



# AIA® Document A102™ – 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Twenty  
*(In words, indicate day, month and year.)*

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

City of Tualatin  
Delivery: 18880 SW Martinazzi Avenue  
Tualatin, OR 97062

and the Contractor:  
*(Name, legal status, address and other information)*

Bremik Construction  
1026 SE Stark Street  
Portland, OR 97214

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

City of Tualatin Service Center  
10699 SW Herman Road  
Tualatin, OR 97062

The Architect:  
*(Name, legal status, address and other information)*

Scott Edwards Architecture LLP  
2525 E. Burnside Street  
Portland, OR 97214

The Owner and Contractor agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The parties should complete A102™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

### ARTICLE 2 THE WORK OF THIS CONTRACT

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

### ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's

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interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

#### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Work shall be:

*(Check one of the following boxes.)*

- The date of this Agreement.
- A date set forth in a notice to proceed issued by the Owner.
- Established as follows:  
*(Insert a date or a means to determine the date of commencement of the Work.)*  
Upon receipt of written Notice to Proceed, Executed Contract and new construction Building Permit

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

#### § 4.3 Substantial Completion

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

*(Check one of the following boxes and complete the necessary information.)*

- Not later than Three hundred six \_\_\_ (306 \_\_\_) calendar days from the date of commencement of the Work.
- By the following date:

§ 4.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

**Portion of Work**

**Substantial Completion Date**

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

#### ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)*

§ 5.1.1.1 Base Fee: Four point Four Five percent (4.45%) of the Cost of the Work

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

§ 5.1.2.1 Change Order Fee: Increase of Four point Four Five percent (4.45%) of the Cost of the Work for Change Orders issued subsequent to the Guaranteed Maximum Price. In the computation of Savings Participation, fee adjustment shall be provided as stipulated in Subparagraph 5.2.1.1 of this Agreement.

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

§ 5.1.3.1 Subcontractor Change Order Fee: Increase of Fifteen percent (15.00%) of the Cost of the Work for Change Orders issued subsequent to the Guaranteed Maximum Price.

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§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed Seventy-five percent ( 75.00 %) of the standard rental rate paid at the place of the Project per Exhibit D.

§ 5.1.5 Unit prices, if any:

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

| Item | Units and Limitations | Price Per Unit (\$0.00) |
|------|-----------------------|-------------------------|
|------|-----------------------|-------------------------|

§ 5.1.6 Liquidated damages, if any:

Contractor acknowledges and agrees that completion of the Work in accordance with the Contract Time is critical to the Owner's desire and requirement to complete the Project. The inability of the Owner to realize completion in accordance with the Contract Time will result in significant additional costs. Subject to any adjustment in Contract Time approved pursuant to Article 8 of the General Conditions, Contractor shall be subject to payment of liquidated damages as provided in Subparagraph 5.1.6.1.

*(Paragraphs deleted)*

§ 5.1.6.1 Time is of the essence of this Contract. The parties agree that if the Work constructed under the terms of this Agreement as required by the Contract Documents is not completed within the applicable Contract Time, damage will be sustained by the Owner. These damages would include, but not be limited to, lost service to the public, project management, and other operational costs. The parties agree that proving such damages would be difficult because the various financial impacts on and economic losses to the Owner represent a combination of actual costs, costs difficult to determine in advance at the time the Owner-Contractor Agreement was formulated, and other factors that cannot be readily or finally ascertained. The parties also agree that fixing a reasonable amount as liquidated damages is a convenient way for the parties to settle any dispute concerning Owner's damages resulting from Contractor's failure to complete the work on time, that it is a convenient way for the Owner to obtain an adequate remedy and, that it enables both parties to avoid the expenses and delays involved in litigating the matter and proving the actual damage suffered by the Owner. It is therefore agreed that Contractor shall pay the Owner, not as a penalty, but as liquidated damages, the per-diem amount set forth below in Subparagraph 5.1.6.2 for each calendar day elapsed beyond the specified date for Substantial Completion. The parties agree that the per-diem amount is reasonable in light of the anticipated harm that would be caused by the Contractor's failure to complete the Work within the applicable Contract Time, the difficulty of proving the Owner's loss and the inconvenience of otherwise obtaining an adequate remedy. Permitting the Contractor to continue and finish the Work, or any part thereof, alter a specified date of Substantial Completion shall in no way operate as a waiver on the part of the Owner of any of the Owner's rights under the Contract. Payment of liquidated damages shall not release the Contractor from obligation in respect to the fulfillment of the entire Contract. It is the intent of the parties that the liquidated damages specified herein be full and complete payment only for failure of the Contractor to complete the Work on time as required by Contract Documents. Liquidated damages amounts may be withheld by the Owner from any partial or final payment due the Contractor.

