembly details and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall review any such specific instructions and any construction or installation procedure specified in the Contract Documents, shall advise the Architect if following the instruction or procedure will affect any warranties. If the Contract Documents give specific instructions concerning construction means, methods, techniques, assembly details, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. The Contractor shall perform no portion of the Work without Contract Documents, or, where required, approved Shop Drawings, Product Data or Samples for such portion of the Work, unless authorized to do so by written instructions of the Owner. Where specific instructions are given in a Contract Document, the Contractor shall review the instructions, including those of manufacturers, and promptly notify the Architect and the Owner in writing if the specified instruction or procedure deviates from accepted construction practice, or normal procedure, or will affect warranties, or other responsibilities of the Contractor. The Contractor's notification shall include reasonable alternatives that the Contractor, exercising Professional judgment, believes will accomplish the original intent of the Contract Documents.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, subcontractors at any tier and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its subcontractors at any tier.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Under no conditions shall a section of Work proceed prior to preparatory work having been completed, cured, dried and otherwise made satisfactory to receive the related work. Responsibility for timely installation of all materials and equipment rests solely with the Contractor, who shall maintain coordination control at all times.

§ 3.3.4 The Contractor shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Contract Documents, including the then current issue of the Drawings and Specifications. The Contractor shall be responsible for examination, inspection and quality surveillance of all Work performed by any subcontractor of any tier, and for such

subcontractors' performance of such Work itself. The Contractor shall determine when it is necessary to perform, and shall perform, tests (in addition to those requested by the Owner or required by the Specifications or any other provision of the Contract Documents) to verify its inspections or to ensure that the Work is being completed in strict accordance with the Contract Documents. If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by Owner hereunder shall be a waiver of any of Contractor's obligations hereunder.

§ 3.3.5 The Contractor shall plan and lay out all Work in advance of operations so as to coordinate all work without delay or revision. The Contractor shall establish and maintain existing lot lines, restrictions, and bench marks. The Contractor shall establish and maintain all other lines, levels and bench marks necessary for the execution of the Work and take necessary steps to prevent their dislocation or destruction. For new building construction or additions, the Contractor shall employ a professional land surveyor registered in the State of Oregon to establish building corners and floor elevations. The land surveyor shall also provide a stamped and signed drawing certifying the actual location of the building corners in reference to the lot lines and actual floor elevations as constructed. The Contractor shall review placement of the improvements on the site with the Owner and the Architect after all lines are staked out and before foundation work is started.

§ 3.3.6 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, or their method or integration into the Work, Contractor shall have the duty to make inquiry of the Owner and Architect as to what is required prior to performance of the Work. Absent Specifications to the contrary, the material that would normally be used to produce finished Work shall be considered a part of the Contract requirements.

§ 3.3.7 If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by Owner hereunder shall be a waiver of any of Contractor's obligations hereunder.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 The Contractor 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.

§ 3.4.2 SUBSTITUTIONS

§ 3.4.2.1 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a executed Change Directive or Change Order. After the Contract has been executed, the Owner and the Architect may consider a written request for the substitution of material or products in place of those specified in the Contract Documents. The written request must include the specifications for the material or product and any proposed change in the Contract Sum or Time. In additions, the Owner may order a substitution of material or products at any time with or without approval of the Architect.

§ 3.4.2.2 By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better in all respects to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs of any kind, has been presented, that it waives any other know or unknown Claim for an increase in the Contract Sum or Time due to the substitution, and that it will coordinate the installation of the substitute if accepted and make all associated changes in the Work. The Contractor will be responsible for the reasonable costs of any time the Owner and/or the Architect expends in reviewing a Contractor substitution request. Should the Contractor or Owner Representative request substitution with a material or system of lesser quality and/or cost, if approved by the Owner Representative, the Contractor shall compensate the Owner for the difference in cost through a deductive Change Order or Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Owner may require in writing the Contractor to immediately remove from the Work any employee or other person carrying out the Contract that the Owner considers objectionable. To the fullest extent permitted by Law, the Contractor shall not be entitled to any change to the Contract Sum or Contract Time as a result of any such removal required by Owner.

§ 3.4.4 The Contractor agrees that each of its employees, subcontractors' employees and principals/owners involved in the Work may, at the option of the Owner, be subject to a security check, at any time, through the Beaverton Police Department or other venue. Notwithstanding the foregoing, Contractor, and not the Owner, remains solely responsible for performing background checks on, and screening for public safety all subcontractors at any tier and employees, and, to the extent allowed by law, shall provide such screening methodologies and information to Owner upon request.

§ 3.4.5 Contractor acknowledges that it is Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work, and Contractor shall use its best efforts to maintain labor peace by and/or among its employees and subcontractors at all tiers for the duration of the project. In the event of a labor dispute related to this project, Contractor shall not be entitled to an increase in the Contract sum or Contract Time if the dispute was caused by acts or omissions of Contractor, or Contractor's agents, subcontractors at any tier or suppliers.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will be performed in a first-class, skillful and workmanlike manner, and that the Work will conform to the requirements of the Contract Documents and will be free from defects. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Notwithstanding the above, the contractor's warranty for all elements of the work shall hold regardless of normal wear and tear. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor shall assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties. The Contractor shall not be relieved of its general warranty obligations by the specification of a particular product or procedure in the Contract Documents. Warranties in the Contract Documents shall survive completion, acceptance and final payment. Contractor shall at Contractor's expense promptly pay and perform, to the reasonable satisfaction of Owner, any repairs required of Contractor in fulfillment of the foregoing warranty obligations. Should Contractor fail to perform any maintenance or repair required of it pursuant to this Section 3.5 within seven (7) days of notice thereof from Owner (provided no notice shall be required for emergency repairs), Owner may make such repair and Owner shall be entitled to recover directly from Contractor the reasonable cost thereof (including attorneys fees) plus interest at the statutory rate thereon from the date of repair, immediately and upon demand by Owner therefore.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use, Business & Occupation, income, and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received whether or not yet effective or merely scheduled to go into effect. Contractor is advised that income taxes in Beaverton and surrounding areas may include, but not be limited to, taxation by the State of Oregon, by Washington County, and by Tri-Met. All such taxes paid by the Contractor are included in the Contract Sum established at the time of execution of this agreement.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Without limitation to the foregoing, Contractor shall procure all certificates of inspection, use, occupancy, permits and licenses, pay all charges and fees and give all notices necessary and incidental to the due and lawful prosecution of the Work including without limitation street use and street closure permits. Certificates of inspection, use and temporary certificate of occupancy shall be delivered to Owner by Contractor prior to (and as a condition to) Substantial Completion of the Work of each Phase in sufficient time for occupation of the Phase in accordance with the Contract Documents, and the final certificate of occupancy prior to (and as a condition to) Final Completion. The Owner will reimburse the Contractor for the actual cost, without markup of the building permit, permanent utility connection permits and fees, and permits required for construction of work in the public right and associated bonds or assurances, outside of the Contract Sum. The Owner may, at its election, retain a firm to perform and pay for the permitting jurisdictions required special inspections. Any other required permits including trade permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work shall be the responsibility of the Contractor and are included in the Contract Sum. Contractor shall deliver an electronic copy in a

PDF format of the building permit and attachments to Architect and Owner as soon as it is issued. Upon final completion, the Contractor shall deliver to the Owner all original permits, licenses and certificates of occupancy with photocopies to the Architect.

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, or performs or fails to perform any permit requirements, the Contractor shall assume appropriate responsibility for such Work and shall pay and bear the resultant costs, including without limitation those attributable to correction, and any penalties, extensions, additional fees or fines assessed.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions; otherwise Contractor's Claim will be barred. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No increase to the Contract Sum or Contract Time shall be allowed if the Contractor knew of the concealed conditions prior to its executing the Contract or such conditions were reasonable discernable from the bidding documents or a careful review of the project site. If the Contractor encounters such a condition, and proceeds to perform any additional work or incur any additional jobsite costs in regard to such condition without prior written direction from Owner, Contractor will be deemed to have acknowledged that such condition does not entitle Contractor to any additional compensation or extension of the Contract Time.

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, general conditions and other expenses contemplated for stated allowance amounts are included in the allowance and there shall be no additional charge for the same;
- .3 Whenever actual costs, as agreed to in writing by Owner, 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 the difference between such actual agreed costs and the allowances under Section 3.8.2.1 and 3.8.2.2;
- .4 Materials and equipment required under an allowance shall be proposed by Contractor and approved in writing by the Owner prior to procurement;

.5 Periodically, during the course of construction, representatives of the Contractor shall advise the Owner of the cost status of each allowance.

The Contractor shall provide this information in a timely manner, but always prior to the completion of the allowance Work. The intent of this subparagraph is to identify possible cost overrun exposure and bring same to the attention of the Owner as soon as possible.

§ 3.9 PROJECT MANAGER / SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent project manager and superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work as required by this Contract or as otherwise necessary or appropriate. The project manager and superintendent shall be the persons designated in the AIA A101 unless the Owner's Project Manager approves another person in writing. The project manager and/or superintendent shall represent the Contractor, and communications given to the project manager and/or superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed by Contractor in writing. Other communications shall be similarly confirmed on written request of Owner in each case. For smaller projects, the project manager and the superintendent may be the same person subject to approval by the Owner Representative.

§ 3.9.2 Unless otherwise agreed in writing, the Contractor shall cause the superintendent to remain on the Project site whenever subcontractors of any tier are present and not less than eight hours per day, five days per week, unless the job is closed down due to a legal holiday, a general strike, conditions beyond the control of the Contractor, termination of the contract in accordance with the Contract Documents, until Final Completion is attained.

§ 3.9.3 Neither the project manager or the superintendent shall be changed without the approval of the Owner's Project Manager.

§ 3.9.4 Within ten days after issuance of the Notice to Proceed, the Contractor shall furnish to the Architect and Owner a chain-of-command organizational chart which includes all supervisory personnel, including the project manager, the project engineer and the superintendent, that the Contractor intends to use on the Work. The chart shall specify any limits of authority for each person, including but not limited to their ability to speak for and bind the Contractor, as well as any limits on decision-making authority with respect to specific dollar values, contract time, and issues affecting quality of the Work. The Contractor shall also provide the Owner with a list of telephone numbers for all key personnel of the Contractor and its principal subcontractors at all tiers for purposes of contacting personnel as Owner reasonably determines necessary. Contractor shall periodically update the list as necessary to ensure the Owner has the most current information.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly but in any event within twenty days after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits then-currently required under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work, no less than monthly, and shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract, no more than twenty (20) calendar days after Award, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's and Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect and Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor must include a response time of at least ten days for the Architect's review and at least fourteen days for review by the Architect's consultants. Neither the Owner nor the Architect can guarantee response times from governmental authorities, such as permitting agencies.

§ 3.10.4 The construction schedule shall be prepared by Contractor in a detailed critical path management ("CPM") format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and

(iii) identify each phase of construction and orderly completion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall load his labor resource requirements and constructed value to each task on the schedule unless Owner elects to waive this requirement in writing. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The construction schedule shall be updated by Contractor to reflect actual conditions on a period described elsewhere herein. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to adjust the schedule to correct the delay, including overtime and/or additional labor, if necessary.

§ 3.10.5 The scheduled Substantial Completion date may be earlier than the required date for Substantial Completion. Any resulting schedule “float” or “slack” time shall be used or allocated only with the consensus of the Owner, Architect, and Contractor shall not be entitled to adjustment of the Contract Sum (including without limitation any claimed extended general conditions costs or expenses), Contract Time, or (if applicable) Guaranteed Maximum Price based on subsequent schedule changes, whether or not approved by Owner or Architect; any such Contract Time and Contract Sum adjustments may be implemented only by Change Order in connection with extension of the required date for Substantial Completion in accordance with this Contract.

§ 3.10.6 The Contractor shall perform the Work in accordance with the most recent schedules submitted to the Owner and Architect, and approved by the Owner.

§ 3.10.7 PROGRESS MEETINGS: The Contractor shall participate in progress meetings held at least once every week or at more or less frequent intervals as may be described in the Contract Documents, with the Architect, the Owner, subcontractors at all tiers and other appropriate consultants. The Contractor shall fully brief the Architect and Owner on the progress of the Work.

§ 3.10.8 REPORTS

- .1 Progress Reports: Contractor shall prepare and deliver to the Owner at least monthly a progress report in a form and in sufficient detail as is reasonably acceptable to Owner approved by Owner. The progress report shall specify, among other things, an estimated percentage of completion, whether the Project is on schedule, and if not, the reasons therefore and the new proposed schedule, as well as the number of days worked for each category of labor and the projected Work to be completed in the next succeeding month. The report shall include a listing and the status of all Change Orders, Modifications, bulletins, and other relevant documents, and shall detail any issues challenging completion of the Work on schedule and Contractor's solutions to same.
- .2 Additional Reports: Contractor shall prepare and deliver such additional reports as Owner may reasonably request.
- .3 Logs: Contractor shall prepare and keep current, for the Architect's and Owner's approval, logs or schedules reflecting the date the items were submitted, when a response is reasonably due and when receipt occurred of Requests for Information (RFI's), Change Order Requests (COR's), Change Orders (CO's) and submittals which shall be coordinated by Contractor with Contractor's construction schedule and which allows Architect and Owner reasonable time to review submittals or other such documents. Contractor shall post all logs to eBuilder or if eBuilder is not used, give the Owner access to such logs and schedules at all times. Logs shall be kept on Excel spread sheets unless other format is approved by the Owner Representative.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner and update at least weekly one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner and Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work sufficient to show a record of the Work as completed.

