

## NOTICE OF CITY COUNCIL MEETING

The City Council of the City of King City will hold a Regular City Council Meeting at 7:00 p.m., Wednesday-May 16, 2018 at the King City Hall, 15300 SW 116<sup>th</sup> Ave, King City, Oregon 97224

AGENDA	Action Item
<p style="text-align: center;"><b>***REGULAR SESSION***</b></p> <p><b><i>Moment of Silence</i></b></p> <p>7:00 p.m. 1. <b>CALL TO ORDER</b></p> <p>2. <b>ROLL CALL</b></p> <p>3. <b>PLEDGE OF ALLEGIANCE</b></p> <p>4. <b>APPROVAL OF MINUTES:</b></p> <p>4.1 March 21, 2018</p> <p>7:05 p.m. 5. <b>OPEN FORUM:</b> We welcome public comment. At this time, the Council will be happy to receive your comment pertaining to items on the agenda (including, questions, suggestions, complaints and items for future agendas). Each person's time will be limited to three minutes.</p> <p>7:15 p.m. 6. <b>UNFINISHED BUSINESS:</b> NONE</p> <p>7:20 p.m. 7. <b>NEW BUSINESS:</b></p> <p>7.1 Agreements for City Hall Remodel – Review</p> <p>7.2 Pride Rate Amendments</p> <p>7:35 p.m. 8. <b>POLICE CHIEF'S REPORT</b></p> <p>7:40 p.m. 9. <b>CITY MANAGER'S REPORT</b></p> <p>7:45 p.m. 10. <b>MAYOR'S AND COUNCILOR'S REPORTS</b></p> <p>8:00 p.m. 11. <b>ADJOURN</b></p> <p style="text-align: center;"><b>NEXT MEETING SCHEDULED FOR JUNE 6, 2018 @ 7:00 PM</b></p> <p>The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired, or for other accommodations for persons with disabilities, should be made at least 48 hours in advance of the meeting to Mike Weston, City Recorder, 503-639-4082.</p> <p>M=Motion; S=Second; A=Action/Vote</p>	<p>Time:</p> <hr/> <p>M S A</p> <hr/> <p>M S A</p> <hr/> <p>M S A</p> <hr/> <p>Time:</p>

**CITY OF KING CITY  
CITY COUNCIL MEETING MINUTES**

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**Call to Order:** A regular meeting of the King City – City Council was held at the King City Hall beginning at 7:10 p.m. on Wednesday, March 21, 2018, Mayor Gibson requested a moment of silence then proceeded to call the meeting to order at 7:11 p.m., followed by roll call and the Pledge of Allegiance

**Roll Call:** **The following City Council members were present:**

Mayor Ken Gibson  
President Bob Olmstead  
Councilor Jaimie Fender  
Councilor John Boylston  
Councilor Billie Reynolds  
Councilor Smart Ochoi

**Absent:**

Councilor Gretchen Buchner

**Staff present included:**

City Manager (CM) Mike Weston  
City Recorder Ronnie Smith

**Agenda Item 4:** **Approval of Minutes:** January 3, 2018, and January 17, 2018

**MOTION MADE BY PRESIDENT OLMSTEAD TO APPROVE THE MINUTES OF  
REGULAR SESSION JANUARY 3 AND JANUARY 17, 2018, SECONDED BY  
COUNCILOR REYNOLDS.**

**VOICE VOTE: 6-AYES – 0-NEYS – 0 ABSTENTIONS– 0- RECUSED  
THE MOTION CARRIED 6-0.**

**Agenda Item 5:** **Open Forum:**

Mayor Gibson opened public comment on any item on the agenda (including questions, suggestions, complaints, and items for future agenda) and stated each person's time would be limited to three minutes.

Brad Vandermark of 1195 SW King James Place:  
Has concerns about the emergency clause in ordinance 2018-02 Housing Needs Analysis and asked the Council to reconsider passing this ordinance without the emergency clause.

**Agenda Item 6:** **Unfinished Business:** None

**Agenda Item 7:** **New Business:**

7.1 Ordinance 2018-02 Housing Needs Analysis

**PUBLIC HEARING:**

The first reading of the title was read by CM Mike Weston "An Ordinance Amending the Comprehensive Plan to Adopt the Housing Needs Analysis (2018) as an Appendix to the King City Comprehensive Plan."

Beth Goodman with EcoNW presented the King City's Housing Needs Analysis to the Councilors. She mentioned that a Housing Needs Analysis must meet the requirements of Goal 10, OAR 660-007, ORS 197.303 and Metros Urban Growth Management Functional Plan. She noted that currently, the city has 1.4 acres in R-9, 0.1 acres in R-12 and 2.3 acres in LC that are considered buildable land.

At the conclusion of her presentation, she mentioned that King City has a deficit of land to accommodate growth over the 2018 to 2038 period and that King City will need an expansion of the Metro UGB to accommodate its forecast of housing.

Mrs. Goodman recommended that the city work with regional partners on the expansion of the Metro UGB to Include URA 6D, remove barriers to attached or multifamily development in the zoning code, consider implementing policies to encourage development of attached or multifamily housing and monitor residential land development.