The per diem amount of liquidated damages shall be as follows:

§ 5.1.6.2 For failure to achieve Substantial Completion and obtain a temporary or permanent Certificate of Occupancy for the entire Work constructed under the terms of this Agreement on or prior to the date established: Five Hundred Dollars (\$500) per calendar day for days 1 – 21, and One Thousand Dollars (\$1,000) per calendar day from day 22 and thereafter for which Substantial Completion has not been met.

## §, 5.2 Guaranteed Maximum Price

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed five million, eight hundred and seventy six thousand, one hundred and twenty dollars. (\$ 5,876,120.00 ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.1.1 Savings Participation: If the sum of Cost of the Work plus the Contractor's Fee at Four point Four Five percent (4.45%) is less than the individual Guaranteed Maximum Price, as adjusted by subsequent Change Orders, Zero percent

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(0.00%) of any savings shall be due to the Contractor and One Hundred percent (100.00%) shall be returned to the Owner. However, under no circumstances shall the Contractor's share of savings exceed fifty thousand dollars (\$50,000.00). Any savings will be determined on the final Cost of the Work and related Contractor's Fee for the entire individual Work, as determined pursuant to Paragraph 12.2 of the Agreement. A Guaranteed Maximum Price may include certain allowance items outlined in Subparagraph 5.2.3 of this Agreement. If an allowance item has a final cost less than the stated allowance for such item, then Contractor shall be not entitled to any of the savings related to that allowance as provided in this Subparagraph 5.2.1.1 but, rather, the Guaranteed Maximum Price shall be adjusted such that 100 percent of the savings (the unused portion of the allowance plus costs outlined in General Conditions Subparagraph 3.8.2.2 and the corresponding Contractor's fee) related to the allowance will be returned to the Owner. Savings shall be reconciled and credited at the time of final payment.

### **§ 5.2.2 Alternates**

**§ 5.2.2.1** Alternates, if any, included in the Guaranteed Maximum Price, are described in the Contract Documents under the terms of this Agreement.

*(Row deleted)*

Refer to Exhibit A - Alternates

*(Table deleted)*

*(Paragraphs deleted)*

**§ 5.2.3** Allowances, if any, included in the Guaranteed Maximum Price:

*(Identify each allowance.)*

*(Row deleted)*

Refer to Exhibit B - Allowances

**§ 5.2.3.1** Allowances shall be administered according to the provisions of Paragraph 3.8 of the General Conditions, this Subparagraph 5.2.3.1 and Subparagraph 5.2.1.1 of this Agreement.

**§ 5.2.3.1.1** Changes in the Work may be made by allocations of the "Change Allowance" that is set forth in the Guaranteed Maximum Price. Such changes shall be limited to those involving an increase or decrease in the Cost of the Work, the sum total of which shall not exceed the amount set forth in Subparagraph 5.2.3 of this Agreement. No changes involving an extension in the Contract Time shall be made by allocations of the Change Allowance.

**§ 5.2.3.1.2** Changes in the Work made by allocations of the Change Allowance shall be either (i) as agreed upon by the Owner and Contractor in advance of said change at a Construction Team Meeting and memorialized in the minutes of such meeting prepared by the Owner's Project Manager or (ii) as otherwise agreed upon by the Owner and Contractor in writing in advance of said change. The Owner's Project Manager shall keep a written record of such changes made by allocations of the Change Allowance, including but not limited to the cumulative total dollar amount of all such allocations. No change by allocation of the Change Allowance shall be made if the cumulative dollar amount of the allocation and all prior allocations would exceed the amount of the Change Allowance.

**§ 5.2.3.1.3** Consistent with General Conditions Subparagraph 7.1.2, all changes in the Work made by allocations of the Change Allowance that involve a change in the physical characteristics of the Work shall be accompanied by a Modification of the Construction Documents prepared and signed by the Architect and issued by the Owner's Project Manager. However, as applied to changes made by allocations of the Change Allowance, the phrase "Modification of the Construction Documents prepared and signed by the Architect" shall mean a change in the Construction Documents either (i) as approved by the Architect in advance of said change at a Construction Team Meeting and memorialized in the minutes of such meeting prepared by the Owner's Project Manager or (ii) as otherwise prepared or approved by the Architect in writing and issued by the Owner's Project Manager in advance of said change.

