

For Recording Stamp Only

**DESCHUTES COUNTY SERVICES CONTRACT  
CONTRACT NO. 2022-303**

This Contract is between DESCHUTES COUNTY, a political subdivision of the State of Oregon, acting by and through the Facilities Department (County) and **PENCE CONTRACTORS LLC**, (Contractor). The parties agree as follows:

**Effective Date and Termination Date.** The effective date of this Contract shall be **April 18, 2022**, or the date, on which each party has signed this Contract, whichever is later. Unless extended or terminated earlier in accordance with its terms, this Contract shall terminate when County accepts Contractor's completed performance, or on **September 30, 2022**, whichever date occurs last. Contract termination shall not extinguish or prejudice County's right to enforce this Contract with respect to any default by Contractor that has not been cured.

**Statement of Work.** Contractor shall perform the work described in Exhibit 1.

**Payment for Work.** County agrees to pay Contractor in accordance with Exhibit 1.

**Contract Documents.** This Contract includes Page 1-8 and Exhibits 1-7.

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**CONTRACTOR DATA AND SIGNATURE**

Contractor Address: 1051 NW Bond Street, Suite 310, Bend, OR 97701

Federal Tax ID# 22-3878410

Is Contractor a nonresident alien? ☐ Yes ☒ No

Business Designation (check one):

☒ Corporation-for profit

☐ Sole Proprietorship

☐ Corporation-non-profit

☐ Partnership

☐ Other, describe:

A Federal tax ID number or Social Security number is required to be provided by the Contractor and shall be used for the administration of state, federal and local tax laws. Payment information shall be reported to the Internal Revenue Service under the name and Federal tax ID number or, if none, the Social Security number provided above.

**I have read this Contract including the attached Exhibits. I understand this Contract and agree to be bound by its terms.** NOTE: Contractor shall also sign Exhibits 3 and 6 and, if applicable, Exhibit 4.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

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**DESCHUTES COUNTY SIGNATURE**

Contracts with a maximum consideration of not greater than \$25,000 are not valid and not binding on the County until signed by the appropriate Deschutes County Department Head. Additionally, Contracts with a maximum consideration greater than \$25,000 but less than \$150,000 are not valid and not binding on the County until signed by the County Administrator or the Board of County Commissioners.

Dated this \_\_\_\_\_ of \_\_\_\_\_, 20\_\_

DESCHUTES COUNTY ADMINISTRATOR

\_\_\_\_\_  
Nick Lelack

## STANDARD TERMS AND CONDITIONS

1. **Time is of the Essence.** Contractor agrees that time is of the essence in the performance of this Contract.
2. **Compensation.** Payment for all work performed under this Contract shall be made in the amounts and manner set forth in Exhibit 1.
  - a. Payments shall be made to Contractor following County's review and approval of billings and deliverables submitted by Contractor.
  - b. All Contractor billings are subject to the maximum compensation amount of this contract.
  - c. Contractor shall not submit billings for, and County shall not pay, any amount in excess of the maximum compensation amount of this Contract, including any reimbursable expenses, (See Exhibit 5).
    - 1) If the maximum compensation amount is increased by amendment to this Contract, the amendment shall be signed by both parties and fully executed before Contractor performs work subject to the amendment.
    - 2) No payment shall be made for any services performed before the beginning date or after the expiration date of this contract.
  - d. Unless otherwise specifically provided in Exhibit 5, Contractor shall submit monthly invoices for work performed. The invoices shall describe all work performed with particularity and by whom it was performed and shall itemize and explain all expenses for which reimbursement is claimed.
  - e. The invoices also shall include the total amount invoiced to date by Contractor prior to the current invoice.
  - f. Prior to approval or payment of any billing, County may require, and Contractor shall provide, any information which County deems necessary to verify work has been properly performed in accordance with the Contract.
3. **Delegation, Subcontracts and Assignment.** Contractor shall not delegate or subcontract any of the work required by this Contract or assign or transfer any of its interest in this Contract, without the prior written consent of County.
  - a. Any delegation, subcontract, assignment, or transfer without prior written consent of County shall constitute a material breach of this contract.
  - b. Any such assignment or transfer, if approved, is subject to such conditions and provisions as the County may deem necessary.
  - c. No approval by the County of any assignment or transfer of interest shall be deemed to create any obligation of the County to increase rates of payment or maximum Contract consideration.
  - d. Prior written approval shall not be required for the purchase by the Contractor of articles, supplies and services which are incidental to the provision of services under this Contract that are necessary for the performance of the work.
  - e. Any subcontracts that the County may authorize shall contain all requirements of this contract, and unless otherwise specified by the County the Contractor shall be responsible for the performance of the subcontractor.
4. **No Third-Party Beneficiaries.**
  - a. County and Contractor are the only parties to this Contract and are the only parties entitled to enforce its terms.
  - b. Nothing in this Contract gives or provides any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name in this Contract and expressly described as intended beneficiaries of this Contract.
5. **Successors in Interest.** The provisions of this Contract shall be binding upon and inure to the benefit of the parties and their successors and approved assigns, if any.
6. **Early Termination.** This Contract may be terminated as follows:
  - a. Mutual Consent. County and Contractor, by mutual written agreement, may terminate this Contract at any time.
  - b. Party's Convenience. County or Contractor may terminate this Contract for any reason upon 30 calendar days written notice to the other party.
  - c. For Cause. County may also terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County, under any of the following conditions:

- 1) If funding from state or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services as required in this Contract.
  - 2) If state laws, regulations or guidelines are modified, changed or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
  - 3) In the event sufficient funds shall not be appropriated for the payment of consideration required to be paid under this Contract, and if County has no funds legally available for consideration from other sources.
  - 4) If any license or certificate required by law or regulation to be held by the Contractor to provide the services required by this Contract is for any reason denied, revoked, suspended, not renewed or changed in such a way that the Contractor no longer meets requirements for such license or certificate.
- d. Contractor Default or Breach. The County, by written notice to the Contractor, may immediately terminate the whole or any part of this Contract under any of the following conditions:
- 1) If the Contractor fails to provide services called for by this Contract within the time specified or any extension thereof.
  - 2) If the Contractor fails to perform any of the other requirements of this Contract or fails to pursue the work so as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from the County specifying such failure, the Contractor fails to correct such failure within 10 calendar days or such other period as the County may in writing authorize.
  - 3) Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis.
- e. County Default or Breach.
- 1) Contractor may terminate this Contract in the event of a breach of this Contract by the County. Prior to such termination, the Contractor shall give to the County written notice of the breach and intent to terminate.
  - 2) If the County has not entirely cured the breach within 10 calendar days of the date of the notice, then the Contractor may terminate this Contract at any time thereafter by giving written notice of termination.

**7. Payment on Early Termination.** Upon termination pursuant to paragraph 6, payment shall be made as follows:

- a. If terminated under subparagraphs 6 a. through c. of this Contract, the County shall pay Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Provided however, County shall not pay Contractor for any obligations or liabilities incurred by Contractor after Contractor receives written notice of termination.
- b. If this Contract is terminated under subparagraph 6 d. of this Contract, County obligations shall be limited to payment for services provided in accordance with this Contract prior to the date of termination, less any damages suffered by the County.
- c. If terminated under subparagraph 6 e of this Contract by the Contractor due to a breach by the County, then the County shall pay the Contractor for work performed prior to the termination date if such work was performed in accordance with the Contract. Specifically:
  - 1) with respect to services compensable on an hourly basis and authorized expenses actually incurred, County shall pay the amount due plus any interest within the limits set forth under ORS 293.462, less the amount of any claims County has against Contractor; and
  - 2) with respect to deliverable-based Work, the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by County, less previous amounts paid and any claim(s) that County has against Contractor.
  - 3) County's payment to Contractor under this subparagraph 7(c) is subject to the limitations set forth in paragraph 8 of this Contract, below.

**8. Remedies.** In the event of breach of this Contract the parties shall have the following remedies:

- a. Termination under subparagraphs 6 a. through c. of this Contract shall be without prejudice to any obligations or liabilities of either party already reasonably incurred prior to such termination.
  - 1) Contractor may not incur obligations or liabilities after Contractor receives written notice of termination.
  - 2) Additionally, neither party shall be liable for any indirect, incidental, or consequential damages under this Contract or for any damages of any sort arising solely from the termination of this Contract in accordance with its terms.

- b. If terminated under subparagraph 6 d. of this Contract by the County due to a breach by the Contractor, County may pursue any remedies available at law or in equity.
  - 1) Such remedies may include, but are not limited to, termination of this contract, return of all or a portion of this Contract amount, payment of interest earned on this Contract amount, and declaration of ineligibility for the receipt of future contract awards.
  - 2) Additionally, County may complete the work either by itself, by agreement with another Contractor, or by a combination thereof. If the cost of completing the work exceeds the remaining unpaid balance of the total compensation provided under this Contract, then the Contractor shall be liable to the County for the amount of the reasonable excess.
- c. If amounts previously paid to Contractor exceed the amount due to Contractor under this Contract, Contractor shall repay any excess to County upon demand.
- d. Neither County nor Contractor shall be held responsible for delay or default caused by fire, civil unrest, labor unrest, riot, acts of God, or war where such cause was beyond reasonable control of County or Contractor, respectively; however, Contractor shall make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. For any delay in performance as a result of the events described in this subparagraph, Contractor shall be entitled to additional reasonable time for performance that shall be set forth in an amendment to this Contract.
- e. The passage of this Contract expiration date shall not extinguish or prejudice the County's or Contractor's right to enforce this Contract with respect to any default or defect in performance that has not been cured.
- f. County's remedies are cumulative to the extent the remedies are not inconsistent, and County may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

**9. Contractor's Tender upon Termination.** Upon receiving a notice of termination of this Contract, Contractor shall immediately cease all activities under this Contract unless County expressly directs otherwise in such notice of termination.

- a. Upon termination of this Contract, Contractor shall deliver to County all documents, information, works-in-progress and other property that are or would be deliverables had this Contract been completed.
- b. Upon County's request, Contractor shall surrender to anyone County designates, all documents, research, objects or other tangible things needed to complete the work.

**10. Work Standard.**

- a. Contractor shall be solely responsible for and shall have control over the means, methods, techniques, sequences and procedures of performing the work, subject to the plans and specifications under this Contract and shall be solely responsible for the errors and omissions of its employees, subcontractors and agents.
- b. For goods and services to be provided under this contract, Contractor agrees to:
  - 1) perform the work in a good, workmanlike, and timely manner using the schedule, materials, plans and specifications approved by County;
  - 2) comply with all applicable legal requirements;
  - 3) comply with all programs, directives, and instructions of County relating to safety, storage of equipment or materials;
  - 4) take all precautions necessary to protect the safety of all persons at or near County or Contractor's facilities, including employees of Contractor, County and any other contractors or subcontractors and to protect the work and all other property against damage.

**11. Drugs and Alcohol.** Contractor shall adhere to and enforce a zero-tolerance policy for the use of alcohol and the unlawful selling, possession or use of controlled substances while performing work under this Contract.

**12. Insurance.** Contractor shall provide insurance in accordance with Exhibit 2 attached hereto and incorporated by reference herein. Contractor shall name ***Deschutes County, its officers, agents, employees, volunteers and Otak, Inc. dba Otak CPM as additional insureds under their Commercial General Liability and Automobile Liability policies.***

**13. Expense Reimbursement.** If the consideration under this Contract provides for the reimbursement of Contractor for expenses, in addition to Exhibit 5, Exhibit 1 shall state that Contractor is or is not entitled to reimbursement for such expenses.

- a. County shall only reimburse Contractor for expenses reasonably and necessarily incurred in the performance of this contract.

- b. Expenses reimbursed shall be at the actual cost incurred; including any taxes paid, and shall not include any mark-up unless the mark-up on expenses is specifically agreed to in this Contract.
- c. The cost of any subcontracted work approved in this Contract shall not be marked up.
- d. Contractor shall not bill County for any time expended to complete the documents necessary for reimbursement of expenses or for payment under this contract.
- e. The limitations applicable to reimbursable expenses are set forth in Exhibit "5", attached hereto and by reference incorporated herein.

**14. Criminal Background Investigations.** Contractor understands that Contractor and Contractor's employees and agents are subject to periodic criminal background investigations by County and, if such investigations disclose criminal activity not disclosed by Contractor, such non-disclosure shall constitute a material breach of this Contract and County may terminate this Contract effective upon delivery of written notice to the Contractor, or at such later date as may be established by the County.

**15. Confidentiality.** As applicable, Contractor shall maintain confidentiality of information obtained pursuant to this Contract as follows:

- a. Contractor shall not use, release or disclose any information concerning any employee, client, applicant or person doing business with the County for any purpose not directly connected with the administration of County's or the Contractor's responsibilities under this Contract except upon written consent of the County, and if applicable, the employee, client, applicant or person.
- b. The Contractor shall ensure that its agents, employees, officers and subcontractors with access to County and Contractor records understand and comply with this confidentiality provision.
- c. Contractor shall treat all information as to personal facts and circumstances obtained on Medicaid eligible individuals as privileged communication, shall hold such information confidential, and shall not disclose such information without the written consent of the individual, his or her attorney, the responsible parent of a minor child, or the child's guardian, except as required by other terms of this Contract.
- d. Nothing prohibits the disclosure of information in summaries, statistical information, or other form that does not identify particular individuals.
- e. Contractor shall at all times comply with all of the transaction, security and privacy provisions of the Health Insurance Portability and Accountability Act ("HIPAA") and all other state and federal laws and regulations related to the privacy and/or security of personally identifiable health information.
- f. Contractor shall cooperate with County in the adoption of policies and procedures for maintaining the privacy and security of personally identifiable health records and for conducting transactions pursuant to the requirements of HIPAA and other applicable state and federal laws and regulations.
- g. This Contract may be amended in writing in the future to incorporate additional requirements related to compliance with HIPAA or other applicable state or federal laws and/or regulations.
- h. If Contractor receives or transmits protected health information, Contractor shall enter into a Business Associate Agreement with County, which, if attached hereto, shall become a part of this Contract. To the extent any provision of the Business Associate Agreement is inconsistent with a provision of this paragraph 15, the Business Associate Agreement shall govern.

**16. Reports.** Contractor shall provide County with periodic reports at the frequency and with the information prescribed by County. Further, at any time, County has the right to demand adequate assurances that the services provided by Contractor shall be in accordance with the Contract. Such assurances provided by Contractor shall be supported by documentation in Contractor's possession from third parties.

**17. Access to Records.** Contractor shall maintain fiscal records and all other records pertinent to this Contract.

- a. All fiscal records shall be maintained pursuant to generally accepted accounting standards, and other records shall be maintained to the extent necessary to clearly reflect actions taken.
  - 1) All records shall be retained and kept accessible for at least three years following the final payment made under this Contract or all pending matters are closed, whichever is later.
  - 2) If an audit, litigation or other action involving this Contract is started before the end of the three-year period, the records shall be retained until all issues arising out of the action are resolved or until the end of the three-year period, whichever is later.
- b. County and its authorized representatives shall have the right to directly access all of Contractor's books, documents, papers and records related to this Contract for the purpose of conducting audits and examinations and making copies, excerpts and transcripts.
  - 1) These records also include licensed software and any records in electronic form, including but not limited to computer hard drives, tape backups and other such storage devices. County shall reimburse

Contractor for Contractor's reasonable cost of preparing copies.

- 2) At Contractor's expense, the County, the Secretary of State's Office of the State of Oregon, the Federal Government, and their duly authorized representatives, shall have license to enter upon Contractor's premises to access and inspect the books, documents, papers, computer software, electronic files and any other records of the Contractor which are directly pertinent to this Contract.
- 3) If Contractor's dwelling is Contractor's place of business, Contractor may, at Contractor's expense, make the above records available at a location acceptable to the County.

**18. Ownership of Work.** All work of Contractor that results from this Contract (the "Work Product") is the exclusive property of County.

- a. County and Contractor intend that such Work Product be deemed "work made for hire" of which County shall be deemed author.
- b. If, for any reason, the Work Product is not deemed "work made for hire," Contractor hereby irrevocably assigns to County all of its right, title, and interest in and to any and all of the Work Product, whether arising from copyright, patent, trademark, trade secret, or any other state or federal intellectual property law or doctrine.
- c. Contractor shall execute such further documents and instruments as County may reasonably request in order to fully vest such rights in County.
- d. Contractor forever waives any and all rights relating to Work Product, including without limitation, any and all rights arising under 17 USC § 106A or any other rights of identification of authorship or rights of approval, restriction or limitation on use or subsequent modifications.
- e. County shall have no rights in any pre-existing work product of Contractor provided to County by Contractor in the performance of this Contract except an irrevocable, non-exclusive, perpetual, royalty-free license to copy, use and re-use any such work product.
- f. If this Contract is terminated prior to completion, and County is not in default, County, in addition to any other rights provided by this Contract, may require Contractor to transfer and deliver all partially completed work products, reports or documentation that Contractor has specifically developed or specifically acquired for the performance of this Contract.
- g. In the event that Work Product is deemed Contractor's Intellectual Property and not "work made for hire," Contractor hereby grants to County an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Contractor Intellectual Property, and to authorize others to do the same on County's behalf.
- h. In the event that Work Product is Third Party Intellectual Property, Contractor shall secure on the County's behalf and in the name of the County, an irrevocable, non-exclusive, perpetual, royalty-free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third-Party Intellectual Property, and to authorize others to do the same on County's behalf.

**19. County Code Provisions.** Except as otherwise specifically provided, the provisions of Deschutes County Code, Section 2.37.150 are incorporated herein by reference. To the extent any provision of DCC 2.37.150 is inconsistent with a provision of this Contract, DCC 2.37.150 shall govern. Such code section may be found at the following URL address:

[https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=2.37.150\\_Standard\\_Contract\\_Provisions](https://deschutescounty.municipalcodeonline.com/book?type=ordinances#name=2.37.150_Standard_Contract_Provisions).