In Support:  
None

Opposition:  
Brad Vandermark of 1195 SW King James Place:  
Restated his concerns about the emergency clause and asked the Council to consider deleting the emergency clause.

Neutral:  
None

Mayor Gibson asked for a motion to close the public hearing.

**MOTION MADE BY PRESIDENT OLMSTEAD TO CLOSE THE PUBLIC HEARING, SECONDED BY COUNCILOR FENDER. PUBLIC HEARING CLOSED AT 7:51 PM.**

**VOICE VOTE: 6-AYES – 0-NEYS – 0 ABSTENTIONS– 0- RECUSED  
THE MOTION CARRIED 6-0.**

Mayor Gibson asked for a motion to approve, Approve with conditions or deny the Ordinance.

**MOTION MADE BY COUNCILOR BOYLSTON TO APPROVE ORDINANCE 2018-02 HOUSING NEEDS ANALYSIS, SECONDED BY PRESIDENT OLMSTEAD.**

**VOICE VOTE: 6-AYES – 0-NEYS – 0 ABSTENTIONS– 0- RECUSED  
THE MOTION CARRIED 6-0.**

**MOTION MADE BY COUNCILOR BOYLSTON TO WITHDREW HIS MOTION TO APPROVE ORDINANCE 2018-02 HOUSING NEEDS ANALYSIS, SECONDED BY COUNCILOR FENDER.**

**VOICE VOTE: 6-AYES – 0-NEYS – 0 ABSTENTIONS– 0- RECUSED  
THE MOTION CARRIED 6-0.**

**MOTION MADE BY COUNCILOR BOYLSTON TO ADOPT ORDINANCE O-2018-02, AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN TO ADOPT THE HOUSING NEEDS ANALYSIS (2018) AS AN APPENDIX TO THE CITY OF KING CITY COMPREHENSIVE PLAN, AND DECLARING AN EMERGENCY, SECONDED BY PRESIDENT FENDER.**

**VOICE VOTE: 6-AYES – 0-NEYS – 0 ABSTENTIONS– 0- RECUSED  
THE MOTION CARRIED 6-0.**

The second reading was read by CM Mike Weston.

ORDINANCE NO. 2018-02 AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN TO ADOPT THE HOUSING NEEDS ANALYSIS (2018) AS AN APPENDIX TO THE KING CITY COMPREHENSIVE PLAN

RECITALS:

WHEREAS, the City is proposing the City of King City Housing Needs Analysis (2018) prepared by Econ NW be adopted as an appendix to the King City Comprehensive Plan; and

WHEREAS, the City provided notice of a hearing before the Planning Commission and City Council of the post-acknowledgement amendments as required by state law, including notice to the Department of Land Conservation and Development 35 days prior to the initial evidentiary hearing consistent with ORS 197.610, and publication in a newspaper of general circulation within the City; and

WHEREAS, on March 7, 2018, the King City Planning Commission held a public hearing and recommended approval of the proposed City of King City Housing Needs Analysis (2018), which would be added as an appendix to the King City Comprehensive Plan; and

WHEREAS, on March 21, 2018, the City Council of King City held a public hearing, to consider the Planning Commission's recommendation, hear public testimony, apply applicable decision-making criteria, and to consider appropriate findings and conclusions in support of adoption.

NOW, THEREFORE, THE CITY OF KING CITY ORDAINS AS FOLLOWS:

SECTION 1. The City of King City finds:

1. The King City Comprehensive Plan contains policies regarding the availability of adequate numbers of housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households.

2. The City of King City Housing Needs Analysis (2018) reflects the projected housing need in comparison to the supply of developable land within the King City limits and urban service area based upon specific land classification and constraints to development.

3. The City of King City Housing Needs Analysis (2018) is a legislative document which will inform policy decisions regarding the housing needs of King City in conformance with Goal 10 and Oregon state law.

SECTION 2. The City of King City Housing Needs Analysis (2018) set forth in Exhibit "A" attached hereto is adopted as an appendix to the King City Comprehensive Plan.

SECTION 3. Under Section 1.08 of the King City Charter, an Emergency is declared in that it is necessary for the general welfare of the people of King City for this ordinance to take effect at the times listed below to ensure the best consistency with the City Code, Plan and Map Amendments:  
The Amendments in Ordinance 2018-02 shall be effective immediately.

**Agenda Item 8: Police Chief's Report**

Police are patrolling the Highlands area at every shift.

**Agenda Item 9: City Manager's Report**

Ernie Happala is taking leadership courses, and Ronnie Smith is taking GIS courses.

Chief Fessler's retirement party is on March 23 from 10 to noon.

Ernie Happala will start the Interim Police Chief position on April 1, 2018.

Planning Commission meeting for the URA Concept Plan will be on March 28 and if needed 29<sup>th</sup>.

We had the Walk-through for the City Hall remodel. Five contractors showed interest. CM also mentioned that the KCCA might let us use the building during the construction.

**Agenda Item 10: Mayor and Councilor's Reports**

Councilor Reynolds: Report that she attended the HOA meeting at Highlands area.