§ 3.11.1 The location of all existing or new hidden piping, valves, and utilities, as located during the course of construction, shall be appropriately marked on plans. The approved permit set of plans shall also be available to the Architect and Owner at the site.

§ 3.11.3 Contractor shall submit to Architect with each Application for Payment an accurate and updated set of field drawings, in such format as the Architect may reasonably request, marked currently to record field changes and selections. Upon final completion of the Work the Contractor shall certify that the record documents reflect complete and accurate "as-built" conditions and shall deliver the documents as well as the approved permit set of plans in good condition to the Architect for submittal to the Owner in accordance with the provisions of the Contract Documents. Contractor shall indicate on the face of each as-built drawing its concurrence that the as-built drawings are accurate. Satisfactory maintenance and submission of up-to-date record drawings will be a requirement and condition for approval of progress payments. Notwithstanding the completion of the as-built drawings and any review and correction of such drawings by Contractor, neither Architect nor Contractor shall be relieved of any responsibility each has under its contract with District for the execution and completion of Work in compliance with the Contract Documents.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

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

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

§ 3.12.8 The Work shall be in accordance with approved/reviewed submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval or review of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval or review thereof. Any corrections or modifications to Shop Drawings made by the Architect shall be deemed accepted by the Contractor, without change in Contract Sum or Contract Time, unless the Contractor provides the Architect with written notice specifically identifying the deviation and impact before commencing any Work from such Shop Drawings. The Contractor shall make all corrections requested by the Architect and, when requested by the Architect, provide a corrected Submittal. Notwithstanding the foregoing, the Contractor shall be solely responsible for errors or omissions in all submittals and Shop Drawings, whether or not the submittals and Shop Drawings have been reviewed or approved by the Architect or Owner.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures ("Design-Build Work"). The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Contractor shall cause all such professionals to be covered by professional liability insurance or equivalent coverage with a limit of at least \$1,000,000, unless otherwise approved by Owner. The premiums for such insurance shall not be an additional charge to Owner. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents, unless Contractor knew of any inadequacy and did not advise Owner and Contractor of the inadequacy prior to procurement or performance of the Design-Build Work. Contractor shall cause all Design-Build Work to be designed, engineered, permitted, and constructed in accordance with the applicable performance and design criteria and program requirements of Architect or Owner, in accordance with all applicable laws, codes, and permits, and in a manner such that these systems are functioning and properly integrated into the remainder of the Work. Contractor shall submit a copy of all design documents prepared by such design professionals to Owner and to Architect. Owner will have an irrevocable, perpetual license to use all design documents generated by Contractor or its subcontractors at any tier. They are not to be used by Contractor or its subcontractors on any other project and shall be given to Owner or destroyed upon completion of the Work, at Owner's discretion.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, permits, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Portions of the site may be occupied and in use during construction. Contractor shall maintain access and services to minimize disturbance to occupants and to allow the Owner to utilize the occupied portion of the site throughout the construction period.

§ 3.13.2 Prior to the commencement of construction, the Contractor shall prepare and obtain the Owner's approval of a construction site management plan, which will take into account requirements contained in the Specifications, and the Owner's requirements and restrictions concerning access and parking for construction personnel, staging areas and material delivery times, traffic flow requirements of the Owner and local governmental authorities, and work hours, among other things.

§ 3.13.3 The Contractor shall at all times and at its expense fully comply with the requirements of all applicable laws pertaining to storm water discharges and mitigation requirements.

§ 3.13.4 No signs or advertising media of any nature shall be permitted on the site of Work or enclosing structures without the written approval of the Owner. Any approved signs shall comply with the applicable laws, ordinances, and/or rules. Contractor shall not use in its external advertising, marketing programs, or other promotional efforts, any data, pictures or other representations of the Owner, except with prior specific written authorization from the Owner.

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such 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 Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 Existing structures and facilities, including but not limited to buildings, utilities, topography, streets, curbs, and walks, that are damaged or removed due to excavations or other construction work, shall be patched, repaired, or replaced by the Contractor to the satisfaction of the Architect, the Owner of such structures and facilities, and governmental authorities having jurisdiction. In the event the governmental authorities require that the repairing and patching be done with their own labor and/or materials, the Contractor shall abide by such regulations and it shall pay for such work.

§ 3.15 CLEANING UP

The Contractor shall keep the premises and surrounding area in a clean condition, free from accumulation of waste materials or rubbish caused by operations under the Contract, on a daily basis. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project, and clean all surfaces. If Contractor fails to perform clean ups operations on a daily basis or the above removal and cleaning at the end of the Work, the Owner after 24 hour notice to the Contractor may (but shall not be required to) perform this function, and Owner shall be entitled to immediate reimbursement from the Contractor, or offset of charges from the Contractor, for the costs incurred by Owner.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect 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 Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, and its officers, agents and employees, and Architect, Architect's consultants, and agents and employees of any of them ("Indemnitees") from and against claims actions liabilities damages losses, costs and expenses, direct and indirect, or consequential, including but not limited to attorneys' fees, costs, design professional fees and attorneys' fees, consultant and expert witness fees and other costs incurred on such claims and in proving the right to indemnification, arising out of or resulting from performance of the Work, to the extent caused, in whole or in part, by the acts or omissions of the Contractor, a subcontractor or supplier of any tier, their agents and anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. Contractor's duty of defense shall arise immediately upon assertion of any claim actually or allegedly covered by this indemnification provision, and, to the fullest extent allowed by law, shall be independent of any limitations upon Contractor's duty of indemnification.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor a subcontractor or supplier of any tier, their agents and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a

limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or any such person or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 To the extent required under ORS 30.140, no provision of this Agreement shall require Contractor, or its surety or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by negligence of the indemnitee, provided this paragraph shall not affect any provision of this Agreement that requires Contractor or Contractor's surety or insurer to indemnify against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the indemnitor, or the fault of the indemnitor's agents, representatives or subcontractors.

§ 3.18.4 The Contractor's obligation to indemnify and hold harmless the Owner from liens shall not be affected by ORS 87.021(4), and ORS 87.021 (4) shall not apply to this agreement.

§ 3.18.5 The indemnities and other covenants of this Section 3.18 shall survive the termination of the Contract.

§ 3.19 PREVAILING WAGES / LABOR LAWS / PUBLIC CONTRACT LAWS

§ 3.19.1 Contractor shall comply in all respects with ORS 279C.840. Pursuant to ORS 279C.840, the hourly rate of wage of any contractor or subcontractor or other person doing or contracting to do any part of the Work pays to workers employed in the performance of any part of this Contract shall be not less than the "prevailing rate of wage" (the effective date to be determined by BOLI rule or administrative guideline) for an hour's work in the same trade or occupation in the locality where such labor is performed.

§ 3.19.2 Except for CM/GC contracts, the "prevailing rate of wage" as published by the Oregon Bureau of Labor and Industries in effect at the time the initial specifications were first advertised for bid solicitations. ("Publication Date") apply, as those which may be paid to workers in each trade or occupation required for the Work, employed in the performance of the Work, either by the Contractor or subcontractor or other person doing or contracting to do the whole or any part of the Work is referenced in the Contract Documents and made a part of this Contract by this reference. For this contract, the 'prevailing rate of wage' as published by the Oregon Bureau of Labor and Industries are the Prevailing Wage Rates for Public Works Contracts in Oregon effective January 1, 2018. Such rates may be found in the solicitation documents, or otherwise at the Bureau's web site www.boli.state.or.us as in effect on the Publication Date. For CM/GC contracts, the "prevailing rate of wage" shall mean the prevailing wage rate in effect at the time the CM/GC contract "becomes a public works contract" as defined in OAR 839-025-0020(6), which prevailing rates shall be incorporated by attachment or reference in Guaranteed Maximum Price Amendment or, if applicable, the Early Work Amendment to the CM/GC contract.

§ 3.19.3 Pursuant to ORS 279C.840, the Contractor shall keep the prevailing wage rate for the Project posted in a conspicuous and accessible place in or about the Project. Copies of these wage rates are available from the Commissioner of the Bureau of Labor and Industries without charge. The Contractor shall also post a description of provided health and welfare and/or pension plans in the same place. In addition to the description of the plans, the notice shall contain information on how and where to make claims and where to obtain further information.

§ 3.19.4 Pursuant to ORS 279C.845, the Contractor or its surety and every subcontractor and their respective sureties shall file with the Owner written statements on oath and in the form prescribed by the Commissioner of the Bureau of Labor and Industries certifying the hourly rate of wage paid each worker it has employed upon the Work and certifying that no worker employed upon the Work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract Documents. The certificate and statement shall be verified by the oath of the Contractor or subcontractor that the Contractor or subcontractor has read such statement and certificate and knows the contents thereof and that the same is true to the Contractor or subcontractor's knowledge. The certified statements shall be set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made and actual wages paid. Certified statements for each week during which the Contractor or subcontractor employs a worker upon the Work shall be submitted to Owner once a month, by the fifth business day of the following month. Contractor or subcontractor shall preserve the statements for a period of three years from the date of completion of the Contract.

§ 3.19.5 The Contractor shall indemnify, defend, and hold the Owner harmless, including attorneys' fees, from any violation or alleged violation of ORS 279C.800 et seq.

§ 3.19.6 Hours. Pursuant to ORS 279C.520, no person shall be employed for more than eight hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, the laborer shall be paid at least time and a half pay for all overtime in excess of eight hours a day and for work performed on Saturday and on any legal holiday specified in ORS 279C.540.

§ 3.19.7 Liens. Pursuant to ORS 279C.505, the Contractor shall not permit any lien or claim to be filed or prosecuted against the Owner on account of any labor or material furnished.

§ 3.19.8 Withholding Taxes. Pursuant to ORS 279C.505, the Contractor shall pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

§ 3.19.9 Payment for Medical Care. Pursuant to ORS 279C.530:

- .1 The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to its employees, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wage of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.
- .2 All employers working under this Contract are subject employers that will comply with ORS 656.017, "Workers' Compensation Combined Health Coverage", or are employers that are exempt under ORS 656.126.

§ 3.19.10 If the contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor shall comply with the requirements of ORS 279A.120.

§ 3.19.11 Drug Testing. Pursuant to ORS 279C.505, the Contractor shall demonstrate to the Owner that an employee drug testing program is in place.

§ 3.19.12 Contractor shall comply with any and all other public contracting laws applicable to the Owner, whether or not articulated herein.

ARTICLE 4 ARCHITECT

§ 4.1 ARCHITECT

§ 4.1.1 Subject to Section 4.1.3, the Architect is the person identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 4.1.2 If the Architect is terminated, the Owner shall employ one or more new persons or entities as Architect whose status under the Contract Documents shall be that of the former Architect.

§ 4.1.3 The Architect shall be the person or entity designated on the face page of this document or such other person or entity as the Owner may select from time to time for one or more rights or duties of the Architect herein, which person or entity may be, without limitation, an engineer, consultant, Owner's Representative, or an Owner employee. The Architect need not be a licensed design professional. Nothing herein shall require the Owner to designate an Architect. If no such party is designated, the Owner shall reserve, for itself, the administrative duties, rights, and responsibilities of the Architect herein. Notwithstanding any provision of the Contract to the contrary, the Contractor agrees that any matter which is subject to the review, interpretation, approval, consent or direction of the Architect shall also be subject to the review, interpretation, approval, consent or direction of the Owner, whose opinion(s) shall govern and bind the Contractor in the event of any disagreement between the Owner (on the one hand) and the Architect (on the other hand).

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 At the discretion of the Owner, the Architect may provide administration of the Contract as described in the Contract Documents and to the extent Owner so elects, will be an Owner's representative,

- .1 During construction,
- .2 Until final payment is due and certified as such pursuant to this Contract, and
- .3 With the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2.

In acting on behalf of the Owner, the Architect will have authority to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. The Architect is not the agent of the Owner and is not authorized to agree to changes in the Contract Sum or Contract Time, nor to direct the Contractor to take actions that change the Contract Sum or Contract Time (this sentence does not apply to Owner's Project Manager).