**20. Partnership.** County is not, by virtue of this contract, a partner or joint venturer with Contractor in connection with activities carried out under this contract, and shall have no obligation with respect to Contractor's debts, taxes, or any other liabilities of each and every nature.

**21. Indemnity and Hold Harmless.**

- a. To the fullest extent authorized by law, the Contractor shall indemnify and hold harmless the Owner, and its agents and employees of any of them from and against third party claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such third party claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.
- b. Contractor shall have control of the defense and settlement of any claim that is subject to subparagraph a of this paragraph; however neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of Deschutes County or any department or agency thereof, nor purport to act as legal representative of the County or any of its departments or agencies without first receiving from the County's

Legal Counsel, in a form and manner determined appropriate by the County's Legal Counsel, authority to act as legal counsel for the County, nor shall Contractor settle any claim on behalf of the County without the approval of the County's Legal Counsel.

- c. To the extent permitted by Article XI, Section 10, of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall defend, save, hold harmless and indemnify Contractor and its officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities costs and expenses of any nature resulting from or arising out of, or relating to the activities of County or its officers, employees or agents under this Contract.

**22. Waiver.**

- a. County's delay in exercising, or failure to exercise, any right, power, or privilege under this Contract shall not operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or privilege under this Contract preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.
- b. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

**23. Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

- a. Any claim, action, suit or proceeding (collectively, "Claim") between County and Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Deschutes County for the State of Oregon; provided, however, if a Claim shall be brought in federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.
- b. CONTRACTOR, BY EXECUTION OF THIS CONTRACT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. The parties agree that the UN Convention on International Sales of Goods shall not apply.

**24. Severability.** If any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if this Contract did not contain the particular term or provision held invalid, unless doing so would materially frustrate the parties' intent in entering into this Contract

**25. Counterparts.** This Contract may be executed in several counterparts, all of which when taken together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of this Contract so executed shall constitute an original.

**26. Notice.** Except as otherwise expressly provided in this Contract, any communications between the parties hereto or notices to be given hereunder shall be given in writing, to Contractor or County at the address or number set forth below or to such other addresses or numbers as either party may hereafter indicate in writing. Delivery may be by personal delivery, facsimile, or mailing the same, postage prepaid.

- a. Any communication or notice by personal delivery shall be deemed delivered when actually given to the designated person or representative.
- b. Any communication or notice sent by facsimile shall be deemed delivered when the transmitting machine generates receipt of the transmission. To be effective against County, such facsimile transmission shall be confirmed by telephone notice to the County Administrator.
- c. Any communication or notice mailed shall be deemed delivered five (5) days after mailing. Any notice under this Contract shall be mailed by first class postage or delivered as follows:

To Contractor:

Pence Contractors LLC  
John Williamson, Project Executive  
1051 NW Bond Road, Suite 300  
Bend, OR 97701  
(541) 323-3393 / John.Williamson@Pence.net

To County:

Deschutes County Facilities  
Lee Randall, Director  
PO Box 6005  
Bend, OR 97708  
(541) 617-4711 / Lee.Randall@Deschutes.org

- 27. Merger Clause.** This Contract and the attached exhibits constitute the entire agreement between the parties.
- a. All understandings and agreements between the parties and representations by either party concerning this Contract are contained in this Contract.
  - b. No waiver, consent, modification or change in the terms of this Contract shall bind either party unless in writing signed by both parties.
  - c. Any written waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given.
- 28. Identity Theft Protection.** Contractor and subcontractors shall comply with the Oregon Consumer Identity Theft Protection Act (ORS 646A.600 et seq.).
- 29. Survival.** All rights and obligations shall cease upon termination or expiration of this Contract, except for the rights and obligations set forth in Sections 4, 5, 8, 9, 15, 17, 18, 20-27, 28 and 30.
- 30. Representations and Warranties.**
- a. **Contractor's Representations and Warranties.** Contractor represents and warrants to County that:
    - 1) Contractor has the power and authority to enter into and perform this Contract;
    - 2) This Contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
    - 3) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor will apply that skill and knowledge with care and diligence to perform the Work in a professional manner and in accordance with standards prevalent in Contractor's industry, trade or profession in the state of Oregon;
    - 4) Contractor shall, at all times during the term of this Contract, be qualified, professionally competent, and duly licensed to perform the Work;
    - 5) Contractor prepared its proposal related to this Contract, if any, independently from all other proposers, and without collusion, fraud, or other dishonesty; and
    - 6) Contractor's making and performance of this Contract do not and will not violate any provision of any applicable law, rule or regulation or order of any court, regulatory commission, board or other administrative agency.
    - 7) Contractor's making and performance of this Contract do not and will not violate any provision of any other contract, agreement to which Contractor is a party, nor materially impair any legal obligation of Contractor to any person or entity.
  - b. **Warranties Cumulative.** The warranties set forth in this paragraph are in addition to, and not in lieu of, any other warranties provided, whether express or implied at law.
- 31. Amendment.**
- a. This Contract may be unilaterally modified by County to accommodate a change in available funds, so long as such modification does not impose an unreasonable hardship upon Contractor or reduce Contractor's compensation for work Contractor actually performs or Contractor's authorized expenses actually incurred. With respect to deliverable-based Work, Contractor's compensation shall not be deemed reduced by a modification of this contract, so long as Contractor is paid the sum designated for performing the Work originally contemplated by this Contract multiplied by the percentage of such originally contemplated Work that Contractor performs under the modified Contract.
  - b. With the exception of subparagraph 31(a), above. This Contract (including any exhibits) may only be amended upon written agreement by both parties, and shall not be effective until both parties have executed such written agreement. Any alleged or claimed amendment that is not performed in compliance with this paragraph 31 shall be void and of no effect.



**EXHIBIT 1**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2022-303**  
**STATEMENT OF WORK, COMPENSATION, PAYMENT TERMS and SCHEDULE**

1. **Contractor shall perform the following work:** Remodel existing Sheriff's office building located at 63333 West Highway 20 in Bend, Oregon. Scope of work is based on drawings and specifications prepared by Pinnacle Architecture, Inc. its subconsultants dated January 12, 2022, titled "Permit Set."

The County and Contractor agree to the following scope reductions from original bid amount:

- 1) Delete ADA Allowance and associated mark-ups.
- 2) Soffit to remain in existing Conference 235.
- 3) Ceiling grid and ACT to remain in existing Waiting 209.
- 4) Delete transom at new door frames F2 and FG; delete 3'-5" sidelight at new door frame FG.
- 5) Floor box to remain in existing Conference 235.
- 6) Re-use existing light fixtures in Admin 210.

2. **County Services.** County shall provide the contractor, at County's expense, with material and services described as follows:

- a. Structural (building) permit by County. All other permits by Contractor.
- b. Survey and testing of hazardous materials complete February 2022.

3. **Consideration.**

- a. County shall pay Contractor on a fee-for-service basis at the rate based on progress against the approved Schedule of Values of the Project.
- b. Contractor shall be entitled to reimbursement for expenses as set forth in Exhibit 5  
☐ YES ☒ NO [Check one]

4. **The maximum compensation.**

- a. The maximum compensation under this contract, including allowable expenses, is **\$171,500.00**
- b. Contractor shall not submit invoices for, and County shall not pay for any amount in excess of, the maximum compensation amount set forth above.
  - 1) If this maximum compensation amount is increased by amendment of this contract, the amendment shall be fully effective before contractor performs work subject to the amendment.
  - 2) Contractor shall notify County in writing of the impending expiration of this Contract thirty (30) calendar days prior to the expiration date.

5. **Schedule of Performance or Delivery.**

- a. County's obligation to pay depends upon Contractor's delivery or performance in accordance with the following schedule: **Within fourteen (14) days after issuance of Notice to Proceed, Contractor shall submit a Project Schedule and Schedule of Values prior to commencement of Work.**
- b. County will only pay for completed work that conforms to this schedule.
- c. Contractor to provide weekly updates so Owner can coordinate access to site.

6. **Oregon Bureau of Labor & Industries required provisions.**

- a. Workers will not be paid less than the applicable prevailing wage rates in accordance with ORS 279C.838 and 279C.840.
- b. When projects are subject to both State Prevailing Wage law and Federal Davis Bacon law, workers must be paid not less than the higher of the applicable State or Federal rate.
- c. If the Contractor fails to pay for labor or services, Deschutes County may be required to withhold payment to Contractor and pay for labor or services directly.
- d. Daily, weekly, weekend and holiday overtime will be paid as required in ORS 279C.540.
- e. Contractor/employer must give a written schedule to all employees showing the number of hours per day and days per week that is required to work.
- f. Contractor/employer must promptly pay for any medical services they have agreed to pay.
- g. Contractor must file a Public Works Bond with CCB prior to starting work on this project, unless exempt. Every subcontractor shall file a Public Works Bond with CCB prior to starting work on this project, unless exempt.

**EXHIBIT 2**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2022-303**  
**INSURANCE REQUIREMENTS**

Contractor shall at all times maintain in force at Contractor's expense, each insurance noted below. Insurance coverage must apply on a primary or non-contributory basis. All insurance policies, except Professional Liability, shall be written on an occurrence basis and be in effect for the term of this contract. Policies written on a "claims made" basis must be approved and authorized by Deschutes County.

Contractor Name: **Pence Contractors LLC**

**Workers Compensation** insurance in compliance with ORS 656.017, requiring Contractor and all subcontractors to provide workers' compensation coverage for all subject workers, or provide certification of exempt status. Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employer's Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employer's Liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against County.

**Professional Liability** insurance with an occurrence combined single limit of not less than:

Per Occurrence limit

- ☐ \$1,000,000  
☐ \$2,000,000  
☐ \$3,000,000

Annual Aggregate limit

- ☐ \$2,000,000  
☐ \$3,000,000  
☐ \$5,000,000

Professional Liability insurance covers damages caused by error, omission, or negligent acts related to professional services provided under this Contract. The policy must provide extended reporting period coverage, sometimes referred to as "tail coverage" for claims made within two years after the contract work is completed or the facts underlying County's claim could reasonably have been discovered, whichever is later.

☐ Required by County                      ☒ Not required by County                      [check one]

**Commercial General Liability** insurance with a combined single limit of not less than:

Per Single Claimant and Incident

- ☒ \$1,000,000  
☐ \$2,000,000  
☐ \$3,000,000

All Claimants Arising from Single Incident

- ☒ \$2,000,000  
☐ \$3,000,000  
☐ \$5,000,000

Commercial General Liability insurance includes coverage for personal injury, bodily injury, advertising injury, property damage, premises, operations, products, completed operations and contractual liability. The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance or self-insurance of County, its officers, employees or agents. Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide County with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against County, its officers, agents, or employees, and that Contractor shall indemnify County for costs and expenses, including reasonable attorneys' fees, incurred or arising out of the defense of such action.

The policy shall be endorsed to name ***Deschutes County and Otak, Inc. dba Otak CPM, its officers, agents, employees and volunteers as an additional insured.*** The additional insured endorsement shall not include declarations that reduce any per occurrence or aggregate insurance limit. The Contractor shall provide additional coverage based on any outstanding claim(s) made against policy limits to ensure that minimum insurance limits required by the County are maintained. Construction contracts may include aggregate limits that apply on a "per location" or "per project" basis. The additional insurance protection shall extend equal protection to County and Otak CPM as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable, then the additional insurance protection to County and Otak CPM shall be narrowed to the maximum amount of protection allowed by law.

☒ Required by County                      ☐ Not required by County                      [check one]

**Automobile Liability** insurance with a combined single limit of not less than:

Per Occurrence:

- ☐ \$500,000  
☒ \$1,000,000  
☐ \$2,000,000

Automobile Liability insurance includes coverage for bodily injury and property damage resulting from operation of a motor vehicle. Commercial Automobile Liability Insurance shall provide coverage for *any* motor vehicle (symbol 1 on some insurance certificates) driven by or on behalf of Contractor during the course of providing services under this contract. Commercial Automobile Liability is required for contractors that own business vehicles registered to the business. Examples include plumbers, electricians or construction contractors. An Example of an acceptable personal automobile policy is a contractor who is a sole proprietor that does not own vehicles registered to the business.

☒ Required by County      ☐ Not required by County      [check one]

**Additional Requirements.** Contractor shall pay all deductibles and self-insured retentions. A cross-liability clause or separation of insured's condition must be included in all commercial general liability policies required by this Contract. Contractor's coverage will be primary in the event of loss.

**Certificate of Insurance Required.** Contractor shall furnish a current Certificate of Insurance to the County with the signed Contract. Contractor shall notify the County in writing at least 30 days in advance of any cancellation, termination, material change, or reduction of limits of the insurance coverage. The Certificate shall also state the deductible or, if applicable, the self-insured retention level. Contractor shall be responsible for any deductible or self-insured retention. If requested, complete copies of insurance policies shall be provided to the County. Any violation by Contractor of this Certificate of Insurance provision shall, at the election of County, constitute a material breach of the Contract.

### Risk Management Review

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

**EXHIBIT 3**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2022-303**  
**CERTIFICATION STATEMENT FOR CORPORATION**  
**OR INDEPENDENT CONTRACTOR**

**NOTE: Contractor Shall Complete A or B in addition to C below**

**A. CONTRACTOR IS A CORPORATION, LIMITED LIABILITY COMPANY OR A PARTNERSHIP.**

**I certify under penalty of perjury that Contractor is a [check one]:**

☐ Corporation   ☐ Limited Liability Company   ☐ Partnership authorized to do business in the State of Oregon.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**B. CONTRACTOR IS A SOLE PROPRIETOR WORKING AS AN INDEPENDENT CONTRACTOR.**

**Contractor certifies under penalty of perjury that the following statements are true:**

1. If Contractor performed labor or services as an independent Contractor last year, Contractor filed federal and state income tax returns last year in the name of the business (or filed a Schedule C in the name of the business as part of a personal income tax return), **and**
2. Contractor represents to the public that the labor or services Contractor provides are provided by an independently established business registered with the State of Oregon, **and**
3. All of the statements checked below are true.

**NOTE: Check all that apply. You shall check at least three (3) to establish that you are an Independent Contractor.**

- \_\_\_\_ A.    The labor or services I perform are primarily carried out at a location that is separate from my residence or primarily carried out in a specific portion of my residence that is set aside as the location of the business.
- \_\_\_\_ B.    I bear the risk of loss related to the business or provision of services as shown by factors such as: (a) fixed-price agreements; (b) correcting defective work; (c) warranties over the services or (d) indemnification agreements, liability insurance, performance bonds or professional liability insurance.
- \_\_\_\_ C.    I have made significant investment in the business through means such as: (a) purchasing necessary tools or equipment; (b) paying for the premises or facilities where services are provided; or (c) paying for licenses, certificates or specialized training.
- \_\_\_\_ D.    I have the authority to hire other persons to provide or to assist in providing the services and if necessary to fire such persons.
- \_\_\_\_ E.    Each year I perform labor or services for at least two different persons or entities, or I routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**C. REPRESENTATION AND WARRANTIES.**

**Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:**

1. Contractor has the power and authority to enter into and perform this contract;
2. This contract, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms;
3. The services under this contract shall be performed in a good and workmanlike manner and in accordance with the highest professional standards; and
4. Contractor shall, at all times during the term of this contract, be qualified, professionally competent, and duly licensed to perform the services.
5. To the best of Contractor's knowledge, Contractor is not in violation of any tax laws described in ORS 305.380(4),
6. Contractor understands that Contractor is responsible for any federal or state taxes applicable to any consideration and payments paid to Contractor under this contract; and
7. Contractor has not discriminated against minority, women or small business enterprises in obtaining any required subcontracts.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT 4**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2022-303**  
**WORKERS' COMPENSATION EXEMPTION CERTIFICATE**

**NOTE: To be used only when Contractor claims to be exempt from Workers' Compensation coverage requirements.**

Contractor is exempt from the requirement to obtain workers' compensation insurance under ORS Chapter 656 for the following reason (*check the appropriate box*):

☐ **SOLE PROPRIETOR**

- Contractor is a sole proprietor, and
- Contractor has no employees, and
- Contractor shall not hire employees to perform this contract.

☐ **CORPORATION - FOR PROFIT**

- Contractor's business is incorporated, and
- All employees of the corporation are officers and directors and have a substantial ownership interest\* in the corporation, and
- The officers and directors shall perform all work. Contractor shall not hire other employees to perform this contract.

☐ **CORPORATION - NONPROFIT**

- Contractor's business is incorporated as a nonprofit corporation, and
- Contractor has no employees; all work is performed by volunteers, and
- Contractor shall not hire employees to perform this contract.

☐ **PARTNERSHIP**

- Contractor is a partnership, and
- Contractor has no employees, and
- All work shall be performed by the partners; Contractor shall not hire employees to perform this contract, and
- Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

☐ **LIMITED LIABILITY COMPANY**

- Contractor is a limited liability company, and
- Contractor has no employees, and
- All work shall be performed by the members; Contractor shall not hire employees to perform this contract, and
- If Contractor has more than one member, Contractor is not engaged in work performed in direct connection with the construction, alteration, repair, improvement, moving or demolition of an improvement to real property or appurtenances thereto.

\*NOTE: Under OAR 436-050-050 a shareholder has a "substantial ownership" interest if the shareholder owns 10% of the corporation or, if less than 10% is owned, the shareholder has ownership that is at least equal to or greater than the average percentage of ownership of all shareholders.