Councilor Boylston: No report.

Councilor Fender: Reported that she attended the CDBG meeting and mentioned that currently the CDBG is having some issues with staffing and funding. CDBG staff will be asking Washington County to use general funds for this cycle. Four of July planning is going well. KCCF will be asking the city for a donation soon.

President Olmstead: Reported that the KCCA is getting ready for their elections.

Councilor Smart: No report

Mayor Gibson: Reported that he attended the WEA meeting to give them an update on King City.

**Agenda Item 11:      Adjournment**

**PRESIDENT OLMSTEAD MOVED TO ADJOURN THE MEETING, COUNCILOR  
FENDER SECONDED, THE MEETING ADJOURNED AT 8:44 P.M**

Respectfully Submitted by:

Attested by:

\_\_\_\_\_  
Ronnie Smith  
City Recorder

\_\_\_\_\_  
Mike Weston  
City Manager

**PERSONAL SERVICES AGREEMENT  
WITH THE CITY OF KING CITY, OREGON  
FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR  
PRE-CONSTRUCTION SERVICES**

**THIS AGREEMENT** made and entered into this Day day of (Month), ~~(Year)~~2018 by and between the City of King City, a municipal corporation of the State of Oregon, hereinafter called City, and Alegis Construction, Inc. ~~(Contractor's Name)~~ hereinafter called Contractor.

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**RECITALS**

**WHEREAS** City has need for the services of a person or an entity with particular training, ability, knowledge, and experience as possessed by Contractor, and

**WHEREAS** City has determined that Contractor is qualified and capable of performing the professional services as City does hereinafter require, under those terms and conditions set forth,

**THEREFORE** the Parties agree as follows:

**1. SERVICES TO BE PROVIDED**

Contractor shall provide services as specified in the Scope of Work, a copy of which is attached hereto, labeled Exhibit A and hereby incorporated by reference. Contractor shall initiate services immediately upon receipt of City's notice to proceed, together with an executed copy of this Agreement.

**2. EFFECTIVE DATE AND DURATION**

This Agreement shall become effective upon the date of execution, and shall expire, unless otherwise terminated or extended, by (Month - Day - Year). All work under this Agreement shall be completed prior to the expiration of this Agreement.

**3. COMPENSATION**

City agrees to pay Contractor as specified in subparagraphs 3.1 and 3.2 of Exhibit A for performance of those services described in the Scope of Work, which payment shall be based upon the following applicable terms:

- A. Payment by City to Contractor for performance of services under this Agreement includes all expenses incurred by Contractor, with the exception of expenses, if any identified in this Agreement as separately reimbursable.
- B. Payment will be made in installments based on Contractor's invoice, subject to the approval of the City Manager, or designee, and not more frequently than monthly. Payment shall be made only for work actually completed as of the date of invoice.
- C. Payment by City shall release City from any further obligation for payment to Contractor, for services performed or expenses incurred as of the date of the invoice. Payment shall not be considered acceptance or approval of any work or waiver of any defects therein.
- D. Where applicable, Contractor must make payment promptly as due to persons supplying Contractor labor or materials for the execution of the work provided by this order. Contractor

must pay all contributions or amounts due from Contractor to the Industrial Accident Fund incurred in the performance of this order. Contractor shall not permit any lien or claim to be filed or prosecuted against City or any subdivision of City on account of any labor or material to be furnished. Contractor further agrees to pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.

- E. If Contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Contractor or a subcontractor by any person as such claim becomes due, City's Finance Director may pay such claim and charge the amount of the payment against funds due or to become due the Contractor. The payment of the claim in this manner shall not relieve Contractor or their surety from obligation with respect to any unpaid claims.
- F. If labor is performed under this order, then no person shall be employed for more than eight (8) hours in any one day, or forty (40) hours in any one week, except in cases of necessity, or emergency or where the public policy absolutely requires it, and in such cases, except cases of contracts for personal services as defined in ORS 279A.055, the labor shall be paid at least time and a half for all overtime in excess of eight (8) hours a day and for all work performed on Saturday and on any legal holidays as specified in ORS 279B.020. In cases of contracts for personal services as defined in ORS 279A.055, any labor shall be paid at least time and a half for all hours worked in excess of forty (40) hours in any one week, except for those individuals excluded under ORS 653.010 to 653.260 or under 29 USC SS 201-209.
- G. Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care or other needed care and attention incident to sickness or injury to the employees of Contractor or all sums which Contractor agrees to pay for such services and all moneys and sums which Contractor collected or deducted from the wages of employees pursuant to any law, contract or agreement for the purpose of providing or paying for such service.

**4. OWNERSHIP OF WORK PRODUCT**

City shall be the owner of and shall be entitled to possession of any and all work products of Contractor which result from this Agreement, including any computations, plans, correspondence or pertinent data and information gathered by or computed by Contractor prior to termination of this Agreement by Contractor or upon completion of the work pursuant to this Agreement.