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work as observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Architect nor the Owner will 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, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Architect nor the Owner will have control over or charge of and will not be responsible for acts or omissions of the Contractor, subcontractors at any tier, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 The Contractor shall provide the Owner with a direct copy of all written communications to or from the Architect, including all notes, requests, claims and potential changes in the Contract Sum or Time. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor, unless at that time Owner has reasonable cause to communicate with them directly or determines the Contractor is in breach of the Contract Documents. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's observations and evaluations of the Work and the Contractor's Applications for Payment, the Architect will make recommendations to and otherwise assist the Owner to determine the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect and the Owner will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect and the Owner will have authority to require inspection or testing of the Work in accordance with Sections 14.5.2 and 14.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect or 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 Architect or the Owner to the Contractor, subcontractors at any tier, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Contractor shall provide such submittals for review so as to cause no delay in the Work and to allow sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the Contract Documents. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Contractor should expect a submittal review cycle time of up to 14 days, although the Owner may in its discretion, at the request of Contractor, cause the Architect to accelerate certain submittal reviews where these are shown to Owner to be necessary for the Project schedule. Neither the Owner nor the Architect can guarantee response times from governmental authorities.

§ 4.2.8 With the approval of Owner, the Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. At Owner's request, the Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will investigate and make observations and recommendations and otherwise assist the Owner in determining the date or dates of Substantial Completion and the date of Final Completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents, including without limitation the Drawings and Specifications, as required by and/or on written request of the Owner. The Architect's response to such requests will be made in writing. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until at least 15 days after written request is made for them accompanied by sufficient information for the determination.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and initial decisions, the Architect will endeavor to secure faithful performance of the Contract by Contractor, and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on all matters will be final only if approved by Owner.

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

§ 4.2.15 In reviewing the quality and progress of the Work and submittals received from the Contractor, the Architect is acting solely for the convenience of the Owner. Neither the Owner nor the Architect has any responsibility to assist the Contractor in the supervision or performance of the Work. No action, approval or omission to act or failure to advise the Contractor as to any matter by the Owner or the Architect shall in any way relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents. Neither the Architect nor the Owner will be responsible for defining the extent of any subcontract or dealing with disputes between the Contractor and third parties. The presence of the Architect or the Owner at the site shall not in any manner be construed as assurance that the Work is being completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract Documents of any kind, including notice, has been met or waived.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site or to supply materials or equipment. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor. "Subcontractors of any tier" mean Subcontractors and Sub-subcontractors.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Within ten days after Notice of Intent of award the Contract, the Contractor shall furnish in writing to the Owner and the Architect 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 (i.e., at least 2% of the Contract Sum), consistent with the listing required with the Bid. The Contractor shall organize this list of Subcontractors in the same sequence as the Index of Specifications Sections, and state the Work category followed by the name of the Subcontractor and/or fabricator (or "Contractor" where the portion of the Work is by the Contractor's own forces). The list shall be accompanied by evidence of any qualifications required within the technical Sections of the Project Manual and satisfactory to Architect and Owner. This list shall be updated monthly as part of the payment process if additional Subcontractors of any tier are engaged. No progress payment will become due until this information is so furnished. No action or inaction of the Owner or Architect in response to receipt of the names of the proposed Subcontractors or Suppliers of any tier shall constitute approval of any Subcontractor or Supplier of any tier or of its performance. The Architect or Owner will promptly (with at least 14 days for review) reply to the Contractor in writing stating (1) whether or not the Owner or the Architect has objection to any such proposed person or entity or (2) that the Architect or Owner requires additional time for review. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection. If the Owner reasonably concludes that a proposed Subcontractor has materially failed to perform satisfactorily (such as causing a material delay or an unsafe working environment) on one or more projects for the Owner within three years of the bidding date or that a proposed Subcontractor is otherwise not "responsible", the Contractor shall replace the Subcontractor. Such a replacement shall not relieve the Contractor of its responsibility for the performance of the work or compliance with all of the requirements of the Contract within the Contract Sum or the Contract Time, except that the Owner will be responsible for the difference between the original Subcontractor's sub-bid and the replacement Subcontractor's sub-bid including any schedule impact. Notwithstanding the above, if the Owner finds the Subcontractor irresponsible based on past performance which was known to the Contractor or reasonably should have been known to the Contractor, then replacement with another Subcontractor shall not result in any change to Contract Sum and/or Contract Time.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. Any objection that a proposed Subcontractor or Supplier of any tier is different from an entity listed with the Bid shall be deemed a reasonable objection. If the proposed but rejected Subcontractor 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 or Change Directive shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required or the proposed Subcontractor or Supplier of any tier is different from an entity listed with the Bid..

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution. If the Owner reasonably concludes that any portion of the Work subcontracted by the Contractor is not being prosecuted in accordance with the Contract Documents, the Contractor shall, upon request of the Owner, remove the Subcontractor performing such work. Such removal shall not relieve the Contractor of its responsibility for the performance of the Work or complying with all of the requirements of the Contract within the Contract Sum and Contract Time.

§ 5.2.5 ENGAGEMENT AND SUBSTITUTION OF FIRST TIER SUBCONTRACTORS.

Notwithstanding the foregoing procedures, the Contractor may only engage and substitute first tier subcontractors as permitted by ORS 279C.370, 279C.585, and 279C.590.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof

will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall provide to the Owner copies of the written agreements between the Contractor and any subcontractor on request.

§ 5.3.2 The Contractor shall schedule, supervise and coordinate the operations of all Subcontractors of any tier. No subcontracting of any of the Work shall relieve the Contractor its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents.

§ 5.3.3 Pursuant to ORS 279A.100 to ORS 279A.110, the Contractor shall not discriminate against minority, women, or emerging small business enterprises in the awarding of subcontracts. Contractor covenants and agrees not to discriminate against any qualified employee or qualified applicant for employment because of race, creed, color, sex or national origin, and that similar provisions shall also be included by said party in any subcontract.

§ 5.3.4 Pursuant to ORS 279C.580, the Contractor shall include in each subcontract for property or services entered into by the Contractor and a Subcontractor, including a material supplier, for the purpose of performing the Work:

- .1 A payment clause that obligates the Contractor to pay the Subcontractor for satisfactory performance under its subcontract within 10 days out of such amounts as are paid to the Contractor by the Owner;
- .2 An interest penalty clause that obligates the Contractor to pay the Subcontractor an interest penalty on amounts due in the case of each payment not made in accordance with the above payment clause for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, computed at the rate specified in ORS 279C.515 (2).
3. A provision requiring the Subcontractor to include a payment clause and an interest penalty clause conforming to the above standards in each of its subcontracts and to require each of its Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor, including material suppliers.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract or supply agreement to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for obligations arising thereunder between the time Owner took assignment under Section 5.4.1.1 and the time Owner makes such further assignment.

§ 5.4.4 Contractor shall include in each subcontract and supply agreement a provision to the effect that in the event of the termination of the Contractor under the prime contract, the subcontractor or supplier shall, upon request of Owner, perform thereunder for the benefit of Owner in accordance with the terms and conditions thereof, subject to the provisions of this Section 5.4. Contractor also shall include with every Subcontract agreement the following language: "Subcontractor binds itself to Contractor and Owner, and is obligated to Contractor and Owner, in the same manner and

to the same extent that Contractor is bound and obligated to Owner under the Prime Contract. In the event of any dispute between the Owner and Contractor, Subcontractor shall be bound by all decisions, directives, interpretations and rulings of the Owner or the Architect, at Owner's option, including Owner's termination or suspension of Contractor."

§ 5.5 SUBCONTRACTOR CLAIMS

§ 5.5.1 The Contractor shall promptly pay (and secure the discharge of any liens or claims asserted by) all persons properly furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited, to any subcontractors of any tier). The Contractor shall furnish to the Owner such releases of claims, payment, bond and surety claims, and other documents as the Owner may request from time to time to evidence such payment and discharge. The Owner, at its option, may withhold payment, in whole or in part, to the Contractor until such documents are furnished. The Contractor shall defend, indemnify, and hold harmless the Owner from any liens and subcontractor claims, including all expenses and attorneys' fees.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The 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. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

§ 6.1.3 Unless the Owner requests that Contractor do so, the Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement by Owner and Contractor. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents. If the Contractor receives items from a separate contractor or from the Owner for storage, erection or installation, the Contractor shall acknowledge receipt for items delivered, and thereafter will be held responsible for the care, storage and any necessary replacement of items received.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so 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 Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor.

§ 6.2.4 The Contractor shall promptly remedy damage by the Contractor wrongfully caused to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may (but shall not be obligated to) clean up and allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and at Owner's discretion Architect; a Construction Change Directive requires signature by the Owner and at Owner's discretion Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect, upon Owner's approval.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Before effectuating a change the Contractor shall propose the amount of change in the Contract Sum, if any, and the amount of change in the Contract Time, if any, arising from a proposed change in the work in the form of a Change Order Proposal. The Contractor shall submit its responsible proposal within no longer than seven days after request from Owner or Architect, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. If the Contractor fails to respond within this time or an agreed to extension thereof, the Contractor shall be liable for any delays or costs to other Work associated with accepting or denying the change. The Owner may accept the proposal in writing, in which case the Owner and Contractor are bound to the terms of the proposal, it will be deemed a Change Order, and the Contractor shall commence the change in the Work immediately in accordance with the proposal. The Owner shall include the accepted proposal in the next available formal Change Order.. The Owner may reject the proposal, in which case the Owner may either not effectuate the change or may order the change through a Construction Change Directive or an order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect, Owner or Contractor and signed by the Owner, Contractor and (at Owner's election) Architect 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; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 Agreement on any Amendment shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, the construction schedule, and the Contract Time.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order signed by the Owner (and at Owner's election, prepared and/or signed by Architect), directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, 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 Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, but no longer than seven days of receipt, the Contractor shall advise the Owner and the Architect of the Contractor's agreement or disagreement with the cost or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. If the Contractor does not timely disagree with the adjustments, the Construction Change Directive will be deemed an agreed "Change Order". The Contractor's notice shall reasonably specify the reasons for its disagreement and the amount or other terms that it proposes. Without such timely written notice, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, in strict accordance with this Paragraph and other applicable provisions of the Contract Documents.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor timely disagrees with the proposed method for adjustment in the Contract Sum and the parties do not otherwise come to terms on adjustment, or if cost is to be determined under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and the Architect may prescribe, an itemized accounting together with appropriate supporting data. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, materials and subcontract costs. Labor and materials shall be itemized in the manner described in Section 7.5. When cost items in excess of \$2,500 arise from subcontractors of any tier, these items shall also be itemized and presented to Owner. Approval may not be given without such itemization. Failure to provide data within 7 days of the Owner's request or approved extension thereof shall constitute waiver of any Claim for changes in the Contract Time or Contract Sum. The Owner shall have the right to audit and copy the books and records of the Contractor and of any subcontractor or supplier of any tier seeking a change in the Contract Sum.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive amounts in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect or Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the progress schedule directly caused thereby.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect and the Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and/or Owner and shall be binding on the Owner and Contractor unless objected to by Owner prior to implementation of the change. The Contractor shall carry out such written orders promptly and the Contractor shall be entitled to no additional compensation and no change in the Contract Time as a result thereof.

§ 7.5 PRICING COMPONENTS

Unless otherwise agreed in writing, increase or decrease in the Contract Sum from a Change Order or Construction Change Directive, including through a Claim under Section 7.3.7, shall be limited to the following itemized components:

§ 7.5.1 DIRECT LABOR COSTS

These are the labor costs determined by either the estimated or actual number of additional craft hours and the hourly cost necessary to perform the change in the Work, or the unit labor costs applied to the material quantities and extended, provided the unit labor costs are developed from the above craft hour cost, whichever is applicable, according to industry practice. The hourly cost shall be based upon the following:

- .1 Basic wages: The hourly wage for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the changed Work on the site. Neither the premium portion of overtime wages, per-diem, or other subsistence or travel costs may be included unless pre-approved by the Owner. Hourly wage shall not exceed applicable PWR, unless actual wage usual and customary for the worker, and then only by prior authorization of the Owner. Supervisory time may not be charged to the work of a change order unless the supervisory time is directly linked to the work of the change order and the supervisor was not otherwise on the site.
- .2 Fringe benefits: Fringe benefits paid by the Contractor as established by the State of Oregon or contributed to labor trust funds as itemized fringe benefits, whichever is applicable.
- .3 Worker's insurances: Direct contributions to the State of Oregon as industrial insurance; medical aid; and supplemental pension by class and rates established by the State of Oregon.
- .4 Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.2 DIRECT MATERIAL COSTS

This is an itemization, including material invoice, of the quantity and cost of additional materials necessary to perform the change in the Work. These costs shall be by the item cost applied to the quantity and extended. The item cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Owner.

§ 7.5.4 CONSTRUCTION EQUIPMENT USAGE COSTS

This is an itemization of the actual length of time construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the prevailing rate published in The Rental Rate Blue Book by Data Quest, San Jose, California, or the actual rate paid as evidenced by rental receipts. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work.

If more than one rate is applicable, the lowest rate will be utilized. The rates in effect at the time of the performance of the Change work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and or monthly rates, as appropriate, will be applied to yield the lowest total cost. The rate for equipment standing by for future use on the Work shall be 50% of the rate established above. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for that equipment, which rate and use must be approved by the Owner prior to performing the changed Work.