\*\*NOTE: Under certain circumstances partnerships and limited liability companies can claim an exemption even when performing construction work. The requirements for this exemption are complicated. Consult with County Counsel before an exemption request is accepted from a contractor who shall perform construction work.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**EXHIBIT 5**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2022-303**  
**EXPENSE REIMBURSEMENT**

- 1. Travel and Other Expenses.** (When travel and other expenses are reimbursed.
  - a. It is the policy of the County that travel expenses shall be allowed only when the travel is essential to the normal discharge of County responsibilities.
    - 1) All travel shall be conducted in the most efficient and cost-effective manner resulting in the best value to the County.
    - 2) Travel expenses shall be reimbursed for official County business only.
    - 3) County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County per Deschutes County Finance Policy F-1, "REIMBURSEMENT FOR MISCELLANEOUS EXPENSES AND EXPENSES INCURRED WHILE TRAVELING ON COUNTY BUSINESS," dated 11/8/06.
    - 4) County may approve a form other than the County Employee Reimbursement Form for Contractor to submit an itemized description of travel expenses for payment.
    - 5) Personal expenses shall not be authorized at any time.
    - 6) All expenses are included in the total maximum contract amount.
  - b. Travel expenses shall be reimbursed only in accordance with rates approved by the County and only when the reimbursement of expenses is specifically provided for in Exhibit 1, paragraph 3 of this contract.
  - c. The current approved rates for reimbursement of travel expenses are set forth in the above-described policy.
  - d. County shall not reimburse for any expenses related to alcohol consumption or entertainment.
  - e. Except where noted, detailed receipts for all expenses shall be provided.
  - f. Charge slips for gross amounts are not acceptable.
  - g. County shall not reimburse Contractor for any item that is not otherwise available for reimbursement to an employee of Deschutes County.
- 2. Approved reimbursements:**
  - a. Mileage. Contractor shall be entitled to mileage for travel in a private automobile while Contractor is acting within the course and scope of Contractor's duties under this Contract and driving over the most direct and usually traveled route to and from Bend, Oregon.
    - 1) Reimbursement for mileage shall be equal to but not exceed those set by the United States General Services Administration ("GSA") and are subject to change accordingly.
    - 2) To qualify for mileage reimbursement, Contractor shall hold a valid, current driver's license for the class of vehicle to be driven and carry personal automobile liability insurance in amounts not less than those required by this contract.
    - 3) No mileage reimbursement shall be paid for the use of motorcycles or mopeds.
  - b. Meals.
    - 1) Any reimbursement for meals shall be for actual cost of meals incurred by Contractor while acting within the course and scope of Contractor's duties under this contract.
    - 2) For purposes of calculating individual meals where the Contractor is entitled only to a partial day reimbursement, the following maximum allocation of the meal expenses applies:
      - (1) Breakfast, \$14;
      - (2) Lunch, \$16;
      - (3) Dinner, \$29.
    - 3) Except in the event of necessary overnight travel as provided below, partial day meal expenses shall be reimbursed as follows and only while Contractor is acting within the course and scope of Contractor's duties under this contract:
      - (1) Breakfast expenses are reimbursable if Contractor is required to travel more than two (2) hours: before the start of Contractor's regular workday (i.e., 8:00 a.m.).
      - (2) Lunch expenses are reimbursable only if Contractor is required to travel overnight and begins the journey before 11:00 am or ends the journey after 11:00 a.m.
      - (3) Dinner expenses are reimbursable only if Contractor is required to travel more than two (2) hours after Contractor's regular workday (i.e., 5:00 p.m.).
    - 4) Breakfast and dinner expenses are reimbursable during Contractor's necessary overnight travel while acting within the course and scope of Contractor's duties under this contract, shall not exceed those set by the GSA, and are subject to change accordingly.

- c. Lodging.
    - 1) County shall reimburse Contractor for Contractor's actual cost of lodging necessary to provide service to the County and shall not exceed the maximum lodge rate set by the GSA for Bend, Oregon.
    - 2) Reimbursement rates for lodging are not considered "per diem" and receipts are required for reimbursement.
  - d. County shall not reimburse Contractor in excess of the lowest fare for any airline ticket or vehicle rental charges.
3. **Exceptions.** Contractor shall obtain separate written approval of the County Administrator for any exceptions to the expense items listed above prior to incurring any expense for which reimbursement shall be sought.



**EXHIBIT 6**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2022-303**  
**Compliance with provisions, requirements of funding source and**  
**Federal and State laws, statutes, rules, regulations, executive orders and policies.**

**Conflicts of Interest**

**Contractor certifies under penalty of perjury that the following statements are true to the best of Contractor's knowledge:**

1. If Contractor is currently performing work for the County, State of Oregon or federal government, Contractor, by signature to this Contract, declares and certifies that Contractor's Work to be performed under this Contract creates no potential or actual conflict of interest as defined by ORS 244 and no rules or regulations of Contractor's employee agency (County State or Federal) would prohibit Contractor's Work under this Contract. Contractor is not an "officer," "employee," or "agent" of the County, as those terms are used in ORS 30.265.
2. No federally appropriated funds have been paid or shall be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - a. If any funds other than federally appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, Contractor agrees to complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.
    - 1) Standard Form-LLL and instructions are located in 45 CFR Part 93 Appendix B.
    - 2) If instructions require filing the form with the applicable federal entity, Contractor shall then as a material condition of this Contract also file a copy of the Standard Form-LLL with the Department.
    - 3) This filing shall occur at the same time as the filing in accordance with the instructions.
  - b. Contractor understands this certification is a material representation of fact upon which the County and the Department has relied in entering into this Contract. Contractor further understands that submission of this certification is a prerequisite, imposed by 31 USC 1352 for entering into this Contract.
  - c. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
  - d. Contractor shall include the language of this certification in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.
  - e. Contractor is solely responsible for all liability arising from a failure by Contractor to comply with the terms of this certification.
  - f. Contractor promises to indemnify County for any damages suffered by County as a result of Contractor's failure to comply with the terms of this certification.
3. Contractor understands that, if this Contract involves federally appropriated funds, this certification is a material representation of facts upon which reliance was placed when this Contract was made or entered into, submission of this certification is a prerequisite for make or entering into this Contract imposed by Section 1352, Title 31, U.S. Code and that any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

\_\_\_\_\_  
Contractor Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

REVIEWED

LEGAL COUNSEL

**EXHIBIT 7**  
**DESCHUTES COUNTY SERVICES CONTRACT**  
**Contract No. 2022-303**  
**GENERAL CONDITIONS OF THE CONTRACT**

For Recording Stamp Only

**GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION**  
**Contract No. 2022-303**

**For the following Project:**

Sheriff's Office Second Floor Remodel  
63333 West Highway 20  
Bend, OR 97703

**CONTRACTOR:**

Pence Contractors LLC  
1051 NW Bond Street, Suite 310  
Bend, OR 97701

**OWNER:**

Deschutes County  
% Facilities Department  
P.O. Box 6005  
Bend, Oregon 97708-6005  
Telephone Number: (541) 383-6713  
Fax Number: (541) 317-3168

**ARCHITECT:**

Pinnacle Architecture, Inc.  
960 SW Disc Drive, Suite 101  
Bend, OR 97702

**TABLE OF ARTICLES**

- 1 GENERAL PROVISIONS**
- 2 OWNER**
- 3 CONTRACTOR**
- 4 ADMINISTRATION OF THE CONTRACT**
- 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**

## **ARTICLE 1. GENERAL PROVISIONS**

### **§1.1 Basic Definitions**

**§1.1.1 The Contract Documents:** The Contract Documents consist of those documents listed in the Agreement between Owner and Contractor (hereinafter the “Agreement”), including Modifications issued after execution of the contract. A Modification is: (1) a Contract Amendment, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by Architect/Engineer or Owner. A Contract Amendment is a document signed by Owner and Contractor pursuant to Paragraph 7.1.4.

**§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 between (1) Architect/Engineer and Contractor, (2) Owner and any subcontractor or sub-subcontractor, (3) Owner and Architect/Engineer, or (4) any persons or entities other than 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 other labor, materials, equipment and services provided or to be provided by Contractor to fulfill Contractor’s obligations. The Work may constitute the whole or a part of the Project.

**§1.1.4 The Project:** The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by Owner or 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 The Project Manual:** The Project Manual is a volume assembled for the Work which may include Addenda, prevailing wage requirements, program requirements, and Specifications. **See attachments listed in Instructions to Bidders.**

### **§1.2 Correlation and Intent of the Contract Documents**

**§1.2.1** The general intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All Contract Documents are intended to be consistent. However, anything provided in one document but not provided in another shall be of like effect as if shown or mentioned in both. This does not constitute a conflict, discrepancy, or error between the two. In the event of directly conflicting provisions, precedence shall be given as follows: (1) Modifications of the Agreement, with those of later date having precedence over those of earlier date; (2) the Agreement; (3) Addenda to the Bid Documents; (4) the General Conditions of the Contract for Construction; (5) the Specifications, with precedence given to Division 1 over Divisions 2-16 and

equal precedence given to Divisions 2-16; (6) the Drawings, with precedence given to figures in the event of any conflict between figures and scaled measurements, and precedence given to large scale drawings in the event of any conflict between large scale drawings and small scale drawings.

**§1.2.1.1** Inconsistencies within any one Contract Document, or inconsistencies not otherwise resolved by the above prioritization, shall be resolved in favor of Owner receiving (a) the greater quality or greater quantity of goods, services or performance, or (b) the greater obligation to Owner in the terms and conditions. Both (a) and (b) shall be resolved in Owner's sole discretion.

**§1.2.1.2** Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and (1) the provisions of any standard, specification, manual, code, or instruction (collectively, "standards"), whether or not specifically incorporated by reference in the Contract Documents, unless the standards provide the better quality or greater quantity of Work to Owner, in which case the standards shall take precedence; or (2) the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

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

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

**§1.2.4** All Work shall be the best of the respective kinds specified or indicated. Should workmanship or materials be required which are not directly or indirectly called for in the Specifications or shown on the Drawings, but are consistent with the Contract Documents and reasonably inferable by them or standard industry practice, said workmanship or materials shall be the same as similar parts that are detailed, indicated or specified, or shall match or exceed the quality of existing improvements, and Contractor shall understand the same to be implied and provide for the same as fully as if it were particularly described or delineated.

**§1.2.5** Contractor has included within the Contract Sum all labor, materials, equipment, and services that are likely to be required for the Project in accordance with the requirements of state laws, local building codes, local building officials, manufacturer's recommendations, building standards, and trade practices. To the extent, if at all, that the Contract Documents contain ambiguities, discrepancies, errors, or omissions, and to the extent, if at all, that there are discrepancies between the Contract Documents and the Project site and surveys (collectively referred to hereafter in this Section as "errors and omissions"), Contractor hereby waives any claims for additional compensation or damages or additional time resulting from any such errors and omissions to the extent Contractor has actually observed, or with the exercise of reasonable care should have observed, those errors and omissions and failed to report them to Owner and Architect/Engineer prior to executing the Agreement.

**§1.2.6** All of the Work shall conform strictly to the Contract Documents. No change therefrom shall be made without Contract Modification. Where detailed information is lacking, or should discrepancies appear among the Contract Documents, Contractor shall, in writing, request interpretation or information from Architect/Engineer before proceeding with the Work.

**§1.2.7** Reference in the Specifications to an article, device, or piece of equipment in the singular number shall apply to as many such articles as are shown on Drawings or required to complete the

installation. Mention in the Specifications or indication of the Drawings of articles, products, materials, operations or methods requires Contractor to provide and install such items.

### **§1.3 Capitalization**

**§1.3.1** Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the AIA.

### **§1.4 Interpretation**

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

**§1.4.2** The misplacement, addition or omission of any letter, word, or punctuation mark shall in no way affect the true spirit, intent, or meaning of the Contract Documents.

**§1.4.3** The words “shown,” “indicated,” “noted,” “scheduled,” or words of like effect, shall be understood to mean that reference is made to the Drawings accompanying the Project Manual.

**§1.4.4** Where reference herein is made to products or materials “as approved” or “as selected,” selection or approval shall be by Architect/Engineer and Owner.

### **§1.5 Execution of Contract Documents**

**§1.5.1** The Contract Documents shall be signed by Owner and Contractor. If either Owner or Contractor or both do not sign all the Contract Documents.

**§1.5.2** Execution of the Contract by Contractor is a representation by Contractor that the Contract Documents are full and complete, are sufficient to have enabled Contractor to determine the Cost of the Work and Contract Sum, and to enable Contractor to construct the Work described therein, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor’s obligation to construct the Work for an amount not in excess of the Contract Sum on or before the Contract time established in the Agreement. Contractor further acknowledges and declares that it and its subcontractors have visited and examined the site, examined all physical, legal and other conditions affecting the Work, and is fully familiar with all of the conditions thereon and thereunder affecting the same. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to (1) the nature, location, and character of the Project and the site, including, without limitation, the ground conditions and all structures and obstructions thereon and thereunder, both natural and man-made, and the surrounding area; (2) the nature, location and character of the general area in which the Project is located, including, without limitation, its climactic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the available quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work.

**§1.5.3** Contractor recognizes the degree of care required for the specific site construction circumstances with respect to safety, protection of pedestrians, cleanliness of the site, health and other laws, and protection of existing utilities, adjacent streets, and property. In arriving at the contract Sum and the Contract Time, contractor has, as an experienced and prudent contractor, exercised its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract time.

## **§1.6 Ownership and Use of Drawings, Specifications and Other Instruments of Service**

**§1.6.1** The Drawings, Specifications and other documents, including those in electronic form, prepared by Architect/Engineer and Architect/Engineer's consultants are Instruments of Service owned by Owner through which the Work to be executed by Contractor is described. Contractor may retain one record set. Neither Contractor nor any subcontractor, sub-subcontractor, or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications, and other documents prepared by Architect/Engineer or Architect/Engineer's consultants and owned by Owner, and unless otherwise indicated, Owner shall retain all common law, statutory and other reserved rights in addition to the copyrights. All copies of Instruments of Service shall be returned or suitably accounted for to the Owner, on request, upon completion of the Work. The Drawings, Specifications, and other documents prepared by Architect/Engineer and Architect/Engineer's consultants, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by Contractor or any subcontractor on other projects or for additions to this Project outside the scope of the work without the specific written consent of Owner. Contractor and subcontractors are authorized to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by Architect/Engineer and Architect/Engineer's consultants appropriate to and for use in the execution of the Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications, and other documents prepared by Architect/Engineer and Architect/Engineer's consultants. 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 Owner's copyrights or other reserved rights.

**§1.6.2** The Contract Documents furnished to Contractor or any subcontractor are owned by Owner and contain proprietary and confidential information for use solely with respect to this Project. During the course of the Work and after its completion, Architect/Engineer, Contractor, subcontractors, and all other persons utilizing the Contract Documents shall keep the Contract Documents (and all information received concerning the Work, the Project, and the affairs of Owner) confidential and not divulge any such information to any other person except as is necessary in conjunction with the performance of the Work or as necessary in any litigation or similar dispute resolution process. Neither the Contract Documents nor the other property and confidential information described herein are to be used by such persons outside the scope of this Project without the prior written consent of Owner. Upon request by Owner, all copies of the Contract Documents shall be returned to Owner upon completion of the Work or upon termination of this Agreement for any reason.

## **ARTICLE 2. OWNER**

### **§2.1 General**

**§2.1.1** 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. Owner shall designate in writing a representative who shall have express authority to bind Owner with respect to all matters requiring Owner's approval or authorization. Except as otherwise provided in Paragraph 4.2.1, Architect/Engineer does not have such authority. The term "Owner" means Owner or Owner's authorized representative.

**§2.1.2** Owner shall furnish to Contractor, within a reasonable time after receipt of a written request, information which is reasonably necessary and relevant for Contractor to evaluate, give notice of, or enforce claims.

### **§2.2 Information and Services Required by Owner**

**§2.2.1** Except for permits and fees, including those required under Paragraph 3.7.1, which are the responsibility of Contractor under the Contract Documents, 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, unless noted otherwise under Paragraph 3.7.1 or within the Contract Documents

**§2.2.2** Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project and a legal description of the site. Contractor shall be entitled to rely on the accuracy of information furnished by Owner, but shall exercise proper precautions relating to the safe performance of the Work. Any such information, including subsurface characteristics or conditions, that is included in the Contract Documents is specifically incorporated into this Agreement. The furnishing of these surveys and the legal description of the site shall not relieve Contractor of any of its duties under the Contract Documents.

**§2.2.3** Information or services required by Owner by the Contract Documents shall be furnished by Owner with reasonable promptness. Any other information or services relevant to Contractor's performance of the Work under Owner's control shall be furnished by Owner after receipt from Contractor of a written request for such information or services.

**§2.2.4** The Contract Documents will be furnished to Contractor for use during construction as follows:

.1 Owner will provide electronic copies of all Contract Documents to Contractor.

### **§2.3 Owner's Right to Stop the Work**

**§2.3.1** If Contractor fails to correct the Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out the Work in accordance with the Contract documents, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the party of Owner to exercise its right for the benefit of Contractor or any other person or entity, including, but not limited to, the surety.

**§2.3.1.1** Owner's exercise of its right to stop the Work pursuant to Paragraph 2.3.1 shall not relieve Contractor from any of its responsibilities and obligations under the Contract Documents.

### **§2.4 Owner's Right to Carry Out the Work**

**§2.4.1** If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) day period after receipt of written notice from Owner to commence and continue correction of such default or neglect with diligence and promptness, Owner may, without prejudice to other remedies Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses (including, but not limited to, construction costs, Owner managerial and administrative time and costs, and delay damages), and compensation for Architect/Engineer's or any other consultant's or contractor's additional services made necessary by such default, neglect or failure. If payments then or thereafter due Contractor are not sufficient to cover such amounts, Contractor shall pay the difference to Owner.

### **§2.5 Extent of Owner's Rights**

**§2.5.1** The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of Owner granted in the Contract Documents, at law or in equity.

**§2.5.2** In no event shall Owner have control over, charge of, or any responsibility for the construction means, methods, techniques, sequences, or procedures or for the safety precautions and programs in



connection with the Work, notwithstanding however any of the rights and authority granted to Owner in the Contract Documents.

## **ARTICLE 3. CONTRACTOR**

### **§3.1 General**

**§3.1.1** 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 term "Contractor" means Contractor or Contractor's authorized representative.