**§ 5.2.4** Assumptions, if any, upon which the Guaranteed Maximum Price is based:

*(Identify each assumption.)*

Project clarifications and assumptions are delineated in Exhibit G - The Guaranteed Maximum Price Proposal from Bremik Construction

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent only with the information provided in the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

## ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 7 COSTS TO BE REIMBURSED

### § 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7. No Cost of the Work in excess of the Guaranteed Maximum Price shall be reimbursed except as described in this section.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

### § 7.2 Labor Costs

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Wage rates computed by the combination of this Subparagraph 7.2.1 and Subparagraph 7.2.4 shall be delineated in the Guaranteed Maximum Price. In the event the Contractor employs a person for whom there is no rate delineated, Contractor shall compute the appropriate rate for the position and submit it in writing to the Owner for approval and, if agreed upon, incorporation by Change Order.

§ 7.2.2 Wages or salaries of the Contractor's Senior Project Manager, Project Manager, Project Engineer, and Project Administrator when stationed at the Contractor's principal office but only for that portion of their time required for the Work, and wages or salaries of the Contractor's supervisory (Senior Project Manager, Project Manager, Project Engineer, Project Administrator, Superintendent and Foremen) when stationed at the site. Wage rates as computed by the combination of this Subparagraph 7.2.2 and Subparagraph 7.2.4 shall be delineated in the Guaranteed Maximum Price. In the event the Contractor employs a person for whom there is no rate listed, Contractor shall compute the appropriate rate for the position and submit it in writing to the Owner for approval and, if agreed upon, incorporation by Change Order.

**§ 7.2.2.1** Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:  
*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

Refer to Exhibit C – 2020 Billable Hourly Labor Rates

**§ 7.2.3** Wages and salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Wagerates as computed by the combination of this Subparagraph 7.2.3 and Subparagraph 7.2.4 shall be delineated in the Guaranteed Maximum Price. In the event the Contractor employs a person for whom there is no rate listed, Contractor shall compute the appropriate rate for the position and submit it in writing to the Owner for approval and, if agreed upon, incorporation by Change Order.

**§ 7.2.4** Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Contractor's site office, including general office equipment and supplies, including but not limited to costs of electronic imaging of the project closeout, as-built and operation and maintenance documents.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

## § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Contractor's general liability insurance and umbrella coverage for this Project will be purchased as part of the annual policy covering Contractor's operations for the policy period and renew yearly. In that future rates cannot be forecasted, and in consideration that this Project could span more than one policy year, insurance costs directly attributed to this Contract will initially be charged to the Project at the current rate of one percent (1.00%) of the Cost of the Work. Upon the Contractor's insurance renewal date, the percentage rate of the Cost of the Work for insurance costs will be adjusted, either higher or lower, to reflect the change in Contractor's premium that is directly attributed to this Contract. Likewise, upon the Contractor's insurance renewal date, the GMP shall be increased or decreased by Change Order by an amount computed as (1) the scheduled value of the Cost of the Work multiplied by (2) the percentage of incomplete Work as determined from the Contractor's application for payment immediately preceding the Contractor's insurance renewal date, multiplied by (3) the change, positive or negative, in the percentage rate of the Cost of the Work for insurance costs.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

§ 7.6.2 Sales, use, Corporate Activity Tax (CAT), or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, provided Contractor timely informs Owner of such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.



§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

§ 7.8.2 MB Structures, LLC is a related party to the Contractor. As a Subcontractor, MB Structures LLC intends on bidding the following work scopes: demolition, building concrete, steel erection, rough carpentry, siding repair, weather resistance barrier, installation of doors, frames and hardware and installation of specialties.

## ARTICLE 8 COSTS NOT TO BE REIMBURSED

§ 8.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts

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received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

**§ 9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 10.1** Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents and shall deliver such bids to the Owner, Owner's Project Manager and Architect. The Contractor shall advertise publicly and shall endeavor to procure a minimum of (3) competitive bids for each subcontract for which the costs of the subcontracted work will exceed \$50,000. The Owner shall then determine, with the advice of the Contractor, Owner's Project Manager and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

**§ 10.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 10.2** Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

## **ARTICLE 11 ACCOUNTING RECORDS**

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## **ARTICLE 12 PAYMENTS**

### **§ 12.1 Progress Payments**

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

**§ 12.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

**§ 12.1.3** Provided that an Application for Payment is received by the Architect and Owners Project Manager not later than the twenty-eighth (28<sup>th</sup>) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the fifteen (15) days after the Application for Payment has been sent to the Architect and Owner. *(Federal, state or local laws may require payment within a certain period of time.)*

### **§ 12.1.4**

Init.