**5. ASSIGNMENT/DELEGATION**

Neither party shall assign, sublet or transfer any interest in or duty under this Agreement without the written consent of the other and no assignment shall be of any force or effect whatsoever unless and until the other party has so consented. If City agrees to assignment of tasks to a subcontract, Contractor shall be fully responsible for the acts or omissions of any subcontractors and of all persons employed by them, and neither the approval by City of any subcontractor nor anything contained herein shall be deemed to create any contractual relation between the subcontractor and City.



**6. STATUS OF CONTRACTOR AS INDEPENDENT CONTRACTOR**

Contractor certifies that:

- A. Contractor acknowledges that for all purposes related to this Agreement, Contractor is and shall be deemed to be an independent contractor as defined by ORS 670.700 and not an employee of City, shall not be entitled to benefits of any kind to which an employee of City is entitled and shall be solely responsible for all payments and taxes required by law. Furthermore, in the event that Contractor is found by a court of law or any administrative agency to be an employee of City for any purpose, City shall be entitled to offset compensation due, or to demand repayment of any amounts paid to Contractor under the terms of this Agreement, to the full extent of any benefits or other remuneration Contractor receives (from City or third party) as a result of said finding and to the full extent of any payments that City is required to make (to Contractor or to a third party) as a result of said finding.
- B. The undersigned Contractor hereby represents that no employee of the City, or any partnership or corporation in which a City employee has an interest, has or will receive any remuneration of any description from Contractor, either directly or indirectly, in connection with the letting or performance of this Agreement, except as specifically declared in writing.  
  
If this payment is to be charged against Federal funds, Contractor certifies that he/she is not currently employed by the Federal Government and the amount charged does not exceed his or her normal charge for the type of service provided.  
  
Contractor and its employees, if any, are not active members of the Oregon Public Employees Retirement System and are not employed for a total of 600 hours or more in the calendar year by any public employer participating in the Retirement System.
- C. Contractor certifies that it currently has a City business license or will obtain one prior to delivering services under this Agreement.
- D. Contractor is not an officer, employee, or agent of the City as those terms are used in ORS 30.265.

**7. INDEMNIFICATION**

City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor warrants that all its work will be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of a contractor's work by City shall not operate as a waiver or release.

Contractor agrees to indemnify and defend the City, its officers, agents, employees and volunteers and hold them harmless from any and all liability, causes of action, claims, losses, damages, judgments or other costs or expenses including attorney's fees and witness costs and (at both trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person or entity which in any way arise from, during or in connection with the performance of the work described in this contract, except to the extent that the liability arises out of the sole negligence of the City and its employees. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

**8. INSURANCE**

Contractor and its subcontractors shall maintain insurance acceptable to City in full force and effect throughout the term of this contract. Such insurance shall cover all activities of the contractor arising directly or indirectly out of Contractor's work performed hereunder, including the operations of its subcontractors of any tier. Such insurance shall be primary and non-contributory.

The policy or policies of insurance maintained by the Contractor and its subcontractor shall provide at least the following limits and coverage:

**A. Commercial General Liability Insurance**

Contractor shall obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract. The following insurance will be carried:

<b><u>Coverage</u></b>	<b><u>Limit</u></b>
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000
Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

**B. Commercial Automobile Insurance**

Contractor shall also obtain, at contractor's expense, and keep in effect during the term of this contract, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.

**C. Professional Liability Insurance**

Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this contract, Professional Liability Insurance covering any damages caused by an error, omission or any negligent acts. Combined single limit per occurrence shall not be less than \$2,000,000. Annual aggregate limit shall not be less than \$2,000,000.

**D. Workers' Compensation Insurance**

The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Contract who are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126. Employer's Liability Insurance with coverage limits of not less than \$500,000 each accident shall be included.

**E. Additional Insured Provision**

The Commercial General Liability Insurance and Commercial Automobile Insurance policies and other policies the City deems necessary shall include the City, its officers, directors, employees and volunteers as additional insureds with respect to this contract.

**F. Notice of Cancellation**

There shall be no cancellation, material change, exhaustion of aggregate limits or intent not to renew insurance coverage without 30 days written notice to the City. Any failure to comply with this provision will not affect the insurance coverage provided to the City. The certificates of insurance provided to the City shall state that the insurer shall endeavor to provide 30 days' notice of cancellation to the City.

G. Insurance Carrier Rating

Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable by the City. The City reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.

H. Certificates of Insurance

As evidence of the insurance coverage required by the contract, the Contractor shall furnish a Certificate of Insurance to the City. No contract shall be effected until the required certificates have been received and approved by the City. The certificate will specify and document all provisions within this contract. A renewal certificate will be sent to the above address 10 days prior to coverage expiration.

Certificates of Insurance should read "Insurance certificate pertaining to contract for the City Hall of King City Rehabilitation and Remodeling Project." The City, its officers, directors and employees shall be added as additional insureds with respects to this contract. A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate.

I. Independent Contractor Status

The service or services to be rendered under this contract are those of an independent contractor. Contractor is not an officer, employee or agent of the City as those terms are used in ORS 30.265.

J. Primary Coverage Clarification

The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the City is excess and not contributory insurance with the insurance required in this section.