§ 7.5.5 COST OF CHANGE IN INSURANCE OR BOND PREMIUM This is defined as:

- .1 Contractor's liability insurance: The cost (expressed as a percentage) of any changes in the Contractor's liability insurance arising directly from the changed Work; and
- .2 Performance and Payment bond: The cost (expressed as a percentage) of the change in the Contractor's premium for the Contractor's bond arising directly from the changed Work.

Upon request, the Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

§ 7.5.6 SUBCONTRACTOR COSTS

These are payments the Contractor makes to Subcontractors for changed Work performed by Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5. Payments to subcontractors or suppliers that are affiliates of Contractor for change work shall not exceed market rates for the services provided.

§ 7.5.7 OVERHEAD AND PROFIT

This is the allowance for all combined overhead, profit, fees and other costs, including all home office, site office and site overhead, including but not limited to the project manager and/or superintendent, delay costs, safety costs, small or hand tools, acceleration and impact costs of any kind ("Overhead and Profit"), added to the total direct cost to the Owner of any Change Order or any claim for additional work or extra payment of any kind on this Project. The maximum Overhead and Profit shall be limited in all cases to the following schedule, unless specifically agreed to by Owner in advance in writing:

- .1 The Contractor shall receive as Overhead and Profit its Fee percentage of the cost of any materials or work performed by the Contractor's or its Affiliates' own forces or that labor performed or materials supplied by subcontractors; provided total Overhead and Profit charges cumulatively at all tiers shall not exceed 20%.
- .2 Each subcontractor at any tier (including lower tier subcontractor involved, but excluding any Affiliates of Contractor) shall receive 10% of the cost of any materials or work directly performed by its own forces, and 5% of the cost of any materials and labor performed by its sub-tier subcontractors.

If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The total Fee payable shall be reconciled by Owner at Final Payment to reflect the net Contract Sum adjustment under all cumulative Change Orders.

§ 7.5.8 The total cost of any change, including a Claim under Article 15, shall be limited to the reasonable value, as determined by the Owner (subject to appeal through the dispute resolution procedure of Article 15), of the items in this Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost of the work in the locality of the Project or the cost of the work in the current editions of R.S. Means Company, Inc. Building Construction cost Data as adjusted to local costs and conditions. The Owner or Architect may confer directly with Subcontractors or Suppliers of tier concerning any item chargeable to the Owner under this Article to confirm balances due and to obtain statements or lien waivers.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion and Final Completion of the Work. The Contractor also agrees to completing the Work necessary to reach Substantial Completion by the Substantial Completion Date set forth in this agreement, and Final Completion by the Final Completion date set forth in this Agreement, and acknowledges that Owner will experience operational impacts, economic damage and other damage if either of these dates are not adhered to.

§ 8.1.2 The date of commencement of the Work is the date established by the Owner in its Notice to Proceed. Site work may begin when the Contractor complies with the requirements of the Notice to Proceed. Within ten days of issuance of the notice of intent to award the Contract, the Contractor shall submit the executed contract, performance and payment bond, certificates of insurance and all other documents required by the Contract Document.

§ 8.1.3 The date of Substantial Completion and the date of Final Completion are specified elsewhere in this agreement. is the date determined under Sections 9.8 through 9.10.

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion and Final Completion within the dates specified in this agreement.

§ 8.2.4 THE TIMELY COMPLETION OF THIS PROJECT IS ESSENTIAL TO THE OWNER. The Owner will incur serious and substantial special, incidental and consequential damages if Substantial Completion and Final Completion of the Work does not occur within the respective specified dates.; however, it would be difficult if not impossible to determine the amount of such damages, which could include, for example, personnel and overtime costs, transportation costs, design fees, governmental fees, storage costs, portable rental costs, loss of use, inconvenience, loss of aesthetic value, and lost opportunities. Consequently, provisions for liquidated damages as a reasonable estimate of loss may be included in the Contract Documents. Such liquidated damages are a reasonable estimate of actual damages from delay and are not a penalty. The Owner's right to liquidated damages for delay is not affected by partial completion, occupancy, or beneficial occupancy. If the Work is to be performed in phases, with separate dates set forth elsewhere in the Contract Documents, then the liquidated damages of this Section shall apply separately to each such phase. The liquidated damages provisions herein are intended to be in addition to every other remedy enforceable at law, equity, or under this Contract, including without limitation the right to collect actual damages in any case where liquidated damages are unenforceable or otherwise unavailable.

§ 8.2.6 If a receiving area is specified in the Contract Documents and access to it by semi-tractor/trailers for unloading purposes are not substantially complete and ready for the Owner's use by the date specified in the Contract Documents, the Owner may incur costs and expenses for leasing of alternate space, transportation, labor, overtime, reshipment, delay, and other damages. For each calendar day after the date specified in the Contract Documents that the receiving area and access are not substantially complete and ready for the Owner's use, liquidated damages may be payable under the Contract Documents, or in the absence of such a provision, actual damages may be payable for such late completion.

§ 8.2.7 The provisions in the Contract for liquidated damages are intended to be in lieu of the liability of the Contractor for actual damages sustained by the Owner for late Substantial Completion or Final Completion but shall not relieve or release the Contractor from liability for any and all damage or damages suffered by the Owner due to other breaches of the Contract or suffered by separate contractors or under the indemnification and warranty provisions of this Contract.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes not reasonably foreseeable on the date the Work commenced and which are beyond the Contractor's control and not caused by the acts or omissions of Contractor or any Subcontractor or sub-subcontractor; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as Owner may determine. Extension shall not exceed the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby, but in no circumstance more than a day for day increase due to the number of days of legitimate occurrence as defined above, as the Owner may determine consistent with the provisions of the Contract Documents. The Contractor shall use best efforts to mitigate both the necessity of the delay and the period of the delay. No extension of time for completion will be allowed for delays or suspensions caused or contributed to by the negligence of Contractor or anyone for whose acts Contractor is responsible. Any such extension of the Contract Time shall be net of any contingency, weather delay, or "float" time allowance included in the Contractor's construction schedule. If

more than one event causes concurrent delays, and the cause of at least one of those events is a cause of delay that would not entitle the Contractor to an extension of time, then to the extent of such concurrency, the Contractor shall not be entitled to an extension of time.

§ 8.3.2 All claims for extension of time shall be made in writing to the Owner no more than seven (7) days after the commencement of the delay; otherwise they shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work and shall notify Owner within ten (10) days after the event causing the delay has ceased.

§ 8.3.3 When the Contract Time has been extended, such extension of time and the additional compensation, if any, allowed to Contractor thereby shall be the Contractor's sole remedy for such delay, and the Contractor shall not be entitled to any delay or impact damages, or other increase in time or compensation due to such extension.

Notwithstanding any other provision of this Contract to the contrary, the Contractor agrees to make no monetary claim under any legal theory for delay, interference or hindrance of any kind in the performance of this Contract for any reason, other than as provided in this Article 8.

§ 8.3.4 Claims relating to time shall be made in accordance with applicable provisions of Article 15. The Owner's or Architect's awareness of the occurrence of the delay through means other than the Contractor's written notification shall not constitute a waiver of a timely or written notice or Claim.

§ 8.3.5 To the fullest extent allowed by law, the Contractor may recover an increase in the Contract Sum or Contract Time from the Owner for Owner-directed changes only if the actions or inactions of the Owner or persons acting therefor were the actual cause of the delay. The Contractor shall not be entitled to an equitable adjustment or an increase in the Contract Sum or Contract Time from the Owner where the Contractor could have reasonably avoided the delay by the exercise of due diligence. The Contractor shall be entitled to an equitable adjustment or an increase in the Contract Sum under this Section only if a delay beyond the Contract Time was caused by the Owner or persons acting therefore;

§ 8.3.6 To the fullest extent allowed by law, the Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, altitude, or labor rhythm; constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar theories of damages.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, 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 Architect or Owner may require. If a schedule of values is attached as an exhibit to this Contract, it shall be considered the schedule of values for the purposes of this Contract. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Progress payments will be made monthly for work duly certified, approved, and performed during the calendar month preceding the application.

- .1 Draft Application: On or about the 25th of each month, the Contractor shall submit to the Architect and Owner, a report on the current progress of the Work as compared to the Contractor's Construction Schedule, and a draft, itemized Application for Payment for work performed during the prior calendar month. This draft shall not constitute a payment request or formal Application for Payment. The Contractor, Owner, and Architect shall confer regarding the current progress of the Work and the amount of payment to which the Contractor is entitled. The Owner or Architect may request the Contractor to provide data substantiating the Contractor's right to payment, such as copies of requisitions from Subcontractors of any tier, and reflecting retainage as provided elsewhere in the

- Contract Documents. The Contractor shall not be entitled to make a payment request, nor is any payment due the Contractor, until such data is furnished.
- .2 Payment Request: After the Contractor, the Owner and the Architect have met and conferred regarding the draft Application for Payment, and the Contractor has furnished all progress information required as well as all data requested by the Architect or Owner under Section 9.3.1.1, the Contractor may submit an Application for Payment request on the first day of the month in the agreed-upon amount to the Owner and Architect. The application shall be in the form of an itemized Application for Payment for Work performed during the prior calendar month on a form approved by the Owner (or absent such approval, on AIA forms G702, G703 AND G706), along with a release of liens and claims from Contractor and each Subcontractor for whose Work the Owner paid the Contractor for the prior month, in form acceptable to Owner. The Application shall also state that prevailing wages have been paid in accordance with the mailed statements of intent to pay prevailing wages on file with the Owner and that all payments due Subcontractors of any tier from the Owner's payment the prior month have been made. THE SUBMISSION OF THIS APPLICATION CONSTITUTES A CERTIFICATION THAT THE WORK IS CURRENT ON THE CONTRACTOR'S CONSTRUCTION SCHEDULE, unless otherwise noted on the application. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.
 - .3 Disputed Amounts: If the Application for Payment includes amounts in dispute, the Owner/Architect need only approve the portions not in dispute. Approval of an Application for Payment does not waive Owner's right to later dispute amounts included in the Application for Payment.
 - .4 Validity of Payment Requests: An Application for Payment request shall not be valid unless it complies with the requirements of the Contract Documents.

§ 9.3.2 If specifically approved by Owner in advance, payments shall be made on account of project-specific materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing in advance by the Owner, on such terms as Owner may require, 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 subject to Owner's approval conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor 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 Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 RETAINAGE

- .1 Pursuant to ORS 279C.555, the Owner will reserve 5% retainage from the moneys the Contractor earns on progress payments during the progress of the Work.
- .2 The moneys retained may, at the option of the Contractor, be:
 - (a) Retained in a fund by the Owner and paid to the Contractor in accordance with ORS 279C.570; or
 - (b) Paid to the Contractor in accordance with ORS 279C.560 (3) or (4) in a manner authorized by the Director of the Oregon Department of Administrative Services.
- .3 The Contractor may withhold payment of not more than 5% from the moneys earned by any Subcontractor, provided that the Contractor pays interest to the Subcontractor at the same interest rate it receives from its reserved funds. If requested by the Owner, the Contractor shall specify the amount of the retainage and interest due a Subcontractor.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within a reasonable period after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount

as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation of Architect that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not excuse Contractor from (1) defects in the quality or quantity of the Work, (2) Contractor's responsibility for construction means, methods, techniques, sequences or procedures, (3) deficiencies in requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, (4) Contractor's duty to properly use money previously paid on account of the Contract Sum or (5) any other obligation of Contractor under the Contract Documents.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect 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 in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied (150% of the estimated value of such defective Work may be withheld);
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for 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;
- .7 Unsatisfactory prosecution of the Work by the Contractor, including but not limited to failure to carry out the Work in accordance with the Contract Documents;
- .8 Delay by the Contractor and/or its subcontractor(s) of any tier, or failure to comply with the Contractor's Construction Schedule requirements;
- .9 Failure to submit affidavits pertaining to wages paid as required by statute;
- .10 Failure to comply with a requirement of the Contract Documents in which the Owner has reserved the right to withhold payment;
- .11 Liquidated damages; or
- .12 Any other grounds for withholding allowed under this Agreement or applicable law, including without limitation ORS 279C.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. Owner shall have the same right of withholding as Architect under Section 9.5.1.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes

payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.5.4 To the fullest extent allowed by law, Contractor shall have no right to stop the Work if Contractor timely is paid for all undisputed invoices, and if so paid, Contractor shall proceed with the performance of its obligations hereunder with reservation of all rights and remedies it may have at law or in equity with respect to disputed invoices.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 In accordance with ORS 279C.570, the Owner will make a progress payment within 30 days of its receipt of the Contractor's acceptable Application for Payment, but shall be entitled to withhold payment according to Section 9.5.1, notwithstanding the issuance of a Certificate for Payment from the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. If the Contractor does not receive payment for any cause which is not the fault of a particular subcontractor, but does receive payment for work done by the particular subcontractor, the Contractor shall pay that subcontractor on demand, made at any time after which such payment to the Contractor would have been made, for its satisfactorily completed work of such subcontractor, less the retained percentage.