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

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

### **§3.2 Review of Contract Documents and Field Conditions by Contractor**

**§3.2.1** Since the Contract Documents are complementary, before starting each portion of the Work, 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 Owner pursuant to Paragraph 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall notify Architect/Engineer and Owner in writing of any errors, inconsistencies, omissions or ambiguities in the Contract Documents discovered by Contractor. Contractor shall be responsible for any additional costs to Owner resulting from Contractor's failure to verify existing conditions related to any portion of the Work or to report to Architect/Engineer and Owner any errors, inconsistencies, omissions, or ambiguities in the Contract Documents discovered by, or which should have been discovered by, Contractor.

**§3.2.1.1** Contractor shall notify Architect/Engineer and Owner in writing of materials, systems, procedures, or methods of construction, either shown on the Drawings or specified in the Specifications, which Contractor discovers are incorrect or inappropriate for the purpose intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. Architect/Engineer and Owner will make a determination of such matters in writing. Contractor shall be responsible for any additional costs to Owner resulting from Contractor's failure to notify Architect/Engineer and Owner of incorrect or inappropriate materials, systems, procedures, and methods that Contractor knows or should know are incorrect or inappropriate.

**§3.2.2** Any design errors or omissions noted by Contractor during this review shall be reported promptly to Architect/Engineer, but it is recognized that Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Contractor shall be reported promptly to Architect/Engineer.

**§3.2.3** If Contractor believes that additional cost or time is involved because of clarifications or instructions issued by Architect/Engineer in response to Contractor's notices or requests for information pursuant to Paragraphs 3.2.1 through 3.2.2, Contractor shall make claims as provided in Paragraphs 4.3.5 through 4.3.7. If Contractor fails to perform the obligations of Paragraphs 3.2.1 and 3.2.2, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to Owner or Architect/Engineer for damages

resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to Architect/Engineer or Owner.

**§3.2.4** Neither Owner nor Architect/Engineer assume responsibility for any understanding or representation made by their agents or representatives prior to the execution of the Agreement unless such understanding or representation is expressly stated in the Contract Documents.

**§3.2.5** Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, then it shall be the duty of Contractor to request interpretation or information from Architect/Engineer as to what is best suited. The material that would normally be used in its place to produce first quality finished Work shall be considered a part of the Contract.

### **§3.3 Supervision and Construction Procedures**

**§3.3.1** Contractor shall supervise, inspect, and direct the Work using Contractor's best skill and attention. Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If Contractor knows or should know that such means, methods, techniques, sequences, or procedures may not be safe, Contractor shall give timely written notice to Owner and Architect/Engineer and shall not proceed with that portion of the Work without further written instructions from Architect/Engineer.

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

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

### **§3.4 Labor and Materials**

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

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

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

**§3.4.1.3** Nothing in Paragraph 3.4.1 shall limit Owner's rights under Paragraph 9.10.

**§3.4.2** Contractor may make substitutions only with the written consent of Owner, after evaluation by Architect/Engineer and in accordance with a Modification.

**§3.4.3** Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Contract. Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. Contractor shall be responsible for labor peace on the Project and shall at all times make its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstance and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Paragraph 8.3.1, Contractor shall be liable to Owner for all damages suffered by Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes.

**§3.4.4** Subcontractors whose Work is unsatisfactory to Owner or Architect/Engineer, or is considered by Owner or Architect/Engineer to be careless, incompetent, unskilled or otherwise objectionable, shall be dismissed from Work under the Contract upon written notice from Owner or Architect/Engineer. No additional compensation shall be provided to Contractor due to the proper dismissal of a subcontractor by Owner or Architect/Engineer.

**§3.4.5** Contractor shall coordinate all Work of like material in order to produce harmony of matching finishes, textures, colors, etc., throughout the various components of the Project.

### **§3.5 Warranty**

**§3.5.1** Contractor warrants to Owner and Architect/Engineer that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, and that the Work will conform to the standards and requirements of the Contract Documents and generally recognized standards of the construction industry, whichever provides the higher standard. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. Except as provided in Paragraph 9.8.4, when a longer warranty time is specifically called for in the Specifications, or is otherwise provided by law, warranty shall be for a period of one year commencing on the date of Substantial Completion, shall be in form and content otherwise satisfactory to Owner. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by Architect/Engineer, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§3.5.2** All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor, as the case may be, and countersigned by Contractor. All warranties shall be addressed to Owner and delivered to Architect/Engineer upon completion of the Work and before or with the Final Payment Application.

**§3.5.3** Contractor hereby assigns to Owner effective automatically upon Final Completion of the Work, any and all subcontractors' warranties relating to materials and labor used in the Work, and further agrees to perform the Work in such a manner so as to preserve any and all such warranties.

**§3.5.4** Contractor shall collect, assemble in a binder, and provide to Owner written warranties and related documents provided by subcontractors. All such written shall extend to Owner.

### **§3.6 Taxes**

**§3.6.1** Contractor shall pay sales, consumer, use, and similar taxes for the Work provided by Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

### **§3.7 Permits, Fees and Notices**

**§3.7.1** Unless otherwise provided in the Contract Documents, Owner shall secure and pay for the structural (building) permit and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract, and which are legally required when bids are received or negotiations concluded.

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

**§3.7.3** If Contractor knows or should know that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, Contractor shall promptly notify Architect/Engineer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

**§3.7.4** If Contractor performs Work knowing it to be contrary to laws, statutes, ordinances building codes, and rules and regulations without such notice to Architect/Engineer and Owner, Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§3.8 Allowances – Not Applicable to this Contract**

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

**§3.8.2** Unless otherwise provided in the Contract Documents:

- .1 Allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts.
- .2 Contractor's and subcontractors' costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated Allowance amounts shall be included in the Contract Sum but not in the Allowances; and
- .3 Whenever costs are more than or less than Allowances, the Contract Sum shall be adjusted accordingly by Change Order executed by both parties in advance of the excess costs being incurred. The amount of the Change Order shall reflect (a) the difference between actual costs and the Allowances under Paragraph 3.8.2.1, and (b) changes in Contractor's costs under Paragraph 3.8.2.2.

### **§3.9 Superintendent**

**§3.9.1** Contractor shall employ a competent superintendent approved by Owner and Architect/Engineer and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent Contractor, and communications given to the superintendent shall be as binding as if given to Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The superintendent shall not be replaced without the consent of Owner. Owner shall have the right, which shall be exercised in a reasonable fashion, to require replacement of the superintendent.

### **§3.10 Contractor's Construction Schedules**

**§3.10.1** Promptly after being awarded the Contract, Contractor shall prepare and submit for Owner's and Architect/Engineer's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and the Project, 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. Any float time in the schedule shall belong to the Contractor and may be used by the Contractor to optimize the construction process, manage the success of the project, finish the project early. For any loss of time due to project delays not caused by the Contractor, the schedule shall be extended and the cost for the delay will be compensable.

**§3.10.2** Contractor shall prepare and keep current, for Architect/Engineer's approval, a schedule of submittals which is coordinated with Contractor's construction schedule and allows Architect/Engineer reasonable time to review submittals.

**§3.10.3** Contractor shall perform the Work in general accordance with the most recent schedules approved by Owner and Architect/Engineer.

**§3.10.4** In the event Owner determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, Owner shall have the right to order Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation (1) working additional shifts or overtime, (2) supplying additional manpower, equipment and facilities, and (3) other similar measures (hereinafter referred to collectively as "Acceleration"), which shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Acceleration is solely for the purpose of ensuring Contractor's compliance with the construction schedule. Any failure of Owner or Architect/Engineer to require Acceleration shall not relieve Contractor of meeting the schedule, the Contract Time, or any other obligation under the Contract Documents.

**§3.10.5** Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Acceleration except to the extent Acceleration was made necessary by reason of Owner's or Architect/Engineer's wrongful acts or omissions.

### **§3.11 Documents and Samples at the Site**

**§3.11.1** Contractor shall maintain at the site for Owner one record copy of the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives, 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 Owner and Architect/Engineer and shall be delivered to Architect/Engineer

for submittal to Owner upon completion of the Work. Failure to deliver them shall result in Owner withholding Contractor's retainage until they are delivered.

### **§3.12 Shop Drawings, Product Data and Samples**

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

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

**§3.12.3** Samples are physical examples which 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. The purpose of their submittal is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Architect/Engineer is subject to the limitations of Paragraph 4.2.7. Informational submittals upon which Architect/Engineer is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by Architect/Engineer without action.

**§3.12.5** Contractor shall review for compliance with the Contract Documents, approve and submit to Architect/Engineer Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Architect/Engineer without action.

**§3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that Contractor has determined and verified materials, field measurements, and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§3.12.7** Contractor shall perform no portion of the Work for which the Contract Documents required submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by Architect/Engineer.

**§3.12.8** The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviation from requirements of the Contract Documents by Architect/Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals unless (1) Contractor has specifically informed the Architect/Engineer in writing of such deviation at the time of submittal and the Architect/Engineer 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. Contractor shall not be relieved of responsibility for errors or omissions in shop Drawings, Product Data, Samples, or similar submittals by Architect/Engineer's approval thereof.

**§3.12.9** 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 Architect/Engineer on previous submittals. In the absence of such written notice, Architect/Engineer's approval of a resubmission shall not apply to such revisions.

**§3.12.10** Contractor shall not be required to provide professional services which constitute the practice of Architect/Engineer unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. 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 Contractor by the Contract Documents, Owner and Architect/Engineer will specify all performance and design criteria that such services must satisfy. 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, and certifications. 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 Architect/Engineer. Owner and Architect/Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications, or approvals performed by such design professionals, provided Owner and Architect/Engineer have specified to Contractor applicable performance and design criteria that such services must satisfy. Pursuant to this Paragraph 3.12.10, Architect/Engineer will review, approve, or take other appropriate action on submittals only for the limited purpose (unless Owner requests otherwise) of checking for conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents; however, Contractor shall notify Architect/Engineer if additional performance or design criteria are required in accordance with Paragraph 3.2.

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

### **§3.13 Use of Site**

**§3.13.1** Contractor shall confine operations at the site to areas and times permitted by law, ordinances, permits, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§3.14 Cutting and Patching**

**§3.14.1** Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

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

### **§3.15 Cleaning Up**

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

**§3.15.1.1** Unless otherwise specified in the Contract Documents, Contractor shall not be required to clean up debris or rubbish resulting from operations of Owner or Owner's separate contractors.

**§3.15.2** If Contractor fails to clean up as provided in the Contract documents, Owner may do so and the cost thereof shall be charged to Contractor.

### **§3.16 Access to Work**

**§3.16.1** Contractor shall provide Owner and Architect/Engineer safe access to the Work in preparation and progress wherever located.

### **§3.17 Royalties, Patents and Copyrights**

**§3.17.1** Contractor shall pay all royalties and license fees. Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall indemnify, reimburse and hold Owner and Architect/Engineer 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 Owner or Architect/Engineer. However, if Contractor has reason to believe that the required design process or product is an infringement of a copyright or a patent, Contractor shall be responsible for such loss unless such information is promptly furnished to Architect/Engineer.

### **§3.18 Indemnification**

**§3.18.1** To the fullest extent permitted by law, Contractor shall indemnify, defend, reimburse, protect and hold harmless Owner and its commissioners, executives, managers, directors, officers, agents, attorneys, employees and designees (individually and collectively the "Indemnified Parties") from all claims under the workers' compensation acts and other employee benefit acts with respect to Contractor's employees or its subcontractors' employees. The obligation under this Paragraph shall not be limited in any way by any limitation on amount or type of damages, compensation or benefits payable by or for Contractor or any subcontractor under workers' or workmen's compensation acts, including that of the State of Oregon, United States Longshoremen's and Harbor Workers' Act, Jones Act, or any workers' compensation disability or other employee benefit-state or federal.

**§3.18.2** To the fullest extent permitted by law, Contractor shall also indemnify, defend, reimburse, protect, and hold harmless the Owner/Indemnified Parties from all other claims and damages including, but not limited to, economic damages and damages to personal or real property, including the Project itself, and all costs, expenses, losses, injuries, personal or otherwise, including, but not limited to, sickness, disease, and death, and all claims, suits, actions, judgments, orders, awards and liabilities (collectively, "Damages") resulting from or arising out of the Work or the Project to the extent the Damages directly or indirectly arise out of or result from breach of contract, negligence, intentional acts, errors or omissions or other improper conduct of Contractor or its subcontractors, employees, or agents in connection with their obligations stated in this Agreement. The coverage of the obligations contained in this Paragraph shall include, without limitation, attorneys' fees, expert consultant fees, and court/arbitration costs incurred by Owner in connection with any of the foregoing. Payment to third party by an Owner/Indemnified Party shall not be a condition precedent to enforcing such party's right under this Paragraph. The obligations set forth in this Paragraph shall apply during the term of this Agreement (or Contractor's performance thereof), and shall survive the expiration or termination of this Agreement until such time as action against the Indemnified Parties on account of any matter covered by this Paragraph is barred by the applicable statute of limitations, Contractor shall insure specifically the obligations contained in this Paragraph and shall include the Owner/Indemnified Parties as named additional insureds by causing amendatory riders or endorsements to be attached to the insurance



policies as described in Article 11 herein. The insurance coverage afforded under these policies shall be primary to any insurance carried independently by the Owner/Indemnified Parties. Said amendatory riders or endorsements shall indicate that, with respect to the Owner/Indemnified Parties, there shall be severability of interests under said insurance policies for all coverage provided under said insurance policies.

### **§3.19 Maintenance and Inspection of Contractor's Books and Records**

**§3.19.1** Contractor shall maintain all fiscal records in accordance with generally accepted accounting principles. In addition, Contractor shall maintain all other records necessary to clearly document Contractor's performance and any claims arising from or relating to Contractor's performance. Contractor shall permit Owner to audit and otherwise have prompt access at all times to all of Contractor's records, correspondence, account books, bills, invoices, cancelled checks, payrolls, labor records, daily logs, and other records relating to the Contract, to the Work, and to Contractor's costs. For these purposes, Contractor shall preserve at its expense all such records for the longer of (1) six years after the Final payment hereunder, (2) if any part of the Contract is involved in litigation, until the litigation is resolved, or (3) such longer period as provided by law.

### **§3.20 Statement of Compliance with Contract Documents**

**§3.20.1** Within seven (7) days of Owner's request, Contractor shall execute and deliver to Owner a certificate addressed to Owner concerning the compliance of the Work with the Contract Documents and applicable laws and regulations, the status of completion of the Work, and the status of payments and defaults.

### **§3.21 Nondiscrimination**

**§3.21.1** Contractor shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, veteran status or political affiliation in programs, activities, services, benefits or employment. Contractor shall not discriminate against minority-owned, women-owned, or emerging small businesses. Contractor shall include a provision in each subcontract requiring subcontractors to comply with the requirements of this Paragraph.

## **ARTICLE 4. ADMINISTRATION OF THE CONTRACT**

### **§4.1 Architect/Engineer**

**§4.1.1** Architect/Engineer is the person lawfully licensed to practice Architect/Engineering or an entity lawfully practicing Architect/Engineering identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect/Engineer" means Architect/Engineer or Architect/Engineer's authorized representative. If the design professional retained by Owner for the Work to be done under this Agreement is an Engineer, the term "Architect/Engineer" as used in this Agreement shall refer to the Engineer.

**§4.1.2** Duties, responsibilities and limitations of authority of Architect/Engineer as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of Owner and Architect/Engineer.

**§4.1.3** In the event of a termination of Architect/Engineer or a restriction of the duties, responsibilities or authority of Architect/Engineer as described in the contract Documents, Owner itself or through another licensed Architect/Engineer shall carry out those duties, responsibilities, and authority of Architect/Engineer.

**§4.1.4** Owner and Contractor acknowledge and agree that nothing in Architect/Engineer's engagement implies any undertaking by Architect/Engineer for the benefit of, or which may be enforced by, Contractor, its subcontractors, or the surety of any of them, it being understood and agreed that Architect/Engineer's obligations are to Owner.

#### **§4.2 Architect/Engineer's Administration of the Contract**

**§4.2.1** Architect/Engineer will provide administration of the Contract as described in the Contract Documents and for the duration provided in the agreement between Architect/Engineer and Owner. Architect/Engineer will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

**§4.2.2** Architect/Engineer, as a representative of Owner, will visit the site as provided in the agreement between Architect/Engineer and Owner. However, Architect/Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Architect/Engineer shall report to Owner any deviations from the Contract Documents that Architect/Engineer is aware of or reasonably should be aware of, and Architect/Engineer is responsible to Owner for any failures in this regard. However, other than its reporting requirements to Owner, Architect/Engineer will neither have control over or charge of, nor be directly responsible for the construction means, methods, techniques, sequences, or procedures (unless Architect/Engineer has specified such means, methods, techniques, sequences, or procedures in the Contract Documents) nor for the safety precautions and programs in connection with the Work, since these are Contractor's rights and responsibilities under the Contract documents, except as provided in Paragraph 3.3.1. Architect/Engineer shall promptly submit to Owner a written report subsequent to each on-site visit.

**§4.2.3** Architect/Engineer shall report to Owner known deviations or those deviations that should be known from the most recent construction schedule submitted by Contractor. However, other than this reporting requirement to Owner, Architect/Engineer will not be directly responsible for Contractor's failure to perform the Work in accordance with the construction schedule. Architect/Engineer will be responsible for its negligent acts or omissions, but shall not have control over or charge of and will not be directly responsible for acts or omissions of Contractor, subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work unless such acts are performed consistent with the direction of Architect/Engineer.

**§4.2.4** Based on Architect/Engineer's evaluations of Contractor's Applications for Payment, Architect/Engineer will review and certify the amounts due Contractor and will issue Certificates for Payment in such amounts.