With each Application for Payment, the Contractor shall submit the most recent approved Schedule of Values and an executed Unconditional Lien Release from the Contractor for the previous deposited payments made by the Owner.

**§ 12.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee. The portion of the GMP allocated to contingency and not otherwise allocated to another line item or included in a Change Order shall not be spent without prior written authorization of the Owner or Owner's Project Manager.

**§ 12.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner, Owner's Project Manager or Architect may require. This schedule, unless objected to by the Owner, Owner's Project Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

**§ 12.1.5.2** The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 12.1.5.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Owner, Owner's Project Manager, and Architect.

**§ 12.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 12.1.7** In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 12.1.7.1** The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201 2017 as modified ;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

**§ 12.1.7.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;

- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

**§ 12.1.8 Retainage**

**§ 12.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

Five percent (5.00%)

**§ 12.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

None

**§ 12.1.8.2** Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

Early partial release of retainage at any time shall be only as agreed upon by the Owner and Contractor.

**§ 12.1.8.3** Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)*

None

**§ 12.1.9** If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

**§ 12.1.11** The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

**§ 12.1.12** In taking action on the Contractor’s Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner’s auditors acting in the sole interest of the Owner.

## § 12.2 Final Payment

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

- .1 the Contractor has fully performed the Contract including the requirements of General Conditions Subparagraph 9.10.2, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

§ 12.2.3 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

Savings pursuant to Subparagraph 5.2.1.1 shall be reconciled and credited to the Project at the time of final payment.

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

## § 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

1.00 % One percent

## ARTICLE 13 DISPUTE RESOLUTION

### § 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

Init.

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

### § 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- [ X ] Arbitration pursuant to Section 15 of AIA Document A201–2017, using the Arbitration Service of Portland, or mutually agreed upon service.
- [ ] Litigation in a court of competent jurisdiction
- [ ] Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## ARTICLE 14 TERMINATION OR SUSPENSION

### § 14.1 Termination

§ 14.1.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

### § 14.1.2 Termination by the Owner for Cause

§ 14.1.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

§ 14.1.2.2 The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

### § 14.1.3 Termination by the Owner for Convenience

Init.

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:  
*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)*

Zero (0) termination fee

#### **§ 14.2 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

### **ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1** Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 15.2** The Owner's representative:  
*(Name, address, email address and other information)*

PlanB Consultancy, Inc.  
Attn: Gerard Mulrooney, Project Manager / Owner's Representative  
696 McVey Ave, Suite 202  
Lake Oswego, OR 97034  
503-850-9876

**§ 15.3** The Contractor's representative:  
*(Name, address, email address and other information)*

Bremik Construction  
Attn: Bob Trapa, Senior Vice President  
1026 SE Stark Street  
Portland, OR, 97214  
503-688-1000

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

#### **§ 15.5 Insurance and Bonds**

**§ 15.5.1** The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 15.5.2** The Contractor shall provide bonds as set forth in AIA Document A102™–2017 Exhibit A, and elsewhere in the Contract Documents.

**§ 15.6** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

Init.

**§ 15.7 Other provisions:**

- .1 Pay the Oregon prevailing rate of wage as required by ORS 279C.830(1)(a),
- .2 Make payment promptly, as due, to all persons supplying to Contractor labor and materials for the prosecution of the services to be provided pursuant to this Agreement.
- .3 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.
- .4 Make prompt payment for all medical services for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker's wages.
- .5 Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.
- .6 Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligation.
- .7 Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 6J3.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime. Contractor shall give written notice to the workers of the number of hours per day and days per week they may be required to work.
- .8 Shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.
- .9 File a public works bond with the Construction Contractors Board before starting work on the Project unless exempt.
- .10 Include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt.

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 16.1** This Agreement is comprised of the following documents:

- .1 AIA Document A102™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™–2017, Exhibit A, Insurance and Bonds  
Refer to Exhibit H – Proof of Bond and Insurance
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

None

- .5 Drawings

**Number**

**Title**

**Date**

Refer to Exhibit E – List of Documents

- .6 Specifications

**Section**

**Title**

**Date**

**Pages**

Refer to Exhibit F – Specifications

- .7 Addenda, if any:

Init.