- .1 Pursuant to ORS 279C.505, the Contractor shall make payment promptly, as due, to all persons supplying to the Contractor labor or materials for the prosecution of the Work.
- .2 No payment request shall include amounts the Contractor does not intend to pay to a Subcontractor because of a dispute or other reason. If, after making a request for payment but before paying a Subcontractor for its performance covered by the payment request, the Contractor discovers that part or all of the payment otherwise due to the Subcontractor is subject to withholding from the Subcontractor under the subcontract for unsatisfactory performance, the Contractor may withhold the amount as allowed under the subcontract, but it shall give the Subcontractor, the Owner and the Architect written notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the Subcontractor payment, and pay the Subcontractor within eight working days after the Subcontractor satisfactorily completes the remedial action identified in the notice.
- .3 Pursuant to ORS 279C.515, if the Contractor fails neglects or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with the Work as such claim becomes due, Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of such contract.
- .4 Pursuant to ORS 279C.515, if the Contractor or first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the Work within 30 days after receipt of payment from the Owner or a contractor, the Contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and ending upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest charged to the Contractor or first-tier subcontractor on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon on the date that is 30 days after the date when payment is received from the public contracting agency or from the contractor, but the rate of interest shall not exceed 30 percent. The amount of interest may not be waived.
- .5 Pursuant to ORS 279C.515, if the Contractor or a subcontractor fails, neglects, or refuses to make payment to a person furnishing labor or materials in connection with the Work, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in OR 279C.580.
- .6 Pursuant to ORS 279C.515, the payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor 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 Contract Documents.

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

§ 9.7 FAILURE OF PAYMENT

If the Owner does not pay the Contractor undisputed sums within the earlier of 30 days after receipt of the properly submitted Application for Payment and supporting documents from the Contractor or 15 days after the payment is approved by the Owner the amount due and owing to the Contractor less amounts permitted to be withheld pursuant to Section 9.5, then the Contractor may, upon fourteen additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and startup, plus interest as provided for in ORS 279C.570. To the fullest extent allowed by law, however, Contractor shall not stop or suspend the Work, withhold services or Work, or terminate this Agreement in the event Owner disputes any Application for Payment, so long as Owner pays the undisputed portion of the Application for Payment after applicable withholdings.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the latest of (a) the stage in the progress of the Work when the Work or designated portion thereof (which the Owner shall have agreed to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, including without limitation issuance of a temporary certificate of occupancy or passage of any necessary governmental inspection; or (b) the date of Owner's receipt of the Certificate of Substantial Completion from the Architect. The Work will not be considered not Substantially Complete if the Owner determines that the Work will not achieve Final Completion on the specified date. The Work will be considered not Substantially Complete if the Owner determines that appropriate cleaning has not occurred, if all systems and parts are not commissioned and usable, including balancing of the HVAC system, if utilities are not connected and operating normally, if all required occupancy permits or inspections have not been issued and/or passed, or if the Work is not safely accessible by normal vehicular and pedestrian traffic routes. The fact that the Owner may occupy the Work or designated portion thereof does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change liquidated damages owed to the Owner.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final acceptance, to indicate the readiness level of that part of the Work for Substantial Completion. The Contractor will further provide a written request to have the Architect certify that this Work has reached Substantial Completion and is ready for use or occupancy as applicable. The Architect and Owner will then inspect this Work for acceptance as Substantially Complete, pending completion of all work items necessary for Final Completion. The Contractor shall then expeditiously complete all work items necessary in the judgment of the Architect and the Owner to achieve Substantial Completion, after which the Architect, upon Substantial Completion, will issue a Certificate of Substantial Completion and the Owner may use and occupy this portion of the Work for his beneficial use. If the Owner or Architect determines that the Work or designated portion is not Substantially Complete, the Contractor shall

expeditiously complete the Work or designated portion, again request an inspection, and pay the costs associated with the re-inspection.

§ 9.8.3 Once Substantial Completion of the Work has been certified, the Architect, Owner and Contractor will jointly tour the all of the area of the Work and record items still remaining to be finished and/or corrected to achieve Final Completion. This list will be referred to as the Punchlist. The Contractor shall expeditiously complete the Punchlist items before the required Final Completion date. Any proposed Punchlist items that the Contractor does not agree is his work scope will be identified by the Contractor in writing on the Punchlist, which the parties shall endeavor to resolve by negotiation; alternatively, the Owner may remove the disputed items from the Punchlist or direct that the Contractor to perform such disputed items, and the issue of whether the Contractor is entitled to additional compensation for the disputed items shall be subject to Claims resolution as provided in the Contract Documents. Any items missed by the inspection but required or necessary for Final Completion of the Contract shall be supplied and installed by the Contractor as a part of the Contract Sum, notwithstanding their not being recorded on the Punchlist.

§ 9.8.4 The Certificate of Substantial Completion issued by the Architect shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract 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. Upon execution of the Certificate of Substantial Completion, the Contractor shall attach a list of each outstanding and unresolved Claim; any Claim not so attached and identified, other than retainage and the undisputed balance of the Contract Sum identified by Contractor in writing at that time, shall be deemed waived and abandoned.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such written acceptance of the Certificate of Substantial Completion and consent of surety, if any, and upon the Contractor's application, the Owner shall make payment as provided in the Contract Documents. Such payment shall be adjusted for a value of 150% of Work that is incomplete or not in accordance with the requirements of the Contract Documents. No further payment will be due or owing until the payment at Final Completion.

§ 9.8.6 Commissioning of Critical Systems: The following systems of the Work, and any other systems designated in the Contract Documents, are considered "Critical Systems":

- .1 HVAC system;
- .2 Electrical system;
- .3 Data communication system(s);
- .4 Intercom system, the life safety system(s);
- .5 Security system.

When the Contractor considers that the Critical Systems are up and running and ready for normal operation as specified for each phase, the Contractor shall so notify the Architect and Owner in writing a minimum of 14 days prior to the Date of Substantial Completion for that portion or phase as fixed in the Contract Documents. The Architect will then schedule a pre-commissioning inspection of these systems to determine whether the Critical Systems are complete and ready for normal operation. If the Architect's or Owner's inspection discloses that the Critical Systems are not Substantially Complete or that any item which is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect to determine completion of the Critical Systems and pay the costs associated with the re-inspections, including fees of the Architect and its consultants. When the Critical Systems are ready for operation, the Architect will notify the Owner in writing, which shall establish the Date of Commissioning. Warranties on the Critical Systems required by the Contract Documents shall commence on the later of the Date of Commissioning or Date of Substantial Completion, unless otherwise provided in the Contract Documents. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may upon written notice to the Contractor, take possession of, occupy or use any completed or partially completed portion of the Work at any stage and time, when it is legal to do so. Unless otherwise agreed in writing, such possession, use or operation shall not be deemed an acceptance of any portion of the Work, nor accelerate the time for any payment to the Contractor under the Contract, nor prejudice any rights of the Owner under the Contract or

under any insurance, bond, guaranty or other requirement of the Contract, nor relieve the Contractor of any of its obligations under the Contract. If the Contractor fails to complete the Work within the Contract Time, the Owner may take possession of, use or operate all or any part of the Work without an increase in the Contract Sum.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 FINAL COMPLETION

- .1 The Contractor shall cause all Punchlist items to be completed by the Final Completion date. In the event that the Contractor fails to correct the deficiencies within the time period required for the Contractor to do so, the Owner may upon seven days' written notice to the Contractor, take over and perform some or all of the Punchlist items. The Owner may deduct the actual cost of performing this Punchlist work, including any design costs from the Contract Sum.
- .2 Upon receipt of written notice from the Contractor that the Work (or Owner-designated portion) is ready for final inspection and acceptance, the Architect will promptly make such inspection accompanied by the Contractor. If it is determined that some or all of the Punchlist items are not accomplished, the Contractor shall be responsible to the Owner for all costs, including re-inspections fees, for any subsequent Architect's inspection to determine compliance with the Punchlist. When the Architect finds all Punchlist items complete (or the Owner has agreed to accept a deductive Change Order in lieu of completion of designated Punchlist items), the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly notify the Owner and the Contractor in writing that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents.
- .3 When the Architect finds that the Work has been concluded, the Punchlist completed, an occupancy permit has been issued, any commissioning process and validation process have been successfully concluded and the Contractor has submitted all the items in Section 9.10.2 to the Architect, the Contractor may submit a final Application for Payment. The Architect will then promptly issue a Certificate of Final Completion and a Certificate for Final Payment stating the entire balance found to be due the Contractor and noted in said final Certificate is due and payable. The Architect's Certificate of Final Completion will establish the date the Work reaches Final Completion upon its execution by the Owner.
- .4 The Contractor is liable for, and the Owner may deduct from any amounts due the Contractor, all fees and expenses incurred by the Owner for services performed after the required Final Completion date of all the Work due to the delay of the Contractor, whether or not those services would have been performed prior to that date had Final Completion been achieved in a timely manner.

§ 9.10.2 FINAL ACCEPTANCE AND PAYMENT

- .1 Neither final payment nor any remaining retained percentage shall become due until the Owner has formally accepted the Project. To achieve final acceptance, the Architect must issue a Certificate of Final Completion and a final Certificate for Payment under Section 9.10.1, a final occupancy permit must have been issued or all governmental inspections necessary for use and occupancy must have been unconditionally made and passed (as applicable), and the Contractor must have submitted to the Architect:
 - (a) An affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might in anyway be responsible or encumbered have been paid or otherwise satisfied, except for any claims of Subcontractors of any tier that are specifically identified on the affidavit;
 - (b) A certificate evidencing that insurance required by the Contract Documents shall remain in force 30 days after final payment is due is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner;
 - (c) A written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents;
 - (d) Consent of surety, if any, to final payment;
 - (e) Certification that the materials in the Work are "lead-free" and "asbestos-free";

- (f) All warranties, guarantees, manuals, operation instructions, certificates, spare parts, maintenance stock, specified excess material, as-built drawings and other documents or items required by the Contract Documents;
 - (g) Originals of all permits, licenses and certificates, together with a certified statement that the Contractor has closed all necessary permits or otherwise met the requirements of all governing jurisdictions related to this project, including but not limited to all city or county departments, health Owners and utility Owners, provided to Owner with a copy of all closed or signed off permits,
 - (h) Proof satisfactory to Owner that the Contractor has fully complied with the requirements of ORS 279C.845(7); and
 - (i) That, if the Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor has complied with the requirements of ORS 279A.120.2
- .2 If a Subcontractor of any tier refuses to furnish a release or waiver required by the Owner, the Owner may:
- (a) Retain funds in such amount as to defray the cost of foreclosing the liens of such claims and to pay attorneys' fees, the total of which shall be no less than 150% of the claimed amount, or
 - (b) Accept a bond from the Contractor satisfactory to the Owner to indemnify the Owner against such lien.

If any such lien remains unsatisfied after all payments from the retainage are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted to the extent permitted by statute. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract 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 Contractor to the Architect prior to certification of such 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 WAIVER OF CLAIMS

- .1 Final Payment to Contractor: Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.
- .2 Change Orders: The execution of a Change Order shall constitute a waiver of Claims by the Contractor arising out of the work to be performed or deleted pursuant to the Change Order, except as specifically described in the Change Order. General reservations of rights will be deemed waived and void.

§ 9.11 RECORDS

The Contractor shall maintain books, records, documents, and other evidence pertaining to the costs incurred by the Contractor in connection with or related to the Contract ("records") to such extent and in such detail as will properly reflect and fully support all costs, charges and other amounts of whatever nature for which reimbursement or payment is or may be claimed under the Contract. The Contractor shall preserve such records for a period of three years following the date of Final Acceptance under the Contract and for such longer period as may be required by any other provision of the Contract. In the event of a claim or dispute the Contractor agrees to make available at the office of the Contractor at all reasonable times all records for inspection, audit and reproduction by the Owner and its representatives. These requirements shall be applicable to and included in each Subcontract and purchase order issued with respect to the Work, except fixed price Subcontracts where the price is \$25,000 or less.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.1.2 No action or inaction of the Owner or the Architect relating to safety or property protection or a violation thereof will:

- .1 Relieve the Contractor of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation;
- .2 Impose any obligation upon the Owner or Architect to inspect or review the Contractor's safety program or precautions or to enforce the Contractor's compliance with the requirements of this Article 10; and
- .3 Impose any continuing obligation upon the Owner or Architect to provide such notice to the Contractor or any other person or entity.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 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 Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall 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 notifying owners and users of adjacent sites and utilities.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

§ 10.2.8 The Contractor shall, and shall require its Subcontractors to: be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying; furnish approved hard hats, other personal protective equipment as required, approved first aid supplies, the name of an individual on each shift who has completed the OSHA Supervisory Training Course and a posted list of emergency facilities; take prompt action to correct any hazardous conditions reported; comply with the requirements of the Occupational Safety and Health Act ("OSHA") and all other applicable federal, state and local worker safety laws, rules and regulations, including all standards and regulations which have been promulgated by the governmental authorities which administer such Acts and said requirements, standards and regulations are incorporated herein by reference. The Contractor shall be directly responsible for compliance therewith on the part of its agents, employees, Subcontractors, Sub-subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of its agents, employees, materialmen, Subcontractors or Sub-subcontractors to so

comply. Contractor shall provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumber's torches and other flame and spark producing apparatus and comply with NFPA Standard No. 51B, as amended, or its replacement. The Contractor shall submit his Safety Plan for the Project in hardcopy form as a submittal to the Owner to demonstrate the general level of safety program he will conduct and his general adherence to good safety practices. Owner's review, comment upon, approval or disapproval of such Safety Plan or any portion thereof shall not relieve Contractor for full responsibility for Project safety.