K. Cross-Liability Clause

A cross-liability clause or separation of insureds clause will be included in the general liability policy.

Contractor's insurance policy shall contain provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days prior notice to City. A copy of each insurance policy, certified as a true copy by an authorized representative of the issuing insurance company, or at the discretion of City, in lieu thereof, a certificate in form satisfactory to City certifying to the issuance of such insurance shall be forwarded to:

City of King City  
Attn: Mike Weston  
15300 SW 116<sup>th</sup> Ave.  
King City, Oregon 97224

Business Phone: 503-639-4083  
Business Fax: [INSERT]  
Email Address: mweston@ci.king-city.or.us

Such policies or certificates must be delivered prior to commencement of the work.

Contract No. 2018-05-11

The procuring of such required insurance shall not be construed to limit contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or neglect connected with this contract.

**9. METHOD & PLACE OF SUBMITTING NOTICE, BILLS AND PAYMENTS**

All notices, bills and payments shall be made in writing and may be given by personal delivery, mail, email or by fax. Payments may be made by personal delivery, mail, or electronic transfer. The following addresses shall be used to transmit notices, bills, payments, and other information:

City	Contractor
City of <del>Milwaukie</del> King City	Company: <del>(insert name of firm)</del> Alegis Construction, Inc.
Attn: Mike Weston	Attn: <del>(insert contract manager's name)</del> Alex Mallett
15300 SW 116 <sup>th</sup> Ave.	Address: <del>(insert contract manager's address)</del> 12909 SW 68th Parkway, Ste 170, Portland, OR 97223
Email Address: mweston@ci.king-city.or.us	alex.mallett@alegisconstruction.com
King City, Oregon 97224	
Phone: 503-639-4083	Phone: <del>(insert #)</del> 503-427-6065
Fax: <del>503-639-3771</del>	Fax: <del>(insert #)</del> 503-427-6066
Email Address: mweston@ci.king-city.or.us	Email Address: alex.mallett@alegisconstruction.com
	<del>(insert address)</del>

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid, or when so faxed, shall be deemed given upon successful fax. In all other instances, notices, bills and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to who notices, bills and payments are to be given by giving written notice pursuant to this paragraph.

**10. MERGER**

This writing is intended both as a final expression of the Agreement between the parties with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement. No modification of this Agreement shall be effective unless and until it is made in writing and signed by both parties.

**11. TERMINATION WITHOUT CAUSE**

At any time and without cause, City shall have the right, in its sole discretion, to terminate this Agreement by giving notice to Contractor. If City terminates the contract pursuant to this paragraph, it shall pay Contractor for services rendered to the date of termination, plus reasonable direct costs incurred by the Contractor due to the termination. In no event shall Contractor be entitled to lost overhead or profit on uncompleted work.

**12. TERMINATION WITH CAUSE**

A. City may terminate this Agreement effective upon delivery of written notice to Contractor, or at such later date as may be established by City, under any of the following conditions:

- 1) If City funding from federal, state, local, or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services. This Agreement may be modified to accommodate a reduction in funds.
- 2) If federal or state 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 Agreement.
- 3) If any license or certificate required by law or regulation to be held by Contractor, its subcontractors, agents, and employees to provide the services required by this Agreement is for any reason denied, revoked, or not renewed.
- 4) If Contractor becomes insolvent, if voluntary or involuntary petition in bankruptcy is filed by or against Contractor, if a receiver or trustee is appointed for Contractor, or if there is an assignment for the benefit of creditors of Contractor.

Any such termination of this agreement under paragraph (a) shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

- B. City, by written notice of default (including breach of contract) to Contractor, may terminate the whole or any part of this Agreement:

- 1) If Contractor fails to provide services called for by this agreement within the time specified herein or any extension thereof, or
- 2) If Contractor fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such other period as City may authorize.

The rights and remedies of City provided in the above clause related to defaults (including breach of contract) by Contractor shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

If City terminates this Agreement under paragraph (B), Contractor shall be entitled to receive as full payment for all services satisfactorily rendered and expenses incurred, an amount which bears the same ratio to the total fees specified in this Agreement as the services satisfactorily rendered by Contractor bear to the total services otherwise required to be performed for such total fee; provided, that there shall be deducted from such amount the amount of damages, if any, sustained by City due to breach of contract by Contractor. Damages for breach of contract shall be those allowed by Oregon law, reasonable and necessary attorney fees, and other costs of litigation at trial and upon appeal.

**13. ACCESS TO RECORDS**

City shall have access to such books, documents, papers and records of Contractor as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.

**14. FORCE MAJEURE**

Neither City nor Contractor shall be considered in default because of any delays in completion and responsibilities hereunder due to causes beyond the control and without fault or negligence on the part of the parties so disabled, including but not restricted to, an act of God or of a public enemy, civil unrest,

volcano, earthquake, fire, flood, epidemic, quarantine restriction, area-wide strike, freight embargo, unusually severe weather or delay of subcontractor or supplies due to such cause; provided that the parties so disabled shall within ten (10) days from the beginning of such delay, notify the other party in writing of the cause of delay and its probable extent. Such notification shall not be the basis for a claim for additional compensation. Each party shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon cessation of the cause, diligently pursue performance of its obligation under the Agreement.