User Notes:

(1647396151)



| Number | Date | Pages |
|--------|------|-------|
| None   |      |       |

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

**.8** Other Exhibits:  
(Check all boxes that apply.)

AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

| Title | Date | Pages |
|-------|------|-------|
|-------|------|-------|

Supplementary and other Conditions of the Contract:

| Document | Title | Date | Pages |
|----------|-------|------|-------|
|----------|-------|------|-------|

**.9** Other documents, if any, listed below:  
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

- Exhibit A – Alternates
- Exhibit B – Allowances
- Exhibit C – 2020 Billable Hourly Labor Rates
- Exhibit D – 2020 Equipment Rental Rate Sheet
- Exhibit E – List of Documents
- Exhibit F – Specifications
- Exhibit G – Guaranteed Maximum Price, Exclusions and Clarifications
- Exhibit H – Proof of Bond and Insurance
- Exhibit I – Project Construction Schedule
- Exhibit J – City of Tualatin provided Reports and Studies

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

\_\_\_\_\_  
OWNER (Signature)

\_\_\_\_\_  
CONTRACTOR (Signature)

---

*(Printed name and title)*

---

*(Printed name and title)*



Init.

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# Additions and Deletions Report for AIA<sup>®</sup> Document A102<sup>™</sup> – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 19:17:16 ET on 03/02/2020.

## PAGE 1

**AGREEMENT** made as of the \_\_\_\_\_ day of \_\_\_\_\_ in the year Two Thousand Twenty

...

City of Tualatin  
Delivery: 18880 SW Martinazzi Avenue  
Tualatin, OR 97062

...

Bremik Construction  
1026 SE Stark Street  
Portland, OR 97214

...

City of Tualatin Service Center  
10699 SW Herman Road  
Tualatin, OR 97062

...

Scott Edwards Architecture LLP  
2525 E. Burnside Street  
Portland, OR 97214

## PAGE 3

[  ] Established as follows:

...

~~If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.~~  
Upon receipt of written Notice to Proceed, Executed Contract and new construction Building Permit

§ 4.2 The Contract Time shall be measured from the date of ~~commencement of the Work~~commencement.

...

[  ] Not later than ~~(—)~~Three hundred six ( 306 ) calendar days from the date of commencement of

the Work.

By the following date:

...

**§ 5.1.1.1 Base Fee: Four point Four Five percent (4.45%) of the Cost of the Work**

...

**§ 5.1.2.1 Change Order Fee: Increase of Four point Four Five percent (4.45%) of the Cost of the Work for Change Orders issued subsequent to the Guaranteed Maximum Price. In the computation of Savings Participation, fee adjustment shall be provided as stipulated in Subparagraph 5.2.1.1 of this Agreement.**

...

**§ 5.1.3.1 Subcontractor Change Order Fee: Increase of Fifteen percent (15.00%) of the Cost of the Work for Change Orders issued subsequent to the Guaranteed Maximum Price.**

**§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed Seventy-five percent ( 75.00 %) of the standard rental rate paid at the place of the ~~Project~~Project per Exhibit D.**

**PAGE 4**

*(Insert terms and conditions for liquidated damages, if any.)*

Contractor acknowledges and agrees that completion of the Work in accordance with the Contract Time is critical to the Owner's desire and requirement to complete the Project. The inability of the Owner to realize completion in accordance with the Contract Time will result in significant additional costs. Subject to any adjustment in Contract Time approved pursuant to Article 8 of the General Conditions, Contractor shall be subject to payment of liquidated damages as provided in Subparagraph 5.1.6.1.