**§4.2.5** Architect/Engineer will have authority to reject Work that does not conform to the Contract Documents. Whenever Architect/Engineer considers it necessary or advisable, Architect/Engineer will have authority to require inspection or testing of the Work in accordance with Paragraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed, or completed. However, neither this authority of Architect/Engineer 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 Architect/Engineer to Contractor, subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§4.2.6** Architect/Engineer will review in reasonable detail and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose (unless Owner requests otherwise) of checking for conformance with information given and the design concept expressed in the Contract Documents. Architect/Engineer's action will be taken

with such reasonable promptness as to cause no delay in the Work or in the activities of Owner, Contractor or separate contractors, while allowing sufficient time in Architect/Engineer's professional judgment to permit adequate review. Unless Owner requests otherwise, review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Architect/Engineer's review of Contractor's submittals shall not relieve Contractor of the obligations under Paragraph 3.3, 3.5 and 3.12. Architect/Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Architect/Engineer, of any construction means, methods, techniques, sequences, or procedures. Architect/Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. Architect/Engineer, however, shall report to Owner any concerns regarding accuracy, completeness, safety, and conformity with the Contract Documents that Architect/Engineer is aware of or reasonably should be aware of as a result of Architect/Engineer's reasonably detailed review of Contractor's submittals.

**§4.2.7** Architect/Engineer shall prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

**§4.2.8** Architect/Engineer will conduct inspections to determine the date or dates of Substantial Completion and will receive from Contractor and forward to Owner for Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by Contractor.

**§4.2.9** If Owner and Architect/Engineer agree, Architect/Engineer will provide one or more project representatives to assist in carrying out Architect/Engineer'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.

**§4.2.10** Architect/Engineer will interpret and make recommendations concerning performance of Contractor on written request of Owner. Architect/Engineer's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§4.2.11** Interpretations and recommendations of Architect/Engineer 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.

**§4.2.12** Architect/Engineer shall advise, counsel, and guide Owner with respect to initial decisions on claims, disputes, or other matters in question between Owner and Contractor.

### **§4.3 Claims and Disputes**

**§4.3.1 Definition:** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

**§4.3.2 Time Limits on Claims:** Claims by Contractor must be made as soon as possible, but in any event no later than thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after Contractor first recognizes, or reasonably should have recognized, the condition giving rise to the Claim, whichever is later; provided, however, Contractor shall cooperate with Architect/Engineer and Owner in an effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition which is the cause of such a Claim. Failure to make

a Claim within the thirty (30) day timeframe will result in Contractor's waiver of the Claim and all related damage. Claims must be made by written notice. Claims must contain reasonably detailed information (including all supporting documents) sufficient to allow meaningful review by Owner and Architect/Engineer. Contractor must provide all impacts to the Contract Time and Contract Sum at the time the Claim is submitted. Failure to do so will result in Contractor's waiver of the Claim and all related damage.

**§4.3.3 Continuing Contract Performance:** Pending final resolution of a Claim, except as otherwise directed by Owner in writing or provided in Paragraph 9.7.1 and Article 14, Contractor shall proceed diligently with performance of the Contract, and Owner shall continue to make approved payments in accordance with the Contract Documents.

**§4.3.4 Claims for Concealed or Unknown Conditions:** If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or otherwise known to (or should have been known to) Contractor, or (2) unknown physical conditions of an unusual nature, which 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, and should not have been known to Contractor, then written notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. Owner will promptly investigate such conditions and, if they differ materially from what Contractor knew or should have known and cause an increase or decrease in 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 Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents or that otherwise should have been known to Contractor, and that no change in the terms of the Contract is justified, Owner shall so notify Contractor in writing, stating the reasons. Claims by Contractor in opposition to such determination must be made within thirty (30) days after Owner has given notice of the decision. If Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment determination shall be referred to arbitration as provided herein. It is expressly agreed that no adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews and preconstruction services which Contractor had the opportunity to or should have performed in connection with the Project.

**§4.3.5 Claims for Additional Cost:** If the Contractor wishes to make 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 Paragraph 10.6. Any change in the Contract Sum resulting from such Claim shall be authorized by written Modification.

**§4.3.6** If Contractor believes additional cost is involved for reasons including, but not limited to (1) a written interpretation from Architect/Engineer, (2) an order by Owner to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by Architect/Engineer, (4) failure of payment by Owner, (5) termination of the Contract by Owner, (6) Owner's suspension, or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.

**§4.3.7 Claims for Additional Time:**

**§4.3.7.1** If Contractor wishes to make Claim for an extension in the Contract Time, written notice as provided herein shall be given to Owner. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time and a critical path schedule analysis based upon the approved Contractor's construction schedule showing the impact of the cause or event on the

critical path of the approved Contractor's schedule. Failure to do so will result in Contractor's waiver of the Claim and all related damages. In the case of a continuing delay, only one Claim is necessary.

**§4.3.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be valid only to the extent documented by data substantiating that weather conditions were (1) abnormal for the period of time, (2) could not have been reasonably anticipated, and (3) had an adverse effect on the scheduled construction. A notice of Claim for additional time due to adverse weather conditions shall include the monthly issue of *Local Climatological Data – Bend, Oregon* for the months involved, plus the "Normals, Means and Extremes" table from the latest *Annual Summary of Local Climatological Data – Bend, Oregon*, both of which are published by the US Department of Commerce, National Oceanic and Atmospheric Administration, national Climatic Data Center located in Asheville, NC 28801. Failure to do so will result in Contractor's waiver of the Claim and all related damages. Unless otherwise agreed by Owner and Contractor, the "Normals, Means and Extremes" table shall be the basis for determining the number of adverse weather days and the effect on the Work resulting therefrom which Contractor should have expected to encounter.

**§4.3.8 Injury or Damage to Person or Property:** If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding thirty (30) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§4.3.9** 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 Owner or Contractor, the applicable unit prices shall be equitably adjusted.

**§4.3.10 Claims for Consequential Damages:** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

#### **§4.4 Resolution of claims and Disputes**

**§4.4.1** Owner will review Claims and within thirty (30) days of the receipt of the claim take one or more of the following actions: (1) request additional supporting data from the claimant, (2) reject the Claim in whole or in part, (3) approve the Claim, or (4) suggest a compromise.

**§4.4.2** In evaluating Claims, Owner may, but shall not be obligated to, consult with or seek information from either Contractor, Architect/Engineer, or from persons with special knowledge or expertise who may assist Owner in rendering a decision.

**§4.4.3** If Owner requests Contractor to furnish additional supporting data, Contractor shall respond, within seven (7) days after receipt of such request, and shall either provide a response on the requested supporting data, advise Owner when the response or supporting data will be furnished, or advise Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, Owner will either reject or approve the Claim in whole or in part.

**§4.4.4** Owner will approve or reject Claims by written decision which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by Owner shall be subject to mediation and arbitration as provided herein.

**§4.4.5** When a written decision of Owner states that (1) the decision is final but subject to mediation and arbitration, and (2) a demand for arbitration of a Claim covered by such decision must be made within thirty (30) days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said thirty (30) days shall result in Owner's decision becoming final and binding upon Contractor.

**§4.4.6** Upon receipt of a Claim against Contractor or at any time thereafter, Architect/Engineer or 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 Contractor's default, Architect/Engineer or Owner may, but is not obligated to, notify the surety or request the surety's assistance in resolving the controversy.

#### **§4.5 Mediation**

**§4.5.1** Any claim, dispute, or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§4.5.2** Owner and Contractor shall endeavor to resolve claims, disputes, and other matters in question between them by mediation. Request for mediation shall be filed in writing with the other party to this Agreement. The request may be made concurrently with the filing of a demand for arbitration, but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**§4.5.3** 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. Written and executed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **§4.6 Arbitration**

**§4.6.1** Any claim, dispute or matter in question arising out of or related to this Agreement shall be decided by arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

**§4.6.2** The demand for arbitration shall be filed in writing with the other party to this Agreement. The parties shall mutually select a single arbitrator for cases with less than One Million Dollars (\$1,000,000.00) in dispute, and a panel of three arbitrators for cases involving One Million Dollars (\$1,000,000.00) or more in dispute. Each party shall be entitled to reasonable discovery in the arbitration. The parties agree to exchange all expert reports prepared for purposes of giving testimony in the arbitration, whether or not such reports will be introduced in the arbitration, thirty (30) days prior to the arbitration.

**§4.6.3** A demand for arbitration shall be made within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on said Claim would be barred by the applicable period of limitations. For all claims by Owner against Contractor, the applicable period of limitations shall not commence to run, and any alleged cause of action shall not be deemed to have accrued (whether such action involves negligence, strict liability,

indemnity, intentional tort or other tort, breach of contract, breach of implied or express warrant, or any other legal or equitable theory), unless and until Owner is fully aware of all three of the following: (1) the identity of the part(ies) responsible, (2) the magnitude of the damage or injury, and (3) the cause(s) of the damage or injury. Claims for indemnity shall not begin to run until Owner has actually paid out or otherwise actually incurred the injury or damage. The discovery rule provided herein applies in lieu of any otherwise applicable statute or related case law.

**§4.6.4 Consolidation or Joinder.** Any arbitration arising out of or relating to this Agreement shall include, by consolidation or joinder or in any other manner, any additional persons or entities if (1) such persons or entities are materially involved in a common issue of law or fact in dispute, and (2) such persons or entities are either contractually bound to arbitrate or otherwise consent to arbitration. If for any reason a party whose presence is required for complete relief to be accorded in the arbitration cannot be joined in the arbitration, Owner may elect to forego arbitration and litigate the dispute. In such event, the parties agree to exchange expert reports in the litigation as provided in Paragraph 4.6.2. The foregoing agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

**§4.6.5 Judgment on Final Award.** The award rendered by the arbitrator or arbitrators (unless unlawful) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **ARTICLE 5. SUBCONTRACTORS**

### **§5.1 Definitions**

**§5.1.1** A Subcontractor is a person or entity who has a direct contract with Contractor to perform a portion of the Work at the site. 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. The term includes all subcontractors, suppliers, manufacturers, materialmen, and vendors at any tier unless otherwise qualified as “first tier” only.

**§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.

### **§5.2 Award of Subcontracts or Other Contracts for Portions of the Work**

**§5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Owner through Architect/Engineer 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. Architect/Engineer will promptly reply to Contractor in writing stating whether or not Owner or Architect/Engineer, after due investigation, has reasonable objection to any such proposed person or entity.

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

**§5.2.3** If Owner or Architect/Engineer has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another to whom Owner or Architect/Engineer has no reasonable

objection. If the proposed but rejected subcontractor was reasonably capable of performing the Work and if its bid was reasonable, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless Contractor has acted promptly and responsively in submitting names as required.

**§5.2.4** Contractor shall not change a subcontractor, person, or entity previously selected without the prior written consent of Owner. If such consent is given and the subcontractor to be replaced is a minority, woman, or emerging small business registered with the State of Oregon, Contractor shall make good faith efforts to contract with an M/W/ESB for the work to be performed by that subcontractor. Documentation of these efforts is required and must be submitted to Owner upon request.

### **§5.3 Subcontractual Relations**

**§5.3.1** By appropriate agreement, written where legally required for validity, Contractor shall require each subcontractor, to the extent of the Work to be performed by the subcontractor, to be bound to Contractor by the terms of the Contract Documents, and to assume toward Contractor all obligations and responsibilities, including the responsibility for safety of the subcontractor's Work, which Contractor, by these Documents, assumes toward Owner and Architect/Engineer. Each subcontract agreement shall preserve and protect the rights of Owner and Architect/Engineer 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 Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. Contractor shall make available to each proposed subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the subcontractor will be bound, and, upon written request of the subcontractor, identify to the subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed sub-subcontractors.

**§5.3.2** Contractor shall include in all subcontracts with subcontractors a right for Contractor to assign subcontracts to Owner in the event of termination of the Contract with Owner.

### **§5.4 Contingent Assignment of Subcontracts**

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

- .1 assignment is effective only after termination of Contract by Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which 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.

## **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** Owner reserves the right to perform construction or operations related to the Project with 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 Contractor claims that delay or additional cost is involved because of such action by Owner, Contractor shall make such Claim as provided in Section 4.3.

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

## **§6.2 Mutual Responsibility**

**§6.2.1** Contractor shall afford 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 Contractor's construction and operations with theirs as required by the Contract Documents.

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

**§6.2.2.1** If part of Contractor's Work requires that any work being performed by Owner or any of its contractors be performed before Contractor can proceed, Contractor shall give Owner and Architect/Engineer adequate prior written notice of when such work must be done. In the absence of such notice, Contractor shall not be entitled to any additional costs or time arising out of delay caused by Owner or its contractors in completing such Work.

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

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

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

## **§6.3 Owner's Right to Clean Up**

**§6.3.1** If a dispute arises among Contractor, separate contractors, and Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste

materials and rubbish, Owner may clean up and Architect/Engineer will allocate the cost among those responsible.

## **ARTICLE 7. CHANGES IN THE WORK**

### **§7.1 General**

**§7.1.1** Changes in the Work may be accomplished AFTER EXECUTION OF THE Contract, and without invalidating the Contract, by prior written Change Order, Construction Change Direction 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** Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a Modification is properly and timely prepared and executed as required in the Contract Documents. Contractor hereby waives any argument that Owner's conduct (including, but not limited to, orally approving changes) amounts to a waiver of the prior, written change requirements of the Contract Documents.

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

**§7.1.4** Owner shall periodically combine several Change Orders into a Contract Amendment which shall be signed by Owner and Contractor. After a Contract Amendment is signed by Owner and Contractor, Contractor may include in the Contractor's Application for Payment the amounts set forth in the Change Orders included in the Contract Amendment as the Work is completed.

### **§7.2 Change Orders**

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

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum, including all direct and indirect costs, all delay costs, impact costs, ripple effect costs, and all profit and overhead on these costs associated with the change; and
- .3 the extent of the adjustment, if any, in the Contract Time, including any delays, schedule impacts, and ripple effects on the Contract Time.

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

### **§7.3 Construction Change Directives**

**§7.3.1** A Construction Change Directive is a written order signed by Owner and Architect/Engineer directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time or both. 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 Times 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 if Owner and Contractor cannot agree on the amount under methods .1, .2 or .3, above, then the adjustment shall be made as provided in Paragraph 7.3.6.

**§7.3.4** Upon receipt of a Construction Change Directive, Contractor shall promptly proceed with the change in the Work involved and advise Architect/Engineer of Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

**§7.3.6** If Owner and Contractor cannot agree on the amount of a Change Order under the methods provided in Paragraphs 7.3.3 (.1, .2 or .3), then the adjustment shall be determined as provided in Paragraph 7.3.6.1 and Paragraph 7.3.6.2, below.

**§7.3.6.1 Costs.** Costs for the purposes of this Paragraph 7.3.6 shall mean actual charges or expenses, verified by receipt or invoice, if available, or Contractor's certification and shall be limited to the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and worker's compensation insurance;
- .2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others;
- .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 additional costs of supervision and field office personnel directly attributable to the change.

**§7.3.6.2 Overhead and Profit.** The combined overhead and profit included in the total cost to Owner of a change in the Work shall be based on the following schedule. Costs to which overhead and profit are to be applied shall be determined in accordance with Paragraph 7.3.6.1.

- .1 for Contractor, for Work performed by Contractor's own forces, ten percent (10%) of the cost;
- .2 for Contractor, for Work performed by Contractor's subcontractors, five percent (5%) of the amount due the subcontractors, provided that with respect to subcontractors affiliated with or substantially owned by Contractor or Contractor's principal officers, no such adjustment under this subparagraph .2 will be allowed; and
- .3 for each subcontractor involved, for Work performed by that subcontractor's own forces, five percent (5%) of the cost, provided that with respect to subcontractors affiliated with or substantially owned by Contractor or Contractor's principal officers, no such adjustment under this subparagraph .3 will be allowed .

**§7.3.7** The amount of credit to be allowed by Contractor to Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Architect/Engineer, plus a corresponding decrease in overhead and profit. 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.

**§7.3.8** Pending final determination of the total cost of a Construction Change Directive to Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, Owner and Architect/Engineer will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

**§7.3.9** When Owner and Contractor agree with the determination made by Architect/Engineer concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

**§7.3.10** In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over One Thousand Dollars (\$1,000.00) be approved without such itemization.

#### **§7.4 Minor Changes in the Work**

**§7.4.1** Owner and Architect/Engineer will each 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 shall be affected by written order and shall be binding on Owner and Contractor. Contractor shall carry out such written orders promptly.

### **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 of the Work.

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

**§8.1.3** The date of Substantial Completion is the date certified by Architect/Engineer in accordance with Section 9.8.

**§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 Contractor’s schedule for substantial completion are of the essence of the contract. By executing the Agreement, Contractor confirms that the Contract Time is a reasonable period for performing and completing the Work.

**§8.2.2** Contractor shall not, except by agreement or instruction of 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 Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by Owner, Contractor shall notify Owner in writing not less than seven (7) days or other agreed period before commencing the Work.