§ 10.2.9 The Contractor, in all cases, shall comply with OSHA, EPA and all other Governmental Workplace Requirements. The term "Governmental Workplace Requirements" as used in the Contract Documents shall mean building, traffic, environmental, occupancy health, accessibility for disabled and other applicable laws, statutes, ordinances, regulations or decrees, of any federal, state, county, municipal or other governmental or quasi-governmental authority or agency pertaining (a) to the Project, (b) to the use and operation of the Project for their intended purposes, or (c) if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (a) or (b), then to the subject matter described in the Section in which the term is used.

§ 10.2.10 Contractor shall protect adjoining private or municipal property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passers-by, as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents.

§ 10.2.11 At all times until the Owner's occupancy of the Work or a designated portion of the Work, the Contractor shall protect from damage, weather, deterioration, theft, vandalism and malicious mischief all materials, equipment, tools, and other items incorporated or to be incorporated in the Work or designated portion, or consumed or used in the performance of the Work or designated portion, and all Work in process and completed Work or designated portion. Contractor shall not permit open fires or smoking on the Project site.

§ 10.2.12 The Contractor 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 messenger to the Owner.

§ 10.3 HAZARDOUS MATERIALS [Not applicable to asbestos/hazardous materials abatement contractors]

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

§ 10.3.2 Upon receipt of the Contractor'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 Contractor 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 Contract Documents, the Owner shall furnish in writing to the Contractor and Architect 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 Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have 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 Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, unless Section 10.3.4 applies.

§ 10.3.3 The Contractor shall not permit or allow any Hazardous Substance to be deposited, disposed, placed, generated, buried, discharged, manufactured, refined, transported, treated, handled or located on or about the Project. The Contractor shall not have violated this Subparagraph if (a) the Contractor, any Subcontractor or Sub-subcontractor

temporarily uses or stores Hazardous Substances at the Project and such Hazardous Substances are reasonably required for and are in quantities appropriate to the performance of the Work then being done; and (b) the Contractor exercises reasonable oversight over the use and storage of such Hazardous Substances and compliance with Governmental Requirements applicable to such use and storage. The Contractor shall store all hazardous materials safely, whether or not required by the Contract Documents. To the extent required by applicable Governmental Requirements, the Contractor shall have Material Safety Data Sheets (MSDS) for all Hazardous Substances used in the workplace and make them available to employees who are potentially exposed to those Hazardous Substances. The MSDS and other information shall be available at the jobsite with two (2) full copies of all information to be turned over to the Owner as it is received.

§ 10.3.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor. The Contractor will be solely responsible for compliance with any "Right to Know" law relating to notice to its employees and others concerning Hazardous Substances to which they could be exposed in the course or the conduct of the Work, including the labeling of such materials, the filing of any necessary reports relating thereto, and related requirements.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business and recognized by the State of Oregon, with a Best Rating of AVII or better and reasonably acceptable to the Owner.

- .1 General Liability Insurance: Occurrence-based Commercial General Liability with limits not less than \$1,000,000 for injury and/or property damage per occurrence and \$2,000,000 for injury and/or property damage in a project general aggregate (CG 25 03), naming the Owner, its employees, officials and agents as additional insured as respects to work or services performed under this Agreement. Include a CG 20 10 11 85 endorsement or equivalent including products of completed operations. This insurance will be primary over any insurance the Owner may carry on its own. Evidence of the above coverage's issued by a company satisfactory to the Owner shall be provided to the Owner by way of a certificate of insurance before any work or services commence. A 30-day prior notice of cancellation or material change in coverage clause shall be included. Failure to maintain the proper insurance shall be grounds for immediate termination of this contract. The Owner, at its option, may require a complete copy of the above policy.
- .2 Asbestos/hazardous materials Abatement (only applicable to Asbestos/hazardous materials abatement Contractors): General Liability policy shall be written on a form that meets the following criteria, and must be ASBESTOS SPECIFIC as follows:
 - (a) A full occurrence form, or
 - (b) A limited occurrence form with at least a three (3) year tail, or
 - (c) A claims made form with a three (3) year tail,
- .3 Automobile Liability Insurance: Occurrence-based Commercial Automobile Liability (any auto or owned, non-owned and hired) Insurance policy(s) with limits not less than \$1,000,000 for injury and/or property damage per occurrence. Evidence of the above coverage's issued by a company satisfactory to the Owner shall be provided to the Owner by way of a certificate of insurance before any work or services commence. A 30-day prior notice of cancellation or material change in coverage clause shall be included. Failure to maintain the proper insurance shall be grounds from immediate termination of this contract. The Owner, at its option, may require a complete copy of the above policy.
- .4 Workers' Compensation / Employers Liability Insurance: Worker's compensation coverage for its employees, officers, agents, or partners, as required by Oregon applicable workers' compensation laws. Employer's liability insurance in a minimum amount of \$500,000. Contractor

- shall provide a certificate of insurance to the Owner as evidence of coverage containing a 30-day notice of cancellation clause.
- .5 Pollution Liability Insurance: Pollution Liability insurance covering the Contractor's liability for a third party bodily injury and property damage arising from pollution conditions caused by the Contractor while performing their operations under the contract. The insurance coverage shall apply to sudden and accidental pollution events. Any coverage restriction as to time limit for discovery of a pollution incident and/or a time limit for notice to the insurer must be accepted by the Owner. The insurance coverage shall also respond to cleanup cost. This coverage may be written in combination with the commercial general liability insurance or professional liability insurance. The policy's limits shall not be less than \$1,000,000 each loss / \$1,000,000 aggregate. The policy shall be endorsed to state that the general aggregate limit of liability shall apply separately to this contract. Any self-insured retention / deductible amount shall be submitted to the Owner for review and approval.
- .6 Subcontractors: The Contractor shall require all subcontractors to provide and maintain General Liability, Auto Liability, Professional Liability (as applicable), and Workers' Compensation insurance with coverage's equivalent to those required of the General Contractor in this Agreement. The Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.
- .7 In addition, the Contractor shall maintain a true umbrella policy which provides excess limits over the primary layer, in an amount not less than \$5,000,000.
- .8 Exceptions or Waivers: Any exception of waiver of these requirements shall be subject to review and written approval from the Owner.

§ 11.1.2 CERTIFICATES OF INSURANCE

Before any presence on site, commencing Work or exposure to loss can occur, the Contractor shall furnish the Owner with Certificates of Insurance, naming the Owner, its employees, officials and agents as additional insured (except Workers Compensation), as evidence of all insurance required by the Contract Documents. If the Agreement is executed, no progress payment will be due until all such Certificates are furnished. All policies and certificates must be signed copies and shall contain a provision that coverage's afforded under the policies cannot be materially altered (i.e., the coverage's reduced, the limits decreased, or the additional insured removed), allowed to expire, or canceled without first giving 30 days' prior written notice to the Owner. The Contractor shall furnish to the Owner copies of any subsequently issued endorsements, amending, modifying, altering, or restricting coverage of limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that the liability coverage's include protection for underground, collapse and explosion.

§ 11.1.3 COVERAGE

The Owner's specification or approval of the insurance in this agreement or of its amount shall not relieve or decrease the liability of the Contractor under this Contract Documents or otherwise:

- .1 Coverage written on an occurrence basis shall be maintained without interruption from the date of commencement of the Work until the date of final acceptance.
- .2 Coverage written on a claims-made basis (if permitted by Owner) shall be maintained without interruption from the date of commencement of the Work until the date of final acceptance and unlimited tail coverage must be purchased.

§ 11.1.4 FAILURE TO MAINTAIN

If the Owner is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the Owner, then the Contractor shall bear all costs attributable thereto, THE OWNER MAY WITHHOLD PAYMENT PENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE. Failure to withhold payment shall not constitute a waiver.

§ 11.1.5 INDUSTRIAL ACCIDENT FUND

Pursuant to ORS 279C.505, the Contractor shall pay all amounts due the Industrial Accident Fund from the Contractor incurred in the performance of this Contract. The Contractor shall require its Subcontractors to make such payments.

§ 11.1.6 All of Contractor's insurance required under this Section 11.1 shall be maintained until the Project has reached a state of Final Completion as demonstrated by the Architect's Certificate of Final Completion, and, extending out to the date the Contractor has moved all of his material, equipment, offices and labor off of the Project site. Completed operations coverage shall extend until at least 10 years following Substantial Completion.

§ 11.2 PROPERTY INSURANCE

The Owner shall at Owner's election, maintain the Owner's usual liability insurance or self-insurance. Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk or equivalent" policy form, in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. At Owner's election, the policy may include coverage for property stored off site or in transit. The Contractor shall be solely responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the Work, regardless of cause, including negligence of the Owner, and Owner shall not be obligated to maintain insurance coverage for the same.

Notwithstanding the foregoing, such insurance policy will not include, and the Owner may not be charged as part of the Contract Sum, any optional builder's risk endorsements and Contractor shall bear the risk of any loss otherwise potentially covered by such endorsements at Contractor's sole expense.

Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10.

This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The interests of a Subcontractor or Sub-subcontractor shall be included within the insurance only to the extent each has any interest in the portion of the Work contracted to be performed by the Subcontractor or Sub-subcontractor which has not been paid for by Owner. No Contractor, Subcontractor or Sub-subcontractor shall be named as loss payee under any policy of insurance purchased by the Owner with respect to the Project, and no draft or other instrument in payment of any loss shall name the Contractor, any Subcontractor or Sub-subcontractor as joint payees.

§ 11.2.1 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles except to the extent the Contractor, any Subcontractor or Sub-subcontractor or anyone directly or indirectly employed by them or anyone for whose acts they may be liable was responsible for the loss, in which event Contractor shall pay the deductible described in Subparagraph 11.4.1.

- .1 Upon written request, the Owner will provide a copy of its policy to the Contractor. The policy shall be endorsed to allow complete or partial occupancy by the Owner before or after Substantial Completion without the insurer's approval.
- .2 Each loss shall be subject to a deductible of \$25,000. Losses up to the deductible amount shall be borne and paid for by the Contractor without reimbursement.
- .3 At Owner's election, this property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.2.1.1 If partial occupancy or use in accordance with Section 9.9 requires the insurance company or companies providing property insurance to have consented to such partial occupancy or use by endorsement or otherwise, the Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.2.1.2 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if it determines possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.2.1.3 The policy shall be endorsed to specifically reference the Project, and shall contain a provision that the policy will not be canceled or allowed to expire until at least 30-days prior written notice has been given to the Owner.

§ 11.2.1.4 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner, for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.2.2 ADJUSTMENT

Upon the occurrence of an insured loss the Owner shall participate in and approve the adjustment and settlement of any loss with the insurers.

- .1 The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach. If no agreement is reached, any damaged Work shall first be repaired or replaced, and payment therefore made from the separate account by Change Order or by payment to a separate contractor, at Owner's option; further disbursements from the separate account will then be determined by Owner.
- .2 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after the occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in paragraph 7.6.

§ 11.3 PERFORMANCE BOND AND PAYMENT BONDS

§ 11.3.1 FURNISH

Pursuant to ORS 279C.380, the Contractor shall furnish bonds covering the faithful performance of the Contract and the payment of obligations arising there under. Bonds are to be obtained through a company that is authorized and licensed by the Oregon Insurance Commissioner. The bonding company must be listed on the most current US Government Treasury list, Department Circular 570 or approved PRIOR TO BID SUBMISSION by Owner. The cost of the bonds shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent of the Contract Sum (as modified from time to time). The bonds shall be submitted on the AIA A312 or other form acceptable to Owner and shall name Owner as beneficiary. Failure to adhere to these requirements may be grounds for rejection of the bid or cancellation by Owner of this Agreement.

§ 11.3.2 DELIVERY

The Contractor shall deliver the required bonds to the Owner prior to or with the signed (by the contractor) Agreement to the Owner Representative at the address of the first page of this Agreement. The Contract shall not be executed by the Owner until the bonds have been received and validated.