**15. NON-WAIVER**

The failure of City to insist upon or enforce strict performance by Contractor of any of the terms of this Agreement or to exercise any rights hereunder should not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights on any future occasion.

**16. NON-DISCRIMINATION**

Contractor agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, ORS 659A.142, and all regulations and administrative rules established pursuant to those laws.

**17. ERRORS**

Contractor shall perform such additional work as may be necessary to correct errors in the work required under this Agreement without undue delays and without additional cost.

**18. EXTRA (CHANGES) WORK**

Only the City Manager, Mike Weston, may, by written order, authorize extra (and/or change) work. Failure of Contractor to secure such authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Contractor thereafter shall be entitled to no compensation whatsoever for the performance of such work.

**19. WARRANTIES**

All work shall be guaranteed by Contractor for a period of one year after the date of final acceptance of the work by the owner. Contractor warrants that all practices and procedures, workmanship and materials shall be the best available unless otherwise specified in the profession. Neither acceptance of the work nor payment therefore shall relieve Contractor from liability under warranties contained in or implied by this Agreement.

**20. ATTORNEY'S FEES**

In case suit or action is instituted to enforce the provisions of this contract, the parties agree that the losing party shall pay such sum as the court may adjudge reasonable attorney fees and court costs, including attorney's fees and court costs on appeal.

**21. GOVERNING LAW**

The provisions of this Agreement shall be construed in accordance with the provisions of the laws of the State of Oregon. Any action or suits involving any question arising under this Agreement must be brought in the appropriate court of the State of Oregon.

**22. COMPLIANCE WITH STATE AND FEDERAL LAWS/RULES**

Contractor shall comply with all applicable federal, state and local laws, rules and regulations, including, but not limited to, the requirements concerning working hours, overtime, medical care, workers' compensation

insurance, health care payments, payments to employees and subcontractors and income tax withholding contained in ORS Chapters 279A, 279B, and 279C, the provisions of which are hereby made a part of this agreement

**23. CONFLICT BETWEEN TERMS**

It is further expressly agreed by and between the parties hereto that should there be any conflict between the terms of this instrument in the proposal of the contract, this instrument shall control and nothing herein shall be considered as an acceptance of the said terms of said proposal conflicting herewith.

**24. AUDIT**

Contractor shall maintain records to assure conformance with the terms and conditions of this Agreement, and to assure adequate performance and accurate expenditures within the contract period. Contractor agrees to permit City, the State of Oregon, the federal government, or their duly authorized representatives to audit all records pertaining to this Agreement to assure the accurate expenditure of funds.

**25. SEVERABILITY**

In the event any provision or portion of this Agreement is held to be unenforceable or invalid by any court of competent jurisdiction, the validity of the remaining terms and provisions shall not be affected to the extent that it did not materially affect the intent of the parties when they entered into the agreement.

**26. COMPLETE AGREEMENT**

This Agreement and attached exhibits constitutes the entire Agreement between the parties. No waiver, consent, modification, or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change if made, shall be effective only in specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. Contractor, by the signature of its authorized representative, hereby acknowledges that he has read this Agreement, understands it and agrees to be bound by its terms and conditions.

**IN WITNESS WHEREOF,** City has caused this Agreement to be executed by its duly authorized undersigned officer and Contractor has executed this Agreement on the date hereinabove first written.

**CITY OF KING CITY**

**CONTRACTOR**

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Printed Name & Title*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*Date*

**EXHIBIT A**  
**SCOPE OF WORK (SERVICES TO BE PROVIDED)**

The City and Contractor agree to the following scope of services to be provided by Contractor during the period prior to the City and Contractor entering into a construction agreement (the "Pre-Construction Phase"):

**1. General**

- 1.1. Consult with, advise, assist and make recommendations to the City, Architect and Project Manager (collectively the "Project Team") on all aspects of the design and planning for construction.
- 1.2. Attend all Project meetings and actively participate in identification and resolution of design, construction, scheduling, budget and restoration issues as they emerge.
- 1.3. Conduct investigations of existing conditions, as directed by the Project Manager.
- 1.4. Provide information, schedule estimates, phasing schemes and participate in decisions regarding construction phasing.
- 1.5. Provide input for the Project Schedule prepared by the Project Manager to assure proper coordination of design work, cost estimates, permitting, bidding and commencement of construction. Contractor will be responsible for creation and maintenance of the detailed construction schedule for use during construction activities.
- 1.6. Provide input as to current construction industry practices and participate in decisions regarding restoration, value engineering, delivery schedules, construction costs, construction methods, materials and systems.
- 1.7. Review in-process design documents and provide input and advise with respect to constructability, alternative materials and methods, availability of materials and labor, and time requirements of procurement and construction.
- 1.8. Develop a construction phasing plan to assure project delivery in conformance with City's desired occupancy date.
- 1.9. Review completed construction documents and suggest modifications to improve completeness or clarity.
- 1.10. Recommend division of the work to facilitate bidding and award of subcontracts.
- 1.11. Continuously monitor the Project Schedule and advance procurement of long lead items to ensure delivery by required dates.