**§8.2.3** Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

## **§8.3 Delays and Extensions of Time**

**§8.3.1** If Contractor is delayed at any time in the commencement or progress of the work by an act or neglect of Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by Owner, or by changes ordered in the Work, or by industry-wide labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond Contractor’s control, or by delay authorized by Owner pending mediation and arbitration, then the following shall apply:

- .1** except as set out in Item .4, below, Contractor shall, if Owner so directs in writing, accelerate the performance of the Work, with additional labor, services, materials, equipment, facilities, subcontractors, supervision and otherwise as necessary, so as to overcome the delay and achieve completion of the Work by the Contract Time, and the Contract Sum shall be increased by prior written Change Order to compensate Contractor for its costs incurred in accelerating the Work in an amount determined in accordance with Article 7 of these General Conditions.
- .2** Contractor shall give prior written notice to Owner and Owner’s Representative of Contractor’s intent to commence Acceleration of the performance of the Work pursuant to Item .1, above. Owner shall not be obligated to increase the Contract Sum as a result of any Acceleration of the Work commenced in advance of Owner’s receipt of written notice of Contractor’s intent to commence such Acceleration.
- .3** In the event of Acceleration, except as set out in Item .4, below, the Contract Time shall not be extended due to the delays set out in Paragraph 8.3.1. Contractor’s sole remedy in the event of those delays is an increase in the Contract Sum pursuant to Item .1, above, unless otherwise agreed to by Owner.
- .4** Contractor shall not be obligated to overcome the delay and achieve completion of the Work by the Contract Time set out in the Agreement, nor shall Contractor be denied an extension

of the Contract Time, in the event the nature of the cause of the delay under Paragraph 8.3.1 is such that no amount of Acceleration of the Work pursuant to Item .1 above reasonably could enable Contractor to overcome the delay and achieve completion of the Work by the Contract Time set out in the Agreement. In the circumstances set out in this Item .4, Contractor shall accelerate the Work to the extent it reasonably is able pursuant to Item .1 above, the unavoidable delay shall be excused, and the Contract Time shall be extended by Change Order in the amount of the unavoidable delay.

**§8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

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

## **ARTICLE 9. PAYMENTS AND COMPLETION**

### **§9.1 Contract Sum**

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

### **§9.2 Schedule of Values**

**§9.2.1** Before the first Application for Payment, Contractor shall submit to Owner and Architect/Engineer a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as Architect/Engineer may require. This schedule, unless objected to by Owner or Architect/Engineer, shall be used as a basis for reviewing Contractor's Applications for Payment.

### **§9.3 Applications for Payment**

**§9.3.1** Contractor shall submit to Owner an itemized application for Payment for Work completed, based on the current, approved schedule of values, in accordance with the Contract Documents. Such Application shall be notarized and supported by such data substantiating Contractor's right to payment as Owner may require, including, but not limited to, copies of invoices and requisitions from subcontractors, waivers and releases by Contractor and subcontractors (see Attachment 1), certified payrolls, all invoices for equipment, proof of payment for prior period invoices, and retainage as provided for in the Agreement. The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet. Applications for Payment may include requests for payment on account of Change Orders that have been included in a Contract Amendment.

**§9.3.1.1** Such applications may not include requests for payment for portions of the Work for which Contractor does not intend to pay to a subcontractor, unless such Work has been performed by others whom Contractor intends to pay. Contractor shall include a written notice, on Contractor's letterhead, stating the name of and amount owed to such subcontractor that has requested payment which has not been included on the Application for Payment.

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

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

#### **§9.4 Certificates for Payment**

**§9.4.1** Architect/Engineer will, within seven (7) days after receipt of Contractor's Application for Payment, either issue to Owner a Certificate for Payment, with a copy to Contractor, for such amount as Architect/Engineer determines is properly due, or notify Contractor and Owner in writing of Architect/Engineer's reasons for withholding certification in whole or in part as provided in Paragraph 9.5.1.

**§9.4.2** The issuance of a Certificate for Payment will constitute a representation by Architect/Engineer to Owner, based on Architect/Engineer's reasonably detailed review of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Architect/Engineer's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents, and that all conditions to payment have been satisfied. 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, inspections and observations, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by Architect/Engineer. The issuance of a Certificate for Payment will further constitute a representation that Contractor is entitled to payment in the amount certified.

#### **§9.5 Decisions to Withhold Certification**

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

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Contractor;
- .3 failure of 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 Owner or another 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 and actual delay damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure to abide by all terms and conditions of the Contract Documents.

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

**§9.5.3** Notwithstanding the issuance of a Certificate for Payment, Owner may withhold payment for the reasons set forth in Paragraph 9.5.1. If Owner withholds payment, in whole or in part, Owner shall notify Contractor and Architect/Engineer in writing of Owner's reasons for withholding payment.

## **§9.6 Progress Payments**

**§9.6.1** After Architect/Engineer has issued a Certificate for Payment, Owner shall make payment in the manner and within the time provided in the Contract Documents. Owner may refuse to make payment on any Certificate of Payment for any breach of the Contract, including, but not limited to, those defaults set forth in Paragraphs 9.5.1.1 through 9.5.1.8. Owner shall not be deemed in breach by reason of withholding payment while any such Contractor breaches remain uncured. If Owner refuses to make payment because Contractor is in breach of the Contract, Owner shall notify Contractor and Architect/Engineer in writing of Owner's reasons for refusing to make payment.

**§9.6.2** Contractor shall promptly pay each subcontractor, upon receipt of payment from Owner, out of the amount paid to Contractor on account of such subcontractor's portion of the Work, the amount to which said subcontractor is entitled, reflecting percentages actually retained from payments to Contractor on account of such subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each subcontractor, require each subcontractor to make payments to sub-subcontractors in a similar manner. Notwithstanding anything in this Section 9.6 to the contrary, Owner may elect, in Owner's sole discretion, to make any payment jointly payable to Contractor and any subcontractor. Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create (1) any contract between Owner and subcontractors or (2) rights in any subcontractor against Owner. In addition, should Contractor neglect or refuse to pay promptly any bill or charge legitimately incurred by it, Owner shall have the right, but not the obligation, to pay the bill directly, and Contractor shall immediately reimburse Owner for same, provided Owner notifies Contractor of its intent to pay such bill directly and Contractor fails to provide Owner, within seven (7) days following Owner's written notice, of an acceptable explanation in writing regarding Contractor's failure to promptly pay the bill or charge legitimately incurred by Contractor. If Contractor does not reimburse Owner prior to the next payment by Owner to Contractor, Owner may offset the amount of the bill against amounts owed by Owner to Contractor hereunder.

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



**§9.6.4** Neither Owner nor Architect/Engineer shall have an express or implied obligation (1) to pay or to see to the payment of money to a subcontractor or (2) track, monitor or investigate Contractor's disbursement of Project funds for the benefit of any subcontractor, surety, creditor, or any other person or entity.

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

**§9.6.6** Unless Contractor provides Owner with a payment bond in the full penal sum of the Contract Sum, payments received by Contractor for the Work properly performed by subcontractors shall be held by Contractor for those subcontractors who performed the Work or furnished materials, or both, under contract with Contractor for which payment was made by Owner.

**§9.6.7** With each Application for Payment, Contractor shall furnish a conditional waiver (see Attachment 1) and release of claims for itself and each first-tier subcontractor who furnished labor, equipment, materials or services to the Project during the period covered by the Application for Payment. Upon each payment by Owner, Contractor shall execute and cause first-tier subcontractors to execute an unconditional waiver and release of claim acknowledging receipt of all payments due through the period covered by the previous Application for Payment (see Attachment 2). The conditional and unconditional claim releases shall be on forms attached to the Agreement, and Contractor shall deliver the executed releases to Owner with its next succeeding Application for Payment, including the Final Application for Payment.

**§9.6.8** In addition to the retainage specified in the Agreement, Owner may withhold progress payments or final payment or any portion thereof on account of (1) defective or nonconforming Work not remedied, (2) claims filed or a reasonable basis to believe that such claims will be filed, (3) failure of Contractor to make payments properly for labor, materials, equipment, or subcontracts, (4) failure of Contractor to submit to Owner claim waivers and releases (see Attachment 1), or (5) significant failure to carry out the Work in strict accordance with this Agreement. Owner may withhold from a progress payment or final payment up to one hundred fifty percent (150%) of the estimated or actual costs associated with the above items.

## **§9.7 Failure of Payment**

**§9.7.1** If Owner fails to make payment to Contractor with respect to any amounts which are not in dispute between Owner and Contractor within the time periods for payment as set forth in the Contract Documents, Contractor may, upon fourteen (14) days' prior written notice to Owner, stop the Work and thereby suspend or terminate the Contract, unless within such fourteen (14) days payment is made to Contractor of all undisputed amounts and Owner's good faith basis for contesting any disputed amounts is delivered to Contractor. If Contractor so terminates the Contract, Contractor's exclusive remedies will be governed by Article 14, below.

## **§9.8 Substantial Completion**

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

**§9.8.1.1** For Substantial Completion to be achieved, Owner must have received a temporary or final certificate of occupancy and all other governmental approvals as necessary and required for Owner to occupy or utilize the Work or designated portion thereof for its intended purpose. The requirement set out in this Section shall be deemed satisfied if all construction, submittals, and other performance by Contractor required for issuance of the temporary or permanent certificate of occupancy has been

completed but the certificate has not been issued solely because of factors beyond the reasonable control of Contractor. A delay in the applicable governmental agency's issuance of a Certificate of Occupancy, following Contractor's completion of construction, submittals, and other performance that is of normal duration for that agency shall not constitute a factor "beyond the reasonable control of Contractor," as that phrase is used in the prior sentence.

**§9.8.2** When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to Architect/Engineer a comprehensive list of items to be completed or corrected prior to Final Payment ("Punch List"). Failure to include an item on such list does not alter the responsibility of Contractor to complete all the Work in accordance with the Contract Documents.

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

**§9.8.4** When the Work or designated portion thereof is substantially complete, Architect/Engineer will prepare a Certificate of Substantial Completion which shall be within the Contract Time unless extended pursuant to Section 8.3, shall establish the date of Substantial Completion, shall establish responsibilities of Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which 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 the warranty relates to Work that is incomplete or requires correction (in which case, such warranty shall commence upon completion or correction of the Work) and unless otherwise provided in the Certificate of Substantial Completion.

**§9.8.5** The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete and not in accordance with the requirements of the Contract Documents.

## **§9.9 Partial Occupancy or Use**

**§9.9.1** Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer as required under Paragraph 11.4.1.5, below, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion substantially complete, Contractor shall prepare and submit a list to Architect/Engineer as provided in Paragraph 9.8.2. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between Owner and Contractor.

**§9.9.2** Immediately prior to such partial occupancy or use, Owner, Contractor, and Architect/Engineer shall jointly inspect the area to be occupied or portion of the work to be used in order to determine and record the condition of the Work.

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

## **§9.10 Final Completion and Final Payment**

**§9.10.1** Contractor shall, within seven (7) days after completion and correction of the items on the Punch List, notify Architect/Engineer and Owner in writing, requesting that a final inspection be made by Owner and Architect/Engineer. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Owner and Architect/Engineer will notify Contractor of the date and time of the final inspection. When Owner and Architect/Engineer find the Work acceptable under the contract Documents and the Contract fully performed, Architect/Engineer will promptly issue a final Certificate of Payment stating that, to the best of Architect/Engineer's knowledge, information, and belief, and on the basis of Architect/Engineer's on-site visits and inspections, the Work has been completed in strict accordance with terms and conditions of the Contract Documents and that the entire balance found to be due Contractor and noted in the final Certificate is due and payable. Architect/Engineer's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 9.10.2 below as precedent to Contractor's being entitled to Final Payment have been fulfilled.

**§9.10.1.1** The term "Final Completion" as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved, and (2) Owner has received a final Certificate of Occupancy; (3) Owner has received all other governmental approvals as necessary and required for Owner to occupy or utilize the Work or designated portion thereof for its intended purpose; and (4) Architect/Engineer has issued Architect/Engineer's final Certificate for Payment. Notwithstanding the foregoing, Final Completion shall be deemed achieved if all construction, submittals, and other performance by Contractor required for issuance of the permanent Certificate of Occupancy has been completed, but the certificate has not been issued solely because of factors beyond the reasonable control of Contractor. A delay in the applicable governmental agency's issuance of a Certificate of Occupancy, following Contractor's completion of construction, submittals, and other performance that is of normal duration for that agency shall not constitute a factor "beyond the reasonable control of Contractor," as that phrase is used in the prior sentence.

**§9.10.2** Neither Final Payment nor any remaining retained percentage shall become due until Contractor submits to Architect/Engineer (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner; (3) a written statement that Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety to Final Payment; (5) if required by Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by Owner; (6) the grounds for withholding certification of payment as set forth in Paragraph 9.5.1 have been removed or no longer exist; (7) completion of the Work in compliance with the Contract Document; and (8) evidence of compliance with all other requirements of the Contract Documents. If a subcontractor refuses to furnish a release or waiver required by Owner, Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such claim. If such claim remains unsatisfied after

payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such claim, 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 Contractor or by issuance of Change Orders affecting final completion, and Owner and Architect/Engineer so confirm, Owner shall, upon application by Contractor and certification by Architect/Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. In such event, Owner shall be entitled to retain an amount equal to one hundred fifty percent (150%) of the estimated costs of finally completing or repairing the Work as determined by Owner. 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 Contractor to Owner and Architect/Engineer 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** The making of Final Payment shall constitute a waiver of Claims by Owner except those arising from:

- .1 claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents or industry standards, or failure of Contractor to comply with all terms and conditions of the contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 faulty or defective Work appearing either before or after Final Payment.

**§9.10.5** Acceptance of Final Payment by 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.

## **ARTICLE 10. PROTECTION OF PERSONS AND PROPERTY**

### **§10.1 Safety Precautions and Programs**

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

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

**§10.1.1.2** Contractor shall coordinate its safety program with the safety programs of Owner's separate contractors and of any other contractors working at the site.

### **§10.2 Safety of Persons and Property**

**§10.2.1** 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, including, but not limited to, licensees, trespassers, and persons on adjacent or adjoining properties;
- .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 Contractor or 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. Contractor at all times shall protect adjoining private or public property from damage arising from Contractor's operations. The Drawings show the approximate location of existing utilities on the Project site. Owner believes the utilities exist as represented in the Drawings, but cannot guarantee this fact. Contractor will take all reasonable precautions to protect and accommodate both the utilities identified in the Drawings and those which may otherwise exist.

**§10.2.2** Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations, and lawful orders of public authorities, governmental authorities, and all other persons or entities having jurisdiction bearing on safety of persons or property or their protection from damage, injury, or loss.

**§10.2.3** Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety, codes, rules, 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, Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

**§10.2.5** Contractor shall promptly remedy damage and loss to property, including, but not limited to, the Work itself, caused in whole or in part by Contractor, any subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible, except damage or loss attributable to acts or omissions of Owner or Architect/Engineer or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, not attributable to the fault or negligence of Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Section 3.18.

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

**§10.2.7** Contractor shall not load or permit any part of the construction or site to be loaded so as to endanger the safety of persons or property.

**§10.2.8** When all or any portion of the Work is suspended for any reason, Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause.

**§10.2.9** Contractor shall promptly report, in writing, to Owner and Architect/Engineer and to any government or other authority as required by law or regulation, all accidents arising out of or in connection with the Work which cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to Owner and Architect/Engineer.

### **§10.3 Hazardous Materials**

**§10.3.1** 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, toxic substances or other hazardous materials as defined in Paragraph 10.5.1, below, encountered on the site by Contactor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Architect/Engineer in writing.

**§10.3.2** Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, Owner shall furnish in writing to Contractor and Architect/Engineer 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. Contractor and Architect/Engineer will promptly reply to Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by Owner. If either Contractor or Architect/Engineer has an objection to a person or entity proposed by Owner, Owner shall propose another to whom Contractor and Architect/Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of Owner and Contractor. The Contract Time shall be extended appropriately, and the Contract Sum shall be increased in the amount of Contractor's reasonable additional costs of shut-down, delay, and start-up, which adjustments shall be accomplished as provided in Article 7, above.

**§10.3.3** To the fullest extent permitted by the law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance, presently known and identified, presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault of negligence of the party seeking indemnity.

**§10.4** Owner shall not be responsible under Paragraph 10.3 for materials and substances brought to the site by Contractor.

**§10.5** Contractor shall not cause or permit any "Hazardous Materials" (as defined herein) to be brought upon, kept, or used in or about the job site except to the extent such Hazardous Materials are necessary for the prosecution of the Work or are required pursuant to the Contract Documents. Removal of such hazardous Materials shall be undertaken within twenty-four (24) hours following Owner's demand for such removal. Such removal shall be undertaken by Contractor at its sole cost and expense, and shall be performed in accordance with all applicable laws. Any damage to the Work, the job site, or any adjacent property resulting from the improper use, or any discharge or release of Hazardous Materials, shall be remedied by Contractor at its sole cost and expense, and in compliance with all applicable laws. Contractor shall immediately notify Owner of any release or discharge of any Hazardous Materials on the job site. Contractor shall be responsible for making any and all disclosures required under applicable "Community Right-to-Know" laws. Contractor shall not clean or service any tools, equipment, vehicles, materials, or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and moved from the job site in accordance with all applicable laws and regulations. Contractor shall immediately notify Owner of any citations, orders, or warnings issued to or received by Contractor, or of which Contractor otherwise becomes aware, which relate to any Hazardous Materials on the job site, without limiting any other indemnification provisions pursuant to law or specified in this Agreement. Contractor shall indemnify, defend (at Contractor's sole

cost, with legal counsel approved by Owner) reimburse, and hold Owner harmless as provided in Paragraph 3.18 from and against any and all such claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs, and expenses in removing or remediating the effect of any Hazardous materials on, under, from, or about the job site, arising out of or relating to, directly or indirectly, Contractor's failure to comply with any of the requirements of this Paragraph 10.5.1. As used in Paragraph 10.3, the term "Hazardous Materials" means any hazardous or toxic substances, materials, and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or listed by the Environmental Protection Agency as hazardous substances (40 CFR Part 302) and any amendments thereto, and any substances, materials, or wastes that are or become regulated under federal, state, or local law. Hazardous Materials (or substances) shall also include, but not be limited to: regulated substances, petroleum products, pollutants, mold and fungi, and any and all other environmental contamination as defined by and in any and all federal, state, and local laws, rules, regulations, ordinances, or statutes now existing or hereinafter enacted relating to air, soil, water, environmental, or health and safety conditions.

## **§10.6 Emergencies**

**§10.6.1** In an emergency affecting safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined as provided in Paragraph 4.3 and Article 7, above.