**§ 5.1.7 Other:**

*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

## **§ 5.2 Guaranteed Maximum Price**

**§ 5.1.6.1** Time is of the essence of this Contract. The parties agree that if the Work constructed under the terms of this Agreement as required by the Contract Documents is not completed within the applicable Contract Time, damage will be sustained by the Owner. These damages would include, but not be limited to, lost service to the public, project management, and other operational costs. The parties agree that proving such damages would be difficult because the various financial impacts on and economic losses to the Owner represent a combination of actual costs, costs difficult to determine in advance at the time the Owner-Contractor Agreement was formulated, and other factors that cannot be readily or finally ascertained. The parties also agree that fixing a reasonable amount as liquidated damages is a convenient way for the parties to settle any dispute concerning Owner's damages resulting from Contractor's failure to complete the work on time, that it is a convenient way for the Owner to obtain an adequate remedy and, that it enables both parties to avoid the expenses and delays involved in litigating the matter and proving the actual damage suffered by the Owner. It is therefore agreed that Contractor shall pay the Owner, not as a penalty, but as liquidated damages, the per-diem amount set forth below in Subparagraph 5.1.6.2 for each calendar day elapsed beyond the specified date for Substantial Completion. The parties agree that the per-diem amount is reasonable in light of the anticipated harm that would be caused by the Contractor's failure to complete the Work within the applicable Contract Time, the difficulty of proving the Owner's loss and the inconvenience of otherwise obtaining an adequate remedy. Permitting the Contractor to continue and finish the Work, or any part thereof, alter a specified date of Substantial Completion shall in no way operate as a waiver on the part of the Owner of any of the Owner's rights under the Contract. Payment of liquidated damages shall not release the Contractor from obligation in respect to the fulfillment of the entire Contract. It is the intent of the parties that the liquidated damages specified herein be full and complete payment only for failure of the Contractor to complete the

Work on time as required by Contract Documents. Liquidated damages amounts may be withheld by the Owner from any partial or final payment due the Contractor.

The per diem amount of liquidated damages shall be as follows:

§ 5.1.6.2 For failure to achieve Substantial Completion and obtain a temporary or permanent Certificate of Occupancy for the entire Work constructed under the terms of this Agreement on or prior to the date established: Five Hundred Dollars (\$500) per calendar day for days 1 – 21, and One Thousand Dollars (\$1,000) per calendar day from day 22 and thereafter for which Substantial Completion has not been met.

## **§. 5.2 Guaranteed Maximum Price**

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed five million, eight hundred and seventy six thousand, one hundred and twenty dollars. (\$ 5,876,120.00 ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

§ 5.2.1.1 Savings Participation: If the sum of Cost of the Work plus the Contractor's Fee at Four point Four Five percent (4.45%) is less than the individual Guaranteed Maximum Price, as adjusted by subsequent Change Orders, Zero percent (0.00%) of any savings shall be due to the Contractor and One Hundred percent (100.00%) shall be returned to the Owner. However, under no circumstances shall the Contractor's share of savings exceed fifty thousand dollars (\$50,000.00). Any savings will be determined on the final Cost of the Work and related Contractor's Fee for the entire individual Work, as determined pursuant to Paragraph 12.2 of the Agreement. A Guaranteed Maximum Price may include certain allowance items outlined in Subparagraph 5.2.3 of this Agreement. If an allowance item has a final cost less than the stated allowance for such item, then Contractor shall be not entitled to any of the savings related to that allowance as provided in this Subparagraph 5.2.1.1 but, rather, the Guaranteed Maximum Price shall be adjusted such that 100 percent of the savings (the unused portion of the allowance plus costs outlined in General Conditions Subparagraph 3.8.2.2 and the corresponding Contractor's fee) related to the allowance will be returned to the Owner. Savings shall be reconciled and credited at the time of final payment.

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price, are described in the Contract Documents under the terms of this Agreement.

**Item**

**Price**

Refer to Exhibit A - Alternates

§ 5.2.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

**Item**

**Price**

**Conditions for Acceptance**

PAGE 5

**Item**

**Price**

Refer to Exhibit B - Allowances

§ 5.2.3.1 Allowances shall be administered according to the provisions of Paragraph 3.8 of the General Conditions, this Subparagraph 5.2.3.1 and Subparagraph 5.2.1.1 of this Agreement.

§ 5.2.3.1.1 Changes in the Work may be made by allocations of the "Change Allowance" that is set forth in the Guaranteed Maximum Price. Such changes shall be limited to those involving an increase or decrease in the Cost of the Work, the sum total of which shall not exceed the amount set forth in Subparagraph 5.2.3 of this Agreement. No changes involving an extension in the Contract Time shall be made by allocations of the Change Allowance.

§ 5.2.3.1.2 Changes in the Work made by allocations of the Change Allowance shall be either (i) as agreed upon by the Owner and Contractor in advance of said change at a Construction Team Meeting and memorialized in the minutes of such meeting prepared by the Owner's Project Manager or (ii) as otherwise agreed upon by the Owner and Contractor in writing in advance of said change. The Owner's Project Manager shall keep a written record of such changes made by allocations of the Change Allowance, including but not limited to the cumulative total dollar amount of all such allocations. No change by allocation of the Change Allowance shall be made if the cumulative dollar amount of the allocation and all prior allocations would exceed the amount of the Change Allowance.