§ 11.3.3 POWER OF ATTORNEY

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

§ 11.3.4 COPIES

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

§ 11.4 PROOF OF INSURANCE

§ 11.4.1 Before commencing Work or exposure to loss can occur and in an event within ten days after the Owner has issued its notice or award, the Contractor shall furnish the Owner with Certificates of Insurance as evidence of all insurance required by the Contract Documents. If the Agreement is executed, no progress payment will be due until all such Certificates and policies are furnished. All policies and certificates must be signed copies and shall contain a provision that coverage's afforded under the policies cannot be materially altered (i.e., the coverage's reduced, the limits decreased, or the additional insured removed), allowed to expire, or cancelled without first giving 30 days' prior written notice to the Owner. The Contractor shall furnish to the Owner copies of any subsequently issued endorsements amending, modifying, altering, or restricting coverage of limits. Furthermore, such policies or certificates shall verify that the policy contains coverage for blanket contractual liability including both oral and written contracts and acknowledge the indemnification provisions and liability coverages called for by this Agreement. Upon written request, the Contractor will provide a copy of its policy to the Owner. Unless otherwise provided herein, such insurance shall be maintained until the project is accepted by the Owner.

§ 11.4.2 The Owner's specification or approval of the insurance in this Contract or of its amount shall not relieve or decrease the liability of the Contractor under the Contract documents or otherwise. Coverage's are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts.

§ 11.4.3 If the Owner is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. The Owner may withhold payment pending receipt of all certificates of insurance. Failure to withhold payment shall not constitute a waiver.

§ 11.4.4 In addition, if Contractor fails to maintain or provide timely proof of evidence of any of the above required coverages, Owner may, but shall not be obligated to, procure such coverages, in which case Contractor shall reimburse Owner for the cost of the same within ten (10) days after demand or, at the Owner's election, the Owner may offset such costs against amounts otherwise due Contractor.

§ 11.4.5 If a payment bond and/or performance bond is required by the Owner under the Contract, the Owner may require that the Contractor subcontract only with Subcontractors who agree to file suit against such bond(s) in the event the Contractor fails to meet its payment or performance obligations to the Subcontractor, as the Subcontractor's exclusive remedy against the Owner, the Project or the Land. This requirement shall not apply if Contractor has not made payments to Subcontractors for the sole reason that Owner has not paid the Contractor per the terms of the Agreement.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to it's being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor subject to the approval of Owner. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Amendment, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor employed by the Owner in which event the Owner (if Owner-caused) or separate contractor (if separate contractor-caused) shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 GENERAL

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense, which costs shall not be passed on to the Owner whether as part of the Contract Sum or otherwise. Roadways, pavements and curbs that are broken, damaged, settled or otherwise defective as a result of receiving, handling, storage of materials or the performance of any Work under the Contract Documents shall be fully restored to the satisfaction of the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 4.6, if, within (i) one year after the date of Substantial Completion of all the Work, (ii) two years after the date of Substantial Completion of the Work, as to those components of the Work that include, alter or affect any portion of the building envelope and penetration components; or (iii) the period established by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it according to the requirements of this section with no change in the Cost of the Work promptly after receipt of written notice from the Owner to do so. If the Contractor does not promptly initiate work to correct the Work designated in the notice, the Owner may proceed to correct the Work, the Owner may dispose of materials and equipment as it sees fit, and the Contractor will be liable for all costs. The obligations of Contractor under this Section 12.2 shall survive acceptance of the Work under the Contract and termination of the Contact, is in addition to other warranties provided by contract or law, and does not establish a time limit for damages.

- .1 If, in the Owner's opinion, the nonconforming Work either prevents the use of the facility and/or immediate response is required to prevent further damage or to restore security to prevent external entrance, and/or is a safety hazard (e.g., break in the waterline, sprinkler system failure, failure of the heating system, inability to close or lock exterior door, etc.), Contractor shall initiate corrective

- work on site the same day if the Contactor is notified prior to noon, or by noon the following day if notified afternoon, and shall complete corrective action within 48 hours.
- .2 If, in the Owner's opinion, the nonconforming Work has the potential of becoming a safety hazard, affects internal security, or limits the use of the facility (e.g. loss of heat in a single classroom, failure of one or more plumbing fixtures, interior door locks not working, etc.), Contractor shall initiate corrective work on site within two working days and shall complete corrective action within 5 working days.
- .3 If, in the Owner's opinion, the nonconforming Work does not have an impact on the use of the building, but must be fixed, (e.g., interior door closer broken, window cracked, wall covering seam coming loose, etc.), the Contractor shall initiate corrective work on site within 14 calendar days and shall complete corrective action within 28 calendar days.

§ 12.2.2.2 The 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 performance of the Work. For example, if a portion of the Work is completed 15 days after Substantial Completion, the period of correction shall commence as to such Work 15 days after Substantial Completion.

§ 12.2.2.3 The period for correction of Work shall be extended with respect to corrective work performed by the Contractor for a period of one (1) year from the date of completion of such corrective work or until the expiration of the original warranty period, whichever is later.

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

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

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract 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. Owner shall never be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases Owner shall be entitled to full removal and correction of defective or non-conforming Work.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

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

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, 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.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project or to a successor school Owner or government agency. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.4.3 Notwithstanding any provision in this Contract to the contrary, in the event requirements of Owner's lender, if any, regarding the conditions, calculation or timing of progress payments differ from those set forth in this Contract, Contractor shall cooperate to comply with such requirements provided the same are not unduly burdensome to Contractor.

§ 13.2.4 If the majority of the ownership or the control of the Contractor is acquired by a third party, and such acquisition reasonably imperils performance or creates a conflict of interest that the Owner, in its sole discretion, cannot reasonably reconcile, then the Owner may terminate this Contract at any time pursuant to Section 14.2, except that the Owner shall give the Contractor thirty days written notice of termination and the opportunity for the Contractor to cure prior to termination.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual or 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 fax, electronic mail, registered or certified mail to the last business address known to the party giving notice. The date of written notice shall be the earlier of the date of personal delivery, actual receipt by fax, electronic mail, or three calendar days after the date of postmark.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations of Contractor imposed by the Contract Documents and rights and remedies of Owner available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law. The Contractor's sole remedy for claims, disputes and other matters in question of the Contractor, direct or indirect, arising out of, or relating to the Contract Documents or breach thereof, except claims which have been waived under the terms of the Contract Documents, is the dispute resolution procedure of Article 15.

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. The Contractor shall make arrangements for such tests, inspections and approvals with the appropriate public authority, and shall bear all related costs of tests inspections and approvals. If the services of an independent testing firm are required the Contractor shall make arrangements for such tests, inspections and approvals with the independent testing firm has been retained by and being paid for by the Owner. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The independent testing agency shall prepare the test reports, logs and certificates applicable to the specific inspections and tests and promptly and simultaneously deliver the specified number of copies of them to the designated parties. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. If the Contractor arranges for an inspection and the inspector is required to wait, to leave without inspection, to perform a partial inspection, to return to complete or re-inspect, or otherwise to expend time other than for the primary inspection, the Contractor shall be responsible for all such costs to the extent caused by the Contractor. If the Contractor does not pay the charges for which it is responsible within 30 days of billing, the Owner

may pay the charges directly and back charge the Contractor on the next progress payment the amount plus a 10% handling fee.

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

§ 13.5.5 If the Architect chooses to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.5.7 No acceptance by the Owner of any Work shall be construed to result from any inspections, tests or failure to inspect or test by the Owner, the Owner's representative, the Architect or any other person. No inspection, test, failure to inspect or test, or failure to discover any defect or nonconformity by the Owner, the Owner's representatives, the Architect or any other person shall relieve the Contractor of its responsibility for meeting the requirements of the Contract Documents or impair the Owner's right to reject defective or nonconforming items or right to avail itself of any other remedy to which the Owner may be entitled, notwithstanding the Owner's knowledge of the defect or nonconformity, its substantiality or the ease of its discovery.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest as specified by ORS 279C.570.

§ 13.7 EXCULPATORY PROVISION

No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against any affiliate, partner, member, officer, director, trustee or beneficiary of Owner on account of any agreement contained in the Agreement or any other Contract Documents, whether expressed or implied. Liability with respect to the entry and performance of this Agreement and all other Contract Documents, however it may arise, with respect to Owner shall be asserted and enforced only against Owner, and Contractor shall have no recourse to any assets of any affiliate, partner, member, director, officer, employee, trustee, beneficiary or other representative of Owner. Any and all personal liability, if any, beyond that which may be asserted against Owner is expressly waived and released by Contractor and by all persons or entities claiming by, through and under Contractor.

§ 13.8 INTERPRETATION

The Contract Documents have been carefully reviewed by Contractor and its counsel and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Paragraph headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 13.9 WAIVER, AMENDMENT AND EXTENSION

No waiver, amendment, extension or variation in the terms of the Contract Documents shall be valid against a party unless in writing and signed by such party and then only to the extent specifically set forth in the writing. No failure or delay on the part of a party in exercising any right, power or privilege under the Contract Documents, nor any course of dealing between the parties, will waive, amend or vary the terms of the Contract Documents.

§ 13.10 EXTENT OF CONTRACT

The terms of the Contract Documents are intended by the parties to be a final expression of their understanding with respect to the Project and may not be contradicted by evidence of any prior or contemporaneous statements or understandings. No addition to, deletion from or modification of any term or provision of the Contract Documents shall be effective unless it is made in a writing signed by the parties hereto.

§ 13.11 SEVERABILITY

If any clause or provision of the Contract Documents is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of the Contract Documents shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable,

there shall be added as a part of the Contract Documents a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

§ 13.12 COUNTERPARTS

This Contract may be executed in counterparts, a complete set of which shall be considered an original.

§ 13.13 SURVIVAL

If the full performance of an obligation is not required prior to the termination of this Contract, such obligation shall survive the termination and be fully enforceable thereafter.

§ 13.14 STATUTES

§ 13.14.1 The Contractor shall abide by the provisions of all applicable Oregon statutes. Although a number of statutes are referenced in the Contract Documents, it is not meant to be a complete list and should not be relied upon as such. Without limitation, the applicable required public contract provisions identified in the following statutes are incorporated herein by reference, whether or not specifically referenced in this Agreement. In the event any of the following provisions conflict with any provision of this Agreement, the following provisions shall prevail:

- .1 Prompt payment to all Persons supplying labor or material; contributions to Industrial Accident Fund; liens and withholding taxes (ORS 279C.505(1));
- .2 Demonstration that an employee drug testing program is in place (ORS 279C.505(2));
- .3 If the Contract calls for demolition Work described in ORS 279C.510(1), the requirement that the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective;
- .4 If the Contract calls for lawn or landscape maintenance, the requirement that the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective (ORS 279C.510(2));
- .5 Payment of claims by public officers (ORS 279C.515(1));
- .6 Contractor and first-tier subcontractor liability for late payment on Public Improvement Contracts pursuant to ORS 279C.515(2), including the rate of interest;
- .7 Person's right to file a complaint with the Construction Contractors Board for all Contracts related to a Public Improvement Contract (ORS 279C.515(3));
- .8 Hours of labor in compliance with ORS 279C.520;
- .9 Environmental and natural resources regulations (279C.525);
- .10 Payment for medical care and attention to employees (ORS 279C.530(1));
- .11 The following requirement: "All employers, including Contractor, that employ subject workers who work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements." (ORS 279C.530(2));
- .12 Maximum hours, holidays and overtime (ORS 279C.540);
- .13 Time limitation on claims for overtime (ORS 279C.545);
- .14 Prevailing wage rates (ORS 279C.800 to 279C.870);
- .15 BOLI Public Works bond (ORS 279C.830(3));
- .16 Retainage (ORS 279C.550 to 279C.570);
- .17 Prompt payment policy, progress payments, rate of interest (ORS 279C.570);
- .18 Contractor's relations with subcontractors (ORS 279C.580);
- .19 Notice of claim (ORS 279C.605);
- .20 Contractor certifies compliance with the Oregon tax laws in accordance with ORS 305.385; and
- .21 Contractor certifies that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

§ 13.14 AUTHORITY

Contractor represents and warrants that he or she or it has the full right, power, legal capacity and authority to enter into and perform Contractor's respective obligations hereunder, and that such obligations shall be binding upon Contractor without the requirement of the approval or consent of any other person or entity in connection herewith. Each person signing the Contract on behalf of Contractor represents and warrants that he or she has the full right, power, legal capacity and authority to sign the Contract on behalf of Contractor.

§ 13.15 CONTRACTOR REGISTRATION

The Contractor shall be registered or licensed as required by the laws of the State of Oregon, including but not limited to ORS 701 et seq. Contractor represents that Contractor and its subcontractors have all requisite endorsements required for performance of the Work under ORS 701 et seq.

§ 13.16 REPRESENTATIONS

Contractor represents that (1) it has sufficient knowledge and expertise to construct the Work in accordance with all applicable codes and regulations; (2) it has reviewed, analyzed, and has current knowledge of the site; and (3) it has reviewed, analyzed, and has found sufficient for completion of the Work the Contract Documents. Contractor acknowledges and warrants that any exceptions to this representation have been specifically identified in the Contract Documents.