## 2. Pre-Construction Cost Management Services

### 2.1. Contractor will prepare construction cost estimates for the Project.

- 2.1.1. Schematic Design Estimate: Upon receipt of the 100% Schematic Design drawings, the Contractor will prepare a Schematic Design Cost Estimate based on such drawings and discussions with the Project Team (SD Estimate). This SD Estimate shall be accompanied by a detailed list of cost saving and value engineering recommendations. The Contractor will meet with the Project Team and fully explain the details of the cost estimate, the assumptions regarding the estimate, and the list of cost saving and value engineering recommendations.
  - 2.1.2. Design Development Estimate: Upon receipt of the 100% Design Development drawings, the Contractor will prepare a Design Development Cost Estimate based on such drawings and discussions with the Project Team (DD Estimate). This DD Estimate shall be accompanied by a detailed list of cost saving and value engineering recommendations. The Contractor will note causes for cost changes from the SD Estimate including such items as design changes, scope changes, or changes in the marketplace. The Contractor will meet with the Project Team and fully explain the details of the cost estimate, the assumptions regarding the estimate, and the list of cost saving and value engineering recommendations.
  - 2.1.3. Construction Documents – 50% Estimate: As the Construction Documents are developed, the Contractor shall continue to review and refine the current cost estimate and advise the Project Team as to the status of the construction budget. The Architect will deliver a set of 50% Construction Documents to the Contractor which will serve as the basis for the 50% Construction Document Cost Estimate. Based on the 50% Construction Documents, the Contractor shall provide a detailed update of the 100% Design Development Cost Estimate and a cost status report. The cost status report will identify any differences between the 100% DD Estimate and the 50% Construction Document Cost Estimate. If the estimated cost exceeds the Project Budget, the Contractor will make recommendations to the Project Team to reduce the estimated construction costs so that it is within the budget. The Contractor shall assist and advise the Project Team in exploring alternative approaches in an attempt to minimize total Project Costs.
- 2.2. Bid/Negotiation: Prior to completion of the construction documents, the Contractor will contact potential subcontractors and suppliers to encourage their interest in bidding. The Contractor will develop a detailed sub-bidding plan for the project and will present the plan to the City for review and approval. When final Construction Documents are available, or at an earlier time if agreed to by the City, the Contractor will conduct an open sub-bidding process consistent with the agreed-upon plan with the goal of obtaining a minimum of three sub-bids for each Project element. The Contractor will bid all work, including work the Contractor would like to self-perform.
- 2.3. Guaranteed Maximum Price (GMP): At a point in time agreed upon by the City and Contractor, the Contractor will present a proposed GMP to the City. The City and Contractor shall negotiate in good faith to establish the GMP. Upon determination of the GMP for construction of the Project, City and the Contractor shall enter into a construction agreement. If City and the Contractor cannot agree on the terms of the GMP or the construction agreement, City reserves the right to negotiate with another general contractor.

Contract No. 2018-05-11

### 3. Reimbursement of Contractor's Pre-Construction Costs

- 3.1. If the City and Contractor enter into a construction agreement, an amount not to exceed ~~\$~~ \$500,000 shall become reimbursable to the Contractor as part of the General Conditions as defined in the construction agreement and contract documents.
- 3.2. If the City and Contractor are unable to agree to a GMP or a construction agreement, or if the Project does not proceed to construction for any reason, Contractor shall be reimbursed for its actual costs of providing the services during the Pre-Construction Phase up to an amount not to exceed \$\_\_\_\_\_.

# DRAFT AIA® Document A102™ – 2007

## **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 **2018**  
(In words, indicate day, month and year.)

**BETWEEN** the Owner:

(Name, legal status, address and other information)

City of King City  
15300 S.W. 116<sup>th</sup> Avenue  
King City, Oregon 97224

and the Contractor:

(Name, legal status, address and other information)

CM/GC Company  
Address 1  
Address 2  
City, State and Zip Code

for the following Project:

(Name, location and detailed description)

City of King City City Hall Rehabilitation and Remodeling Project  
15300 S.W. 116<sup>th</sup> Avenue  
King City, Oregon 97224

The Architect:

(Name, legal status, address and other information)

Scott Edwards Architecture  
2525 E Burnside St.  
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.

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

This document is not intended for use in competitive bidding.

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

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

## TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	RELATIONSHIP OF THE PARTIES
4	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
5	CONTRACT SUM
6	CHANGES IN THE WORK
7	COSTS TO BE REIMBURSED
8	COSTS NOT TO BE REIMBURSED
9	DISCOUNTS, REBATES AND REFUNDS
10	SUBCONTRACTS AND OTHER AGREEMENTS
11	ACCOUNTING RECORDS
12	PAYMENTS
13	DISPUTE RESOLUTION
14	TERMINATION OR SUSPENSION
15	MISCELLANEOUS PROVISIONS
16	ENUMERATION OF CONTRACT DOCUMENTS
17	INSURANCE AND BONDS



### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents under the terms of this Agreement shall consist of this Agreement and the Conditions of the Contract (General, Supplementary and other Conditions), and as added by the initiating Change Order (CO 00) to this Agreement the Drawings, Specifications, Addenda issued prior to execution of the initiating Change Order (CO 00), other documents listed in the initiating Change Order (CO 00) and Modifications issued after execution of the initiating Change Order (CO 00), all of which taken together as a whole 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.