§ 5.2.3.1.3 Consistent with General Conditions Subparagraph 7.1.2, all changes in the Work made by allocations of the Change Allowance that involve a change in the physical characteristics of the Work shall be accompanied by a Modification of the Construction Documents prepared and signed by the Architect and issued by the Owner's Project Manager. However, as applied to changes made by allocations of the Change Allowance, the phrase "Modification of the Construction Documents prepared and signed by the Architect" shall mean a change in the Construction Documents either (i) as approved by the Architect in advance of said change at a Construction Team Meeting and memorialized in the minutes of such meeting prepared by the Owner's Project Manager or (ii) as otherwise prepared or approved by the Architect in writing and issued by the Owner's Project Manager in advance of said change.

...

Project clarifications and assumptions are delineated in Exhibit G - The Guaranteed Maximum Price Proposal from Bremik Construction

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom, only with the information provided in the Contract Documents. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**PAGE 6**

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7. No Cost of the Work in excess of the Guaranteed Maximum Price shall be reimbursed except as described in this section.

...

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Wage rates computed by the combination of this Subparagraph 7.2.1 and Subparagraph 7.2.4 shall be delineated in the Guaranteed Maximum Price. In the event the Contractor employs a person for whom there is no rate delineated, Contractor shall compute the appropriate rate for the position and submit it in writing to the Owner for approval and, if agreed upon, incorporation by Change Order.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval. Senior Project Manager, Project Manager, Project Engineer, and Project Administrator when stationed at the Contractor's principal office but only for that portion of their time required for the Work, and wages or salaries of the Contractor's supervisory (Senior Project Manager, Project Manager, Project Engineer, Project Administrator, Superintendent and Foremen) when stationed at the site. Wage rates as computed by the combination of this Subparagraph 7.2.2 and Subparagraph 7.2.4 shall be delineated in the Guaranteed Maximum Price. In the event the Contractor employs a person for whom there is no rate listed, Contractor shall compute the appropriate rate for the position and submit it in writing to the Owner for approval and, if agreed upon, incorporation by Change Order.

**PAGE 7**

Refer to Exhibit C – 2020 Billable Hourly Labor Rates

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. Wage rates as computed by the

combination of this Subparagraph 7.2.3 and Subparagraph 7.2.4 shall be delineated in the Guaranteed Maximum Price. In the event the Contractor employs a person for whom there is no rate listed, Contractor shall compute the appropriate rate for the position and submit it in writing to the Owner for approval and, if agreed upon, incorporation by Change Order.

...

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and ~~supplies-supplies~~, including but not limited to costs of electronic imaging of the project closeout, as-built and operation and maintenance documents.

**PAGE 8**

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Contractor's general liability insurance and umbrella coverage for this Project will be purchased as part of the annual policy covering Contractor's operations for the policy period and renew yearly. In that future rates cannot be forecasted, and in consideration that this Project could span more than one policy year, insurance costs directly attributed to this Contract will initially be charged to the Project at the current rate of one percent (1.00%) of the Cost of the Work. Upon the Contractor's insurance renewal date, the percentage rate of the Cost of the Work for insurance costs will be adjusted, either higher or lower, to reflect the change in Contractor's premium that is directly attributed to this Contract. Likewise, upon the Contractor's insurance renewal date, the GMP shall be increased or decreased by Change Order by an amount computed as (1) the scheduled value of the Cost of the Work multiplied by (2) the percentage of incomplete Work as determined from the Contractor's application for payment immediately preceding the Contractor's insurance renewal date, multiplied by (3) the change, positive or negative, in the percentage rate of the Cost of the Work for insurance costs.

...

§ 7.6.2 Sales, use, Corporate Activity Tax (CAT), or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

...

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, provided Contractor timely informs Owner of such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

**PAGE 9**

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10. MB Structures, LLC is a related party to the Contractor. As a Subcontractor, MB Structures LLC intends on bidding the following work scopes: demolition, building concrete, steel erection, rough carpentry, siding repair, weather resistance barrier, installation of doors, frames and hardware and installation of specialties.

**PAGE 10**

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall

obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. ~~The Contractor Documents and shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. Owner, Owner's Project Manager and Architect. The Contractor shall advertise publicly and shall endeavor to procure a minimum of (3) competitive bids for each subcontract for which the costs of the subcontracted work will exceed \$50,000. The Owner shall then determine, with the advice of the Contractor, Owner's Project Manager and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.~~

...