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

## **ARTICLE 11. INSURANCE AND BONDS**

### **§11.1 Contractor's Liability Insurance**

**§11.1.1** Contractor shall, at all times provide and maintain and require all subcontractors to provide and maintain the following types of insurance written on an occurrence basis protecting the interests of Owner (or any successor in interest to Owner), and naming Owner and its commissioners, executives, managers, directors, officers, agents, attorneys, employees, and designees as additional insureds, with limits and durations not less than those as set forth below; provided, however, Owner may, in its sole discretion, accept lesser insurance for subcontractors if done so in writing in advance of the Work.

- .1 Worker's Compensation Insurance to cover claims made under Worker's Compensation, disability benefit or any other employee benefit laws, including statutory limits in any state of operation with Coverage B Employers Liability coverage all at the statutory limits. In the absence of statutory limits the limits of said Employers liability coverage shall be not less than \$1,000,000 each accident, disease and each employee. This insurance must be endorsed with a waiver of subrogation endorsement, waiving the insured's right of subrogation against Owner and Architect/Engineer.

- .2 Commercial General Liability Insurance, including insurance on an “occurrence basis,” with combined bodily injury and property damage in the following amounts: \$1,000,000 each occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 general aggregate, \$2,000,000 products/completed operations aggregate, \$100,000 fire damage legal liability, \$5,000 medical expenses per person. Such insurance shall include the following coverages: (1) Premises-Operations, (2) without exclusion for subsidence, Explosion, Collapse or Underground Property Damages, (3) without exclusion for water intrusion or water damage, (4) Elevators and Escalators, (5) Independent Contractors, (6) Products and Completed operations shall be carried for the duration applicable for the statute of repose in Oregon and (7) contractual including contract obligations specified in the indemnification paragraphs of the owner-contractor agreement. If the Commercial General Liability Form is used, the General Aggregate limit shall apply to this Project only. Policy limits shall not be eroded or wasted by defense costs. There shall be no endorsement requiring specific contract language be in place with any other entity in order for the policy to be effective.
- .3 Automobile Liability Insurance covering all owned, non-owned and hired automobiles used in connection with the Work with minimum combined single limits as provided in the Agreement for Bodily Injury and Property Damage Liability Each Person/Each Occurrence of not less than \$1,000,000 each accident.
- .4 Umbrella (Excess) Liability Insurance, including coverage for both bodily injury and property damage, with a minimum limit as provided in the Agreement, covering the following:
  - a. Bodily injury, including damages for care and loss of services, because of bodily injury, including death, at any time resulting therefrom sustained by any person or persons, and including, but not limited to, damages related to and arising out of Hazardous Materials as defined in Article 10, above.
  - b. Property Damage for losses due to injury to or destruction of tangible personal or real property, including, but not limited to, the Work itself, including, but not limited to, consequential damages and loss of use resulting therefrom.
  - c. \$5,000,000 each occurrence, \$5,000,000 aggregate, coverage to be at least as broad as all liability policies described above and shall be carried for the duration of the applicable statute of repose in Oregon.
  - d. coverage hereunder shall be triggered upon exhaustion, which may include reasonable compromise for amounts less than limits, of the underlying primary and additional insurance applicable to the loss.
- .5 The insurance coverages provided for herein must be endorsed as primary and non-contributory to any insurance of Owner, its officers, employees or agents.

**§11.1.2** Certificates of insurance from Contractor and all subcontractors and all required endorsements (including, but not limited to, additional insured endorsements) acceptable to Owner evidencing compliance with this Section 11.1 shall be filed at Contractor's cost with Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to Owner. If any of the foregoing insurance coverages are required to remain in force after Final Payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final application for Payment and upon each renewal for the duration of coverage required. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by Contractor with reasonable promptness in accordance with Contractor's information and belief. All endorsements, including notice of cancellation and additional insured endorsements, shall be physically attached to the certificate of insurance.



**§11.1.3** In the event Contractor or any of its subcontractors has or obtains insurance coverage in amounts in excess of those listed above, such additional limits shall inure to the benefit of Owner.

**§11.1.4** Contractor agrees to notify Owner by certified mail thirty (30) days prior to cancellation, non-renewal, or material change in any insurance required hereunder. Any provision which provides that the insurer “will endeavor” to provide notice or that the insurer shall not be liable for failure to provide timely notice shall have “endeavor” and the limitation on liability marked out and signed by any authorized agent of the insurer.

**§11.1.5** Failure on the part of Contractor to procure and maintain the required insurance and provide proof thereof to Owner shall constitute a material breach of this Agreement, upon which Owner may immediately terminate this Agreement or, upon seven (7) days notice to Contractor, procure such insurance and deduct all costs of procurement from any sum due Contractor, or to withhold any payment due to Contractor under this Agreement until the required proof of insurance coverage is provided to Owner.

**§11.1.6** Each such policy obtained by Contractor shall provide that the insurer shall defend any suit against the named insured and the additional insureds, their officers, agents, or employees, even if such suit is frivolous or fraudulent. Such insurance shall provide Owner with the right, but not the obligation, to engage its own attorney for the purpose of defending any legal action against Owner, its officers, agents, or employees, and that Contractor shall indemnify Owner for costs and expenses, including reasonable attorneys’ fees, incurred or arising out of the defense of such action.

**§11.1.7** The issuance or maintaining of insurance of any type by Contractor will not be deemed or construed to release, limit, waive, or discharge Contractor from any and all of the obligations and risks imposed by this Agreement upon Contractor. Neither shall any forbearance or omission by Owner to require proof of insurance from Contractor before permitting Contractor to proceed or continue with the Work be deemed a waiver of Owner’s rights or Contractor’s obligations regarding the provision of insurance under this Agreement.

**§11.1.8** Any coverage for adequacy of Contractor’s performance shall be maintained after Final Completion of the Work for the full one-year correction of Work period and any longer specific periods set forth in the Contract Documents. If the insurance is cancelled before the end of any such period, and Contractor fails to immediately procure replacement insurance as specified, Owner reserves the right to procure such insurance and to either charge the cost thereof to Contractor or deduct the cost from any sum due Contractor.

**§11.1.9** Nothing contained in these insurance requirements shall be construed as limiting the extent of Contractor’s responsibility for payment or damages resulting from the operations under this Agreement, including Contractor’s obligation to pay both liquidated damages and actual delay damages.

**§11.1.10** In no instance will Owner’s exercise of its option to occupy and use completed portions of the Work relieve Contractor of its obligation to maintain insurance required herein until the date of Final Completion.

**§11.1.11** All insurance to be carried by Contractor shall state, by endorsement, that Contractor’s insurance is primary and that any liability insurance maintained by Owner or any other additional insured is excess and noncontributory. Contractor shall not commence Work under this Agreement until proof of all required insurance has been submitted to and approved by Owner. Contractor shall not allow any subcontractor to commence Work until such subcontractor has obtained and submitted proof of insurance as required pursuant to the Contract Documents, including endorsements for notice of cancellation and additional insured provisions.

**§11.1.12** The commercial general liability policies maintained by Contractor and subcontractors pursuant to the Contract Documents shall name, by endorsement, Owner and its commissioners, executives, managers, directors, officers, agents, attorneys, employees, and designees as additional named insureds for both ongoing and completed operations. The additional insurance protection shall extend equal protection to Owner as to Contractor or subcontractors and shall not be limited to vicarious liability only or any similar limitation. To the extent any aspect of this Paragraph shall be deemed unenforceable, then the additional insurance protection to Owner shall be narrowed to the maximum amount of protection allowed by law. Additional insured provisions shall include provision for completed operations and shall be primary and noncontributory in the event of a loss.

**§ 11.1.13** Upon Owner's request, Contractor will immediately provide an actual copy of its insurance policies and those of its subcontractors and suppliers. The insurance shall be provided by an insurance company or companies acceptable to Owner.

**§ 11.1.14** All subcontractors' and suppliers' insurance shall meet all insurance requirements provided in this section 11.1, including but not limited to the types of insurance (except Excess/Umbrella Liability coverage is not required), the extent and duration of coverages, and notice requirements, except that the limits of insurance for subcontractors shall be no less than the following: Workers Comp and Employers Liability, same, Commercial General Liability (occurrence form), combined bodily injury and property damage, \$1,000,000 each occurrence, \$1,000,000 personal and advertising injury, \$1,000,000 general aggregate, \$1,000,000 products and completed operations, \$50,000 fire damage, \$5,000 medical expenses per person. With the exception of worker's compensation, all liability insurance policies shall contain a waiver of subrogation against Owner.

## **§11.2 Owner's Liability Insurance**

**§11.2.1** Owner shall be responsible for purchasing and maintaining Owner's usual liability insurance and may self-insure.

## **§11.3 Project Management Protective Liability Insurance**

**§11.3.1** Optionally, Owner may require Contractor to purchase and maintain Project Management Protective Liability insurance from Contractor's usual sources as primary coverage for Owner's, Contractor's, and Architect/Engineer's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, Owner shall reimburse Contractor by increasing the Contract Sum to pay the cost of purchasing and maintaining such optional insurance coverage, and Contractor shall not be responsible for purchasing any other liability insurance on behalf of Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Paragraphs 11.1.1.2 through 11.1.1.5.

**§11.3.2** To the extent damages are covered by Project management Protective liability insurance, Owner, Contractor, and Architect/Engineer waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

## **§11.4 Property Insurance**

**§11.4.1** Unless otherwise provided, Owner, at Owner's option, may 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 with deductibles satisfactory to Owner, for which Contractor will be held responsible. Such property insurance shall be maintained, if acquired by Owner, until Final Payment has been made as provided in Section 9.10 or until no person or entity other than Owner has an insurable interest in the property to be covered, whichever is later.

**§11.4.1.1** Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage, including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings, and debris removal, including demolition occasioned by enforcement of any applicable legal requirements.

**§11.4.1.2** This property insurance shall cover portions of the Work stored off the site and also portions of the Work in transit.

**§11.4.1.3** Partial occupancy or use of the premises/building will occur during construction. Owner and Contractor shall take reasonable steps to obtain consent of the insurance company or companies, if any, and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance.

**§11.4.2 Boiler and Machinery Insurance.** Owner shall, at its option, purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until Final Acceptance by Owner.

**§11.4.3 Loss of use Insurance.** Owner, at Owner’s option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner’s property due to fire or other hazards, however caused.

**§11.4.4** If 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, Owner may, if possible, at its option, include such insurance, and the cost thereof shall be charged to Contractor by appropriate Change Order.

**§11.4.5** Upon Contractor’s written request, Owner shall provide Contractor a copy of each policy that includes insurance coverages described by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least thirty (30) days’ prior written notice has been given to Contractor.

## **§11.5 Performance Bond Payment Bond, and BOLI Bond**

**§11.5.1** Contractor shall obtain a Performance Bond and Payment Bond each in the amount of One Hundred Percent (100%) of the applicable Contract Sum. Contractor shall deliver its required bonds not later than the date of execution of the Agreement and deliver the required subcontractor bonds to Owner not later than the date of execution of the subcontract with any such subcontractor, or if the Work is commenced prior thereto in response to a Notice to Proceed, Contractor shall, prior to commencement of the Work, submit evidence satisfactory to Owner that such bonds will be issued. The bonds shall be in form approved by Owner.

**§11.5.2** Contractor and subcontractors performing work that exceeds \$100,000 in contract price shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000 and must be in compliance with all requirements of ORS 279C.836, “Public works bonds; rules.” The purpose of this bond is to ensure payment of claims ordered by the Bureau of Labor and Industries. Exemptions to this bonding requirement are contained in ORS 279C.836.

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

**§11.5.4** The bonds shall in all respects conform to the requirements of the laws of Oregon in the county in which the Project is located and shall (1) name Owner as obligee, (2) be in a form and be issued by a licensed surety satisfactory to Owner, and (3) be automatically increased in the amount of any additive Change Orders and Construction Change Directives signed by Owner.

**§11.5.5** Owner may, in Owner's sole discretion, inform the surety of the progress of the Work and obtain consents as necessary to protect Owner's rights, interests, privileges and benefits under and pursuant to any bond issued in connection with the Work. Owner does not, however, owe any duty to surety, and Owner hereby expressly disclaims any duty or obligation to advise, notify or consult with surety on any matters relating to Contractor or the Project, including, but not limited to, Contractor's payments to subcontractors or Contractor's use of Project funds.

## **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 Owner's or Architect/Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by Owner or Architect/Engineer, be uncovered by Owner's or Architect/Engineer's examination and be replaced at Contractor's expense without change in the Contract Time or Contract Sum.

**§12.1.2** If a portion of the Work has been covered which Owner or Architect/Engineer has not specifically requested to examine, and the work is typically not Work to be examined, prior to its being covered, Owner or Architect/Engineer may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at Owner's or Architect/Engineer's expense. If such Work is not in accordance with the Contract Documents, correction shall be at Contractor's expense unless the condition was caused by Owner or a separate contractor, in which event Owner or separate contractor shall be responsible for payment of such costs.

### **§12.2 Correction of Work**

#### **§12.2.1 Before or After Substantial Completion**

**§12.2.1.1** Contractor shall promptly correct Work rejected by Owner or Architect/Engineer 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 and compensation for Architect/Engineer's services and expenses made necessary thereby, shall be at Contractor's expense.

#### **§12.2.2 After Final Completion**

**§12.2.2.1** In addition to Contractor's obligations under Section 3.5, if, within one year after the date of Final Completion of the Work or designated portion thereof, or after the date for commencement of warranties established herein, or by terms of an applicable special warranty required by the Contract Documents, or within such longer period of time as may be prescribed by law or in equity, any of the Work is found to be defective or otherwise not in accordance with the requirements of the Contract Documents, either Owner may correct the Work and charge the costs back to Contractor, or Contractor shall correct it promptly at Contractor's expense after receipt of written notice from Owner to do so unless Owner, with knowledge of the defective or non-conforming condition, has previously given

Contractor a written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition.

**§12.2.2.2** Corrective work shall be warranted to be free from defects for the longer of (1) a period of twelve (12) months after the completion of the corrective work, (2) any period specified in the original warranty on such work, (3) any period specified by manufacturer's warranty, or (4) any period that may be prescribed by law or equity. Any defect in such corrective work shall be corrected again by Contractor promptly upon notice of the defect from Owner. The obligation under this Paragraph 12.2.2.3 shall survive acceptance of the Work and termination of the Contract.

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

**§12.2.4** Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of Owner or separate contractors caused by Contractor's correction or removal of Work which 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 which Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of Contractor to correct the Work, and has no relationship to the time limit (if any such limit exists) 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 Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

### **§12.3 Acceptance of Nonconforming Work**

**§12.3.1** If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so in writing instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be affected whether or not Final Payment has been made. Contractor may not rely on any non-written statements that purport to accept nonconforming Work.

## **ARTICLE 13. MISCELLANEOUS PROVISIONS**

### **§13.1 Governing Law**

**§13.1.1** The Contract shall be governed by the laws of Oregon, with venue in the Circuit Court for Deschutes County, and/or the Federal District Court for Oregon.

### **§13.2 Successors and Assigns**

**§13.2.1** Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns, and legal representatives of such other party with respect to all covenants of this Agreement. Contractor shall not assign any portion of the Contract Documents or any monies due or to become due to it without the advance written consent of Owner.

### **§13.4 Rights and Remedies**

**§13.4.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies

otherwise imposed or available by law or in equity or by any other agreement, and any such rights or remedies shall survive the acceptance of the Work and termination of the Contract.

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

**§13.4.3** Notwithstanding any other provisions to the contrary contained in the Contract Documents, provided that Owner continues to make payments of approved amounts not in dispute in accordance with the provisions of the Contract Documents during all disputes, actions, claims and other matters in question arising out of or relating to the Contract Documents or the breach thereof, Contractor will continue the Work and maintain the schedule, unless otherwise agreed between Contractor and Owner 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. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Architect/Engineer timely notice of when and where tests and inspections are to be made so that Architect/Engineer may be present for such procedures.

**§13.5.1.1** Representatives of the testing agency shall have access to the Work at all times. Contractor shall provide facilities for such access in order that the agency may properly perform its functions.

**§13.5.1.2** Inspection or testing performed exclusively for Contractor's convenience shall be the sole responsibility the Contractor.

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

**§13.5.3** If such procedures for testing, inspection, or approval under Paragraphs 13.5.1 and 13.5.2 reveal faulty or otherwise defective Work or the failure of the portions of the Work to comply with requirements established by the Contract Documents, or if the necessity of any such testing, inspections, and approval procedures arises out of the fault, neglect, or omission of Contractor, all costs made necessary by such failures including, but not limited to, those of repeated procedures and compensation for Architect/Engineer's services and expenses, shall be at Contractor's expense.

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

**§13.5.5** If Architect/Engineer or Owner is to observe tests, inspections, or approvals required by the Contract Documents, Architect/Engineer and Owner 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 delay in the Work.

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

### **§13.6 Interest**

**§13.6.1** Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate provided by law.

### **§13.7 Forum**

**§13.7.1** Any mediation, arbitration proceeding, or court suit or action arising out of or related to the Contract or the Work shall be conducted in Bend, Oregon.

### **§13.8 Severability**

**§13.8.1** Should any provision of the Contract, at any time, be in conflict with any law, rule, regulation or order, or be unenforceable or inoperative for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event any provision of the Contract becomes less than fully enforceable and operative, the remaining provisions of the Contract nevertheless shall remain in full force and effect and the arbitrator(s) or court shall give the offending provision the fullest meaning and effect permitted by law.

### **§13.9 Additional Provisions**

**§13.9.1** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neutral gender, shall include all other genders, and the singular shall include the plural, and vice versa. Titles of Articles and sections are for convenience only, and neither limit nor amplify the provisions of this Agreement in itself. The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

**§13.9.2** Any specific requirement in this Agreement that the responsibilities or obligations of Contractor also apply to a subcontractor is added for emphasis and is also hereby deemed to include a subcontractor. The omission of a reference to a subcontractor in connection with any of Contractor's responsibilities or obligations shall not be construed to diminish, abrogate, or limit any responsibilities or obligations of a subcontractor under the Contract Documents.