§ 13.17 CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

Contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act of 1970 (42 U.S.C. 1867 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) as amended. Violations shall be reported as required by law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 Subject to the other provisions of this Contract, the Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, and Owner has not cured such matters within seven (7) days after the date of Contractor's notice to Owner, or because the Owner has not made payment on an approved Certificate for Payment (other than disputed sums) within the time stated in the Contract Documents.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit and costs incurred by reason of such termination. The total recovery of the Contractor shall not exceed the unpaid balance of the Contract Sum.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly and persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding any provision of the Contract seemingly to the contrary, to the fullest extent allowed by law, Contractor shall not stop or suspend the Work or terminate this Contract in the event Owner withholds any disputed payment, so long as Owner continues to make undisputed payments for which Architect has issued a Certificate of Payment.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may, upon at least one business day written notice to the Contractor, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Work or the Contract for cause if the Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make prompt payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 fails to abide by laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;
- .4 fails to prosecute the Work or any portion thereof with sufficient diligence to ensure the Substantial Completion of the Work within the Contract Time;
- .5 is adjudged bankrupt makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency;
- .6 otherwise is guilty of a breach of or default under a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, at least one business days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid earned balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. Contractor shall be responsible and shall pay all Owners' claims for costs and damages upon demand, pending reconciliation pursuant to this Section 14.2.4. The amount to be paid to the Contractor or Owner, as the case may be, shall be determined by the Owner, and this obligation for payment shall survive termination of the Contract.

§ 14.2.5 If, after Contractor has been terminated pursuant to this paragraph 14.2, it is determined that none of the circumstances set forth in paragraph 14.2.1 exists, then such termination shall be considered a termination for convenience pursuant to Paragraph 14.4.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall be consistent with the terms of the Contract Documents, provided to the fullest extent allowed by law Contractor waives all claims for additional profit as a result of such suspension. No adjustment shall be made to the extent:

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate (without prejudice to any right or remedy of the Owner) the whole or any portion of the Contract for the Owner's convenience and without cause.

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment consistent with the Contract Documents for Work properly executed, and costs necessarily incurred by reason of such termination (such as the cost of settling and paying claims arising out of the termination of Work under subcontracts or orders), along with reasonable profit on the Work executed, not to exceed the profit in Contractor's bid. The total sum to be paid to the Contractor under this Section 14.4 shall not exceed the Contract Sum as reduced by the amount of payments otherwise made, the price of Work not terminated, and as otherwise permitted by this Contract. The amounts payable to the Contractor shall exclude the fair value of property which is destroyed, lost, stolen or damaged so as to become undeliverable to the Owner or to a buyer pursuant to section 14.5.

§ 14.4.4 If Owner terminates for cause, Owner at any time may, by notice to Contractor, convert the termination to a termination for convenience. In the event Owner terminates for cause and it is determined that Owner did not have sufficient cause for termination, such termination shall be deemed at Owner's convenience under this Section. Termination for convenience shall not impair Owner's other rights, including its rights and remedies for any breach of this Contract. In no event shall Contractor have a claim for damages, lost profits or otherwise on account of the termination of the Contract by Owner, with or without cause.

§ 14.5 EFFECTS OF TERMINATION BY OWNER

§ 14.5.1 Unless the Owner directs otherwise, after receipt of a notice of termination from the Owner pursuant to Section 14.2 or 14.4, the Contractor shall promptly:

- .1 Stop Work under the Contract on the date and as specified in the Notice of Termination;
- .2 Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
- .3 Procure cancellation of all orders and subcontracts, upon terms acceptable to the Owner, to the extent that they relate to the performance of Work terminated;
- .4 Assign to the Owner all of the right, title and interest of the Contractor under all orders and subcontracts, in which case the Owner shall have the right, in its discretion, to accept such assignments or any of them, and settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- .5 With the Owner's approval, settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts not assigned to the Owner;
- .6 Transfer title and deliver to the entity or entities designated by the Owner the fabricated or un-fabricated parts. Work in process, partially completed supplies and equipment, materials, parts, tools, dies, jigs and other fixtures, completed Work, supplies and other material produced as part of, or acquired in connection with the performance of, the Work terminated, and the completed or partially completed plans, drawings, information and other property related to the Work;
- .7 Use its best efforts to sell any property of the types referred to in section 14.5.1.6. The Contractor shall not be required to extend credit to any buyer, and may acquire any such property under the conditions prescribed by and at a price or prices approved by the Owner, and the proceeds of any such transfer or disposition may be applied in reduction of any payments to be made by the Owner to the Contractor;
- .8 Take such action as may be necessary or as directed by the Owner to preserve and protect the Work and property related to this Project in the possession of the Contractor in which the Owner has an interest; and
- .9 Continue performance only to the extent not terminated.

§ 14.5.2 The Contractor shall, from the effective Date of Termination until the expiration of three years after final settlement under this Contract, preserve and make available to the Owner, at all reasonable times at the office of the Contractor, and without charge to the Owner, all books, records, documents, photographs and other evidence bearing on the costs and expenses of the Contractor under this Contract and relating to the terminated Work.

§ 14.5.3 In arriving at any amount due the Contractor after termination, in addition to any other permitted deductions, the following deductions shall be made:

- .1 All un-liquidated advance or other prior payments on account made to the Contractor applicable to the terminated portion of the Contract;

- .2 Any claim pursued under the Contract which the Owner may have against the Contractor, including without limitation liquidated damages;
- .3 An amount necessary to protect the Owner against outstanding or potential liens or claims;
- .4 The agreed price for or the proceeds of sale of any materials, supplies or other things acquired by the Contractor or sold, pursuant to the provisions of section 14.5.1.7, and not otherwise recovered by or credited to the Owner.

§ 14.5.4 If (and only if) the termination pursuant to Section 14.4 is partial, the Contractor may file a claim for equitable adjustment of the price or prices specified in the Contract relating to the continued portion of the Contract. Any claim by the Contractor for an equitable adjustment under this section must be asserted within thirty days from the effective date of the partial termination or it shall be deemed barred.

§ 14.5.5 The Contractor shall refund to the Owner any amounts paid by the Owner to the Contractor in excess of costs reimbursable under the Contract Documents.

§ 14.5.6 The Owner may have costs reimbursable under this Article 14 audited and certified by independent certified public accountants selected by the Owner, who shall have full access to all the books and records of the Contractor.

§ 14.5.7 To the fullest extent allowed by law, the damages and relief from termination by the Owner specifically provided in Article 14 shall be the Contractor's sole entitlement in the event of termination.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party. Unless a different period for assertion of particular Claims is specifically identified in this Agreement, Contractor must give written notice of any Claim to Owner not later than seven days after occurrence of the event giving rise to the Claim or Contractor first becomes aware of the Claim, whichever is sooner, or the Claim shall be deemed forever time barred and waived. Contractor's notice shall provide sufficient detail to enable the Owner to investigate the matter, and shall include a clear description of the Claim, the proposed change in the Contract Sum and/or Contract Time of the Claim, and data supporting the Claim. Failure to properly submit the notice of Claim shall constitute waiver of the Claim. The Claim shall be deemed to include all changes, direct and indirect, in cost and in time to which the Contractor (and subcontractors of any tier) is entitled. Prior to the initiation of a dispute resolution procedure, the Owner or its representatives shall have the right to audit and copy any subcontractor or supplier of any tier whose claim is part of or included in the Claim. All Claims shall be addressed to:

Administrator, Facilities Development
Beaverton School District
16550 SW Merlo Road Beaverton, Oregon 97006

In addition, a copy of the Claim notice shall be sent concurrently to the Owner's Representative.

All unresolved Contractor Claims shall be deemed waived and released by Contractor unless Contractor has strictly complied with the time limits of the Contract Documents.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed amounts in accordance with the Contract Documents. The Architect will prepare Amendments, Change Orders and issue Certificates for Payment in accordance with the decisions of Owner.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor'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.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path for the scheduled construction, and that either the Work was on schedule (or not behind schedule through the fault of the Contractor) at the time the adverse weather conditions occurred or the adverse effect on the scheduled construction would have occurred whether or not the Work was on schedule. No claim for additional time will be granted where the scheduled construction adversely affected was not on the critical path, was within the schedule float or contingency (or would have been in float or contingency had Contractor appropriately rescheduled Work on account of weather conditions), or could be avoided by Contractor through temporary weather protection measures. Claims for additional time will not be granted where the delays for which Contractor is responsible result in moving Work into an adverse weather season. Contractor shall provide copies of weather reports to the Owner and the Architect, produced from 'NOAA' - National Oceanic & Atmospheric Administration' for dates affected, as well as, a 5 year historical average report for same period of time. In addition, Contractor to submit a revised construction schedule to Owner and Architect showing critical path activities affected by the delay. A rain, windstorm, high water, or other natural phenomenon for the specific locality of the Work, which might reasonably have been anticipated from the previous 10-year historical records of the general locality of the Work, shall not be construed as abnormal. Rainfall, even extreme rainfall, is normal. The Office of the Environmental Data Service of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce nearest the Project site shall be considered the official agency of record for weather information.

§ 15.2 INITIAL MATTERS

§ 15.2.1 In the event of a Claim against the Contractor, 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 Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.2 If a claim, dispute or other matter in question relates to or is the subject of a bond, the party asserting such matter may proceed in accordance with applicable Oregon law to comply with the bond notice or filing deadlines prior to resolution of the matter by the Owner, by mediation, or by arbitration.

§ 15.2.3 Contractor shall make its employees and principals, as well as its work and project records, available to Owner upon Owner's request, in the event that there is any dispute concerning the compliance of the Work with the Agreement or the Contract Documents. The availability of such personnel and documentation shall be provided without the necessity of a subpoena, request for production or similar legal process. In the event that Owner is required to utilize some form of legal process to obtain such ability, Owner shall be entitled to recover its reasonable attorney fees and the costs expended in obtaining access to such personnel and documentation, regardless of whether Owner is the prevailing party in connection with any later dispute resolution, mediation, arbitration, or litigation regarding such matters.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4.1 and 9.10.4.2 shall be subject to mediation, at the election of Owner. If the Owner has given written notice to Contractor requiring mediation of the claim, Contractor may not commence litigation against Owner until the mediation is concluded, except as is necessary to avoid a time bar from commencement of litigation under this Contract or applicable law. Owner may commence arbitration at any time.

§ 15.3.2 At Owner's election, the parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall

be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending attempted mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation (if Owner elected to mediate) shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement, except that there shall only be one arbitrator regardless of the amount in dispute. 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.

§ 15.4.1.1 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. For statute of limitations 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.

§ 15.4.1.2 Any arbitration or other legal proceeding must be initiated by Contractor within the earlier of (a) 120 days after Substantial Completion as designated in writing by the Owner or (b) 60 days after Final Acceptance, or the Claim will be considered waived and time-barred. This requirement cannot be waived except by an explicit written waiver signed by the Owner. The pendency of mediation shall toll these deadlines unless and until Owner terminates mediation.

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

§ 15.4.3 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.

§ 15.4.4 CONSOLIDATION OR JOINDER

§ 15.4.4.1 Owner, 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). In addition, at Owner's election, the Contractor agrees to joinder in any arbitration or litigation proceeding in which the Owner is a party with third parties in which the Owner or such third party alleges indemnification or contribution from the Contractor, any of its subcontractors of any tier, any one directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. The Contractor agrees that all of its subcontractors of any tier will, in the subcontracts, similarly stipulate; in the event any does not, the Contractor shall be liable in place of such subcontractor(s).

§ 15.4.4.2 Owner, 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.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

§ 15.4.4.4 Notwithstanding the foregoing, Owner does not agree to joinder in any separate proceeding in which Contractor is a party, without Owner's written consent. Upon demand by the Owner, claims between Owner and Contractor, Owner and Architect, Contractor and Architect or Contractor and its subcontractors and suppliers shall be submitted in a single arbitration, and Contractor agrees to joinder in such arbitration.

§ 15.5 DISPUTE EXPENSES

In the event of any dispute relating to this Agreement the Work or the Project, whether such dispute is resolved through mediation or through judicial process, the prevailing party shall recover from the other party, the prevailing party's "Dispute Expenses" incurred in mediation, at trial or on appeal or review from a decision or determination in mediation or following trial, including without limitation any proceeding under the US Bankruptcy Code. For purposes of this Agreement, the term "Dispute Expenses" shall include a recovery for the following items of expense: reasonable attorney and paralegal fees, reasonable fees for expert witnesses and consultants, costs for providing discovery materials, costs for creation or mediation or trial materials (including, without limitation, photographs, exhibits, analyses, diagrams, or plans) and a reasonable reimbursement for employed staff time incurred with respect to handling any such claim to completion. All the foregoing items shall be in addition to any statutory award of costs and fees provided under Oregon law. The foregoing provisions recognize the significant expenditure of public funds by the Owner under this Agreement and the necessity of the Owner to recoup expenses associated with recovering public money for breaches of this Agreement, for non-complying Work or for warranty or contractual claims.