**§ 12.1.2** The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:  
month.

**§ 12.1.3** Provided that an Application for Payment is received by the Architect and Owners Project Manager not later than the twenty-eighth (28<sup>th</sup>) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the day of the month. ~~If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ( ) days after the Architect receives the Application for Payment, fifteen (15) days after the Application for Payment has been sent to the Architect and Owner.~~

**PAGE 11**

With each Application for Payment, the Contractor shall submit ~~payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Contractor on account of the Cost of the Work equal or exceed progress payments already received by the Contractor plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Contractor's Fee.~~ the most recent approved Schedule of Values and an executed Unconditional Lien Release from the Contractor for the previous deposited payments made by the Owner.

**§ 12.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price ~~among; among~~ (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee. The portion of the GMP allocated to contingency and not otherwise allocated to another line item or included in a Change Order shall not be spent without prior written authorization of the Owner or Owner's Project Manager.

**§ 12.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the ~~Architect may require. The schedule of values~~ Owner, Owner's Project Manager or Architect may require. This schedule, unless objected to by the Owner, Owner's Project Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

...

**§ 12.1.5.3** When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Owner, Owner's Project Manager, and Architect.

...

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of ~~values;~~ values.



Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201 2017 as modified :

**PAGE 12**

Five percent (5.00%)

...

None

...

Early partial release of retainage at any time shall be only as agreed upon by the Owner and Contractor.

...

None

**PAGE 13**

.1 the Contractor has fully performed the ~~Contract~~, Contract including the requirements of General Conditions Subparagraph 9.10.2, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;

...

Savings pursuant to Subparagraph 5.2.1.1 shall be reconciled and credited to the Project at the time of final payment.

...

1.00 % One percent

**PAGE 14**

Arbitration pursuant to Section 15 of AIA Document ~~A201-2017~~A201-2017, using the Arbitration Service of Portland, or mutually agreed upon service.

**PAGE 15**

Zero (0) termination fee

...

PlanB Consultancy, Inc.  
Attn: Gerard Mulrooney, Project Manager / Owner's Representative  
696 McVey Ave, Suite 202  
Lake Oswego, OR 97034  
503-850-9876

...

Bremik Construction  
Attn: Bob Trapa, Senior Vice President  
1026 SE Stark Street  
Portland, OR, 97214  
503-688-1000

**PAGE 16**

- .1 Pay the Oregon prevailing rate of wage as required by ORS 279C.830(1)(a).
- .2 Make payment promptly, as due, to all persons supplying to Contractor labor and materials for the prosecution of the services to be provided pursuant to this Agreement.
- .3 Pay all contributions or amounts due to the State Accident Insurance Fund incurred in the performance of this Agreement.
- .4 Make prompt payment for all medical services for which the contractor has agreed to pay, and for all amounts for which the contractor collects or deducts from the worker's wages.
- 5 Not permit any lien or claim to be filed or prosecuted against City on account of any labor or materials furnished.
- .6 Be responsible for all federal, state, and local taxes applicable to any compensation or payments paid to Contractor under this Agreement and, unless Contractor is subject to back-up withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligation.
- .7 Pay all employees at least time and one-half for all overtime worked in excess of forty (40) hours in any one week, except for individuals excluded under ORS 653.100 to 6J3.261 or under 29 U.S.C. §§ 201 to 209 from receiving overtime. Contractor shall give written notice to the workers of the number of hours per day and days per week they may be required to work.
- .8 Shall comply with ORS 656.017, which requires provision of workers' compensation coverage for all workers.
- .9 File a public works bond with the Construction Contractors Board before starting work on the Project unless exempt.
- .10 Include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, unless exempt.

...

Refer to Exhibit H – Proof of Bond and Insurance

...

None

...

Refer to Exhibit E – List of Documents

...

Refer to Exhibit F – Specifications

**PAGE 17**

None

- Exhibit A – Alternates
- Exhibit B – Allowances
- Exhibit C – 2020 Billable Hourly Labor Rates
- Exhibit D – 2020 Equipment Rental Rate Sheet
- Exhibit E – List of Documents
- Exhibit F – Specifications
- Exhibit G – Guaranteed Maximum Price, Exclusions and Clarifications

Exhibit H – Proof of Bond and Insurance  
Exhibit I – Project Construction Schedule  
Exhibit J – City of Tualatin provided Reports and Studies



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 19:17:16 ET on 03/02/2020 under Order No. 3790866996 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A102™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*