**§13.9.3** This Agreement shall not be interpreted as creating any third party or class of persons not parties hereto or expressly designated herein, any right or benefits of any kind or nature whatsoever.

**§13.9.4** The Agreement and Contract Documents, to the extent they were prepared by counsel for the parties hereto, shall not be construed against any party as a consequence of its role, or the role of its

counsel, in the preparation of the Agreement, the General Conditions, or any of the other Contract Documents.

#### **§13.10 Other Provisions**

**§13.10.1** ORS Chapter 279, more specifically 279a, 279b and 279c, and the most current version of the Attorney General's Model Rules for Public Contracting ("Model Rules") at OAR 137-046, 137-047, 137-048, 187-049 and the provisions of the Deschutes County Contracting Code (DCC 2.37) contain provisions more specifically, ORS 279C.505, 279C.515, 279C.520, 279C.525, 279C.530 and 279C.540. The required contract provisions are incorporated herein by this reference. Furthermore, Contractor and Owner agree to comply with all requirements of ORS Chapter 279, the model Rules and other Oregon laws whether or not any such provisions are excised.

**§13.10.2** All notices given under the Contract Documents shall be in writing and shall be deemed properly given when delivered in person or by facsimile transmission to the individual to whom it is addressed or four (4) days after it is sent postage prepaid by certified mail return receipt requested to the addresses set forth above.

**§13.10.3** Contractor shall comply fully with the provisions of ORS 279C.800 through 279C.870. Workers shall be paid not less than the specified minimum hourly rate of wage as provided in the Oregon Bureau of Labor and Industries (BOLI) publication (which publication is available at web address [http://www.boli.state.or.us/BOLI/WHDPWR/pwr\\_book.shtml](http://www.boli.state.or.us/BOLI/WHDPWR/pwr_book.shtml)) titled "Prevailing Wage Rates for Public Works Contracts in Oregon" (subject only to state law) in effect on the date bids are opened.

### **ARTICLE 14. TERMINATION OR SUSPENSION OF THE CONTRACT**

#### **§14.1 Termination by Contractor**

**§14.1.1** Contractor may terminate the Contract if, after written notice by Contractor and fourteen (14) days' opportunity to cure, Owner fails to make payments to Contractor as set forth in the Contract Documents, subject to all rights and remedies of Owner.

**§14.1.2** If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of Contractor or a subcontractor or their agents or employees or any other persons performing portions of the Work under the contract with Contractor because Owner has persistently failed to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, Contractor may, upon fourteen (14) days' written notice and opportunity to cure, terminate the Contract and recover from Owner for all Work performed up to the date of termination, plus all reasonable and unavoidable expenses directly attributable to termination for which Contractor is not otherwise compensated. Contractor shall in no case be entitled to compensation of any kind, including, but not limited to, profit and overhead, on any unperformed Work.

#### **§14.2 Termination by Owner for Cause**

**§14.2.1** Owner may terminate the Contract if Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials or equipment;
- .2 fails to make payment to subcontractors for materials or equipment or labor in accordance with the respective agreements between Contractor and the subcontractors;
- .3 disregards laws, ordinances, or rules, regulations, or orders of a public authority having jurisdiction;



- .4 disregards the instructions of Architect/Engineer or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 breaches any warranty made by Contractor under or pursuant to the Contract Documents;
- .6 fails to furnish Owner with assurances satisfactory to Owner evidencing Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .7 fails to proceed diligently and continuously with the construction and completion of the Work in accordance with the Contract Time or the approved schedule;
- .8 is adjudged bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors, or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws, or fails or is unable to provide Owner timely and adequate assurance of future performance of the Work in accordance with the terms and conditions of the Contract Documents; or
- .9 otherwise does not fully comply with the Contract Documents.

**§14.2.2** When any of the above reasons exist, Owner may, without prejudice to any other rights or remedies of Owner and after giving Contractor and Contractor's surety, if any, fourteen (14) day's written notice, terminate employment of Contractor, and may:

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor;
- .2 accept assignment of subcontracts pursuant to Section 5.4; and
- .3 finish the Work by whatever reasonable method Owner may deem expedient. Upon request of Contractor, Owner shall furnish to Contractor a detailed accounting of the costs incurred by Owner in finishing the Work.

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

**§14.2.4** In the event of termination of the Contract for cause under Paragraph 14.2.1, the compensation of the parties shall be determined as follows:

- .1 For lump sum projects using the A101 Agreement, determine the value of the work performed as of the time of termination by reviewing the percentage of completion for each item and the approved schedule of values, provided that this amount shall not exceed the Contract Sum, and add in Contractor's percentage markup on that value for overhead and profit as used by Contractor in preparing its bid. For purposes of this Section 14.2.4, the term "earned Contract Sum" shall mean the sum determined under this Item .1, or .2, below.
- .2 For cost-plus projects using the A111 Agreement, add the amount of the Cost of the Work for the Work performed as of the time of the termination to the amount of Contractor's Fee computed upon that Cost of the Work, provided that this sum shall not exceed the Guaranteed Maximum Price as of the time of the termination. For purposes of this Section 14.2.4, the term "Earned Contract Sum" shall mean the sum determined under this Item .2, or .1, above.

- .3 Determine the amount of all costs incurred by Owner in completion of the Work. For purposes of this Section 14.2.4, the term "Owner's Costs" shall mean the sum determined under this Item .3. Owner's Costs shall include, but not be limited to, the cost of any additional design, construction management, and Project administrative costs required to facilitate completion with another contractor, any costs incurred in retaining another contractor or other subcontractors, any additional interest or other fees paid by Owner, any attorneys' fees and other legal expenses related to the termination of Contractor and transactions to arrange for the completion of the Project with another contractor, and any and all other costs, expenses, and damages incurred by Owner by reason of the termination of Contractor, the completion of the Work and of the Project, and delay in the completion of the Project.
- .4 For cost-plus projects using the A111 Agreement, determine the amount of Owner's share of the savings that Owner would have received under Paragraph 5.2.2.1 of the Agreement, but for the Contractor's failure to perform or the other occurrence(s) that resulted in the termination under Section 14.2.1. For the purposes of this Section 14.2.4, the term "Owner's Lost Savings" shall mean the sum determined under this Item .4.
- .5 Subtract the Earned Contract Sum from the Guaranteed Maximum Price (when using A111) or Contract Sum (when using A101). This item shall be called "Unearned Contract Sum."
- .6 If Owner's Costs exceed the Unearned Contract Sum, then Contractor shall pay Owner the amount of the excess, plus Owner's Lost Savings (when using A111 only), less the amount of the Earned Contract Sum not yet paid, if any. If this sum is a negative number, then Owner shall pay Contractor any unpaid portion of the Earned Contract Sum up to the amount of the negative number arrived at in this Item. In no event will Contractor be entitled to compensation of any kind, including, but not limited to, profit or overhead, on any unperformed Work.
- .7 If the Unearned Contract Sum exceeds Owner's Costs, then Owner shall pay Contractor the amount of difference minus Owner's Lost Savings, if any; provided, however, that if this sum is a negative number, the Contractor shall pay Owner that sum.

#### **§14.2.5 Conversion of Owner's Termination for Cause**

**§14.2.5.1** In the event Owner terminates the Contract for cause under Section 14.2 and such termination subsequently is determined in a final arbitrated award or a final judgment to have been wrongful, the termination shall automatically be converted to a termination for Owner's convenience pursuant to Section 14.4, below, and damages will be limited to those described in Paragraph 14.4.3.

#### **§14.3 Suspension by Owner for Convenience**

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

**§14.3.2** The contract Sum and Contract Time shall be adjusted for increases, if any, if the cost and time caused by suspension, delay, or interruption as described in Paragraph 14.3.1, above. 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 Contractor is responsible;

- .2 that an equitable adjustment is made or denied under another provision of the Contract; or
- .3 the suspension, delay, or interruption was made necessary by Contractor or anyone for whose acts Contractor was responsible.

#### **§14.4 Termination by Owner for Convenience**

**§14.4.1** Owner may, without prior notice and at any time, terminate the Contract for Owner's convenience and without cause.

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

- .1 cease operations as directed by Owner in the notice;
- .2 take actions necessary, or that 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 or purchase orders.

**§14.4.3** In case of termination for Owner's convenience, Contractor shall be entitled to receive compensation for Work performed prior to termination, together with reasonable and unavoidable expenses directly attributable to termination for which Contractor was not otherwise compensated. In no event shall Contractor be entitled to recover compensation, including, but not limited to, profit and overhead, on Work not performed, for alleged damage to reputation, for interference with contractual relations, or for consequential damages or losses on other projects.

#### **§14.5 Actions Upon Termination**

**§14.5.1** Upon termination of the Contract for either cause or convenience, Contractor shall:

- .1 forthwith withdraw its employees, workmen, machinery, and equipment from the Project in an orderly manner, as directed by Owner;
- .2 within thirty (30) days after such termination, furnish Owner with a complete accounting of the costs incurred to the date of termination, together with a final status report updating the progress of the Work up to the date of termination;
- .3 within thirty (30) days after said termination, deliver to Owner all those items enumerated in Paragraph 9.10.2, above, to the extent that said items are available, and all Shop Drawings, Project Data and Samples available, and all other of Contractor's engineering, procurement, accounting and construction documents and record relating to the work performed under the Contract; and
- .4 within fourteen (14) days after said termination, assign to Owner all Contractor's interest in any subcontracts and purchase orders that Owner so designates in writing.

Application No: \_\_\_\_\_

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

## **SUBCONTRACTOR PROGRESS PAYMENT WAIVER AND RELEASE OF LIENS AND CLAIMS**

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

Subcontractor: \_\_\_\_\_

Project Location: \_\_\_\_\_

Payment Amount: \_\_\_\_\_

Owner: \_\_\_\_\_

Payment Period: \_\_\_\_\_

Contractor: \_\_\_\_\_

Prior Application No.: \_\_\_\_\_

For the purpose of inducing payment by the Contractor identified above ("Contractor") to Subcontractor, and in consideration thereof, and with the recognition that this instrument (this "Waiver") is to be delivered to and will be relied upon by Contractor and Owner, together with their respective directors, officers, managers, members, employees, subcontractors, vendors, attorneys, sureties, lenders, title companies, representatives, successors and assigns, subsidiaries, parents, and affiliates, (the "Released Parties"), Subcontractor hereby agrees and acknowledges as follows:

1. Subcontractor hereby represents and warrants to and for the benefit of the Released Parties that: (a) the work, or labor or services performed or material or equipment (including rented materials and equipment) furnished by Subcontractor ("Work") for which payment is being requested is Work actually supplied to, performed on, or used in connection with the Project; (b) all federal, state and local taxes and contributions required to be withheld from employees of Subcontractor in connection with the Work have been withheld in the manner provided by law; (c) Subcontractor has been paid in full for all Work previously furnished for the Project or for the benefit of Contractor or Owner through the last date of the Payment Period identified above except for the Payment Amount and any retainage allowed under the Contract; (d) all Work covered by the Application has been incorporated into the Project and title thereto has been passed to the Owner, or, in the case of materials or equipment stored at the site or some other location previously agreed to by Contractor, title will pass to the Owner upon receipt of the Payment Amount, in each case free and clear of any lien, claim, security interest or other encumbrance; and (e) all Work furnished on behalf of Subcontractor to the Project for which Subcontractor has previously received payment has been fully paid for by Subcontractor and there are no amounts unpaid in favor of any employee, subcontractor, materialman, supplier, vendor or any other person or entity furnishing or supplying such Work to said Project or to Subcontractor for utilization in the Project or in the performance of the obligations of Subcontractor with respect to the Project.

2. Subcontractor hereby represents and agrees that the entire amount owed to it as consideration for entering into this Waiver is the Payment Amount identified above. Upon receipt by Subcontractor of (i) one or more checks payable to Subcontractor in the aggregate amount of the Payment Amount, when the check(s) has been paid by the bank upon which it is drawn, or (ii) a wire transfer for said Payment Amount, and in consideration therefor, this instrument shall become effective to unconditionally release and waive all liens, claims, or causes of action against the Released Parties, or against bonds or related to the failure to require bonds, now existing or that may hereafter arise, related in any way to the Project, or Work furnished, supplied or performed by Subcontractor in connection with the Project through the last date of the Payment Period identified above.

3. This Waiver shall not operate as an acceptance by any of the Released Parties of any incomplete Work or Work not in conformance with the contract documents, nor shall it relieve Subcontractor of its continuing obligations under such contract documents, including, but not limited to any guarantees, warranties, achievement of final completion of the Work pursuant to such contract documents, all of which are hereby agreed to be for the benefit of and enforceable by any of the Released Parties. It is specifically

understood that this instrument shall not operate to waive, discharge, alter or affect in any way any obligation pursuant to any payment or performance bonds provided for the Project or any guaranty in favor of a Released Party.

4. At the request of Contractor, Subcontractor further agrees to promptly furnish a good and sufficient waiver of liens and claims in the form hereof from every person or entity furnishing or performing any portion of the Work by, through or under Subcontractor.

5. Subcontractor shall indemnify, defend and hold harmless the Released Parties from and against any and all claims, demands, costs and expenses (including attorneys' fees) against any of the Released Parties or their property, arising out of or related in any way to the breach of any representation, warranty or covenant set forth herein or the failure of the Subcontractor to pay any sums owed for Work furnished or performed by, through or under Subcontractor through the date hereof.

Subcontractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Name (printed): \_\_\_\_\_

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

Application No: \_\_\_\_\_

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

## **SUBCONTRACTOR FINAL PAYMENT WAIVER AND RELEASE OF LIENS AND CLAIMS**

Project Name: \_\_\_\_\_ Contractor: \_\_\_\_\_

Project Location: \_\_\_\_\_ Subcontractor: \_\_\_\_\_

Owner: \_\_\_\_\_ Final Payment Amount: \_\_\_\_\_

For the purpose of inducing payment by the Contractor identified above ("Contractor") to Subcontractor, and in consideration thereof, and with the recognition that this instrument (this "Waiver") is to be delivered to and will be relied upon by Contractor and Owner, together with their respective directors, officers, managers, members, employees, subcontractors, vendors, attorneys, sureties, lenders, title companies, representatives, successors and assigns, subsidiaries, parents, and affiliates, (the "Released Parties"), Subcontractor hereby agrees and acknowledges as follows:

1. Subcontractor hereby represents and warrants to and for the benefit of the Released Parties that: (a) the work, or labor or services performed or material or equipment (including rented materials and equipment) furnished by Subcontractor ("Work") for which payment is being requested is Work actually supplied to, performed on, or used in connection with the Project; (b) all federal, state and local taxes and contributions required to be withheld from employees of Subcontractor in connection with the Work have been withheld in the manner provided by law; (c) Subcontractor has been paid in full for all Work for the Project or for the benefit of Contractor or Owner except for the Final Payment Amount identified above; (d) all Work covered by the Application has been incorporated into the Project and title thereto has been passed to the Owner, or, in the case of materials or equipment stored at the site or some other location previously agreed to by Contractor, title will pass to the Owner upon receipt of the Final Payment Amount, in each case free and clear of any lien, claim, security interest or other encumbrance; and (e) all Work furnished on behalf of Subcontractor to the Project for which Subcontractor has previously received payment has been fully paid for by Subcontractor and there are no amounts unpaid in favor of any employee, subcontractor, materialman, supplier, vendor or any other person or entity furnishing or supplying such Work to said Project or to Subcontractor for utilization in the Project or in the performance of the obligations of Subcontractor with respect to the Project.

2. Subcontractor hereby represents and agrees that the entire amount owed to it as consideration for entering into this Waiver is the Final Payment Amount identified above. Upon receipt by Subcontractor of (i) one or more checks payable to Subcontractor in the aggregate amount of the Final Payment Amount, when the check(s) has been paid by the bank upon which it is drawn, or (ii) a wire transfer for said Final Payment Amount, and in consideration therefor, this instrument shall become effective to unconditionally release and waive all liens, claims, or causes of action against the Released Parties, or against bonds or related to the failure to require bonds, now existing or that may hereafter arise, related in any way to the Project, or Work furnished, supplied or performed by Subcontractor in connection with the Project.

3. This Waiver shall not operate as an acceptance by any of the Released Parties of any incomplete Work or Work not in conformance with the contract documents, nor shall it relieve Subcontractor of its continuing obligations under such contract documents, including, but not limited to any guarantees, warranties, achievement of final completion of the Work pursuant to such contract documents, all of which are hereby agreed to be for the benefit of and enforceable by any of the Released Parties. The Subcontractor further agrees that if it hereafter performs any labor or furnishes any materials, tools, equipment, supplies or services pursuant to such guaranty or warranty, it will fully pay for the same, will pay any and all taxes and charges in connection therewith and will release, discharge, defend and hold

harmless the Released Parties and their real and personal property, from any and all claims, demands and liens arising in connection therewith, all in a like manner and to the same extent as is herein provided with respect to the Work. It is specifically understood that this instrument shall not operate to waive, discharge, alter or affect in any way any obligation pursuant to any payment or performance bonds provided for the Project or any guaranty in favor of a Released Party.

4. At the request of Contractor, Subcontractor further agrees to promptly furnish a good and sufficient waiver of liens and claims in the form hereof from every person or entity furnishing or performing any portion of the Work by, through or under Subcontractor.

5. Subcontractor shall indemnify, defend and hold harmless the Released Parties from and against any and all claims, demands, costs and expenses (including attorneys' fees) against any of the Released Parties or their property, arising out of or related in any way to the breach of any representation, warranty or covenant set forth herein or the failure of the Subcontractor to pay any sums owed for Work furnished or performed by, through or under Subcontractor.

Subcontractor: \_\_\_\_\_

Signed: \_\_\_\_\_

Name (printed): \_\_\_\_\_

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