### 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 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 constructed under the terms of this Agreement shall be the execution date of the initiating Change Order (CO 00) to this Agreement. However, in anticipation of formal execution of the initiating Change Order (CO 00) and upon agreement between Owner and Contractor of the Guaranteed Maximum Price and dates of commencement and Substantial Completion of the Work, Contractor shall commence Work within five (5) days of receipt of a Notice to Proceed issued by the Owner and issuance of the first, partial or full permit for construction for the Project. If the Owner issues a Notice to Proceed prior to formal execution of the initiating Change Order (CO 00), then the date of the Notice to Proceed shall become the date of commencement delineated in the initiating Change Order (CO 00).

**§ 4.2** The Contract Time shall be measured from the date of commencement that is delineated by the initiating Change Order (CO 00) to this Agreement.

**§ 4.3** The Contractor shall achieve Substantial Completion of the entire Work of the Project not later than the number of calendar days from the date of commencement that is delineated by the initiating Change Order (CO 00) to this Agreement, subject to adjustments of the Contract Time as provided in the Contract Documents.

**§ 4.3.1** 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 4.3.2.

**§ 4.3.2** 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 4.3.2.1 for each calendar day elapsed beyond the specified date for Substantial Completion established in the initiating Change Order (CO 00). 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, after 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:

**§ 4.3.2.1** 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 by the initiating Change Order (CO 00): One Thousand Dollars (\$1,000.00) per day for which Substantial Completion has not been achieved.

## 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:

§ 5.1.1.1 Base Fee: \_\_\_\_\_ percent (\_\_\_\_%) 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 \_\_\_\_\_ percent (\_\_\_\_%) of the Cost of the Work for Change Orders issued subsequent to the initiating Change Order (CO 00) which establishes 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 \_\_\_\_ percent (\_\_\_\_%) of the Cost of the Work for Change Orders issued subsequent to the initiating Change Order (CO 00) which establishes the Guaranteed Maximum Price.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed ninety-five percent (95.00%) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any: None

## § 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed the amount agreed upon and delineated by the initiating Change Order (CO 00) to this Agreement, subject to additions and deductions by subsequent Change Orders as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause a 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 \_\_\_\_\_ percent (\_\_\_\_%) is less than the individual Guaranteed Maximum Price, as adjusted by subsequent Change Orders, \_\_\_\_\_ percent (\_\_\_\_%) of any savings shall be due to the Contractor and \_\_\_\_\_ percent (\_\_\_\_%) 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 The Guaranteed Maximum Price may be based on alternates, if any, which are described in the Contract Documents under the terms of this Agreement.

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

§ 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 initiating Change Order (CO 00) which establishes 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 or in the initiating Change Order (CO 00) which establishes the Guaranteed Maximum Price. 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, on which the Guaranteed Maximum Price is based:

Project clarifications, exclusions and assumptions are delineated in the initiating Change Order (CO 00) which establishes the Guaranteed Maximum Price.

**§ 5.2.5** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

## **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 Section 7.3.3 of AIA Document A201 2007 as modified, General Conditions of the Contract for Construction.

**§ 6.2** In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201 2007 as modified and the terms "costs" and "a percentage fee" as used in Section 7.3.6 of AIA Document A201 2007 as modified shall have the meanings assigned to them in AIA Document A201 and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior 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 the above-referenced provisions of AIA Document A201 2007 as modified 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. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. 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 any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

### **§ 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 initiating Change Order (CO 00) which establishes 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 and Project Manager 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, Superintendent and Foremen) and administrative personnel when stationed at the site with the Owner's approval. Wage rates as computed by the combination of this Subparagraph 7.2.2 and Subparagraph 7.2.4 shall be delineated in the initiating Change Order (CO 00) which establishes 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.

**§ 7.2.3** 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. Wage rates as computed by the combination of this Subparagraph 7.2.3 and Subparagraph 7.2.4 shall be delineated in the initiating Change Order (CO 00) which establishes 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 for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such 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.

### **§ 7.3 SUBCONTRACT COSTS**

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

### **§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION**

**§ 7.4.1** Costs, including transportation and storage, 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, maintenance, dismantling 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

**§ 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 document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

**§ 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** 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 \_\_\_\_\_ percent (\_\_\_\_%) 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 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 by Section 13.5.3 of AIA Document A201 2007 as modified 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; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17.1 of AIA Document A201 2007 as modified or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

§ 7.6.8 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.

§ 7.6.9 Subject to the Owner's prior approval, 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.

§ 7.6.10 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 if, and to the extent, approved in advance in writing by the Owner.

§ 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 Section 10.6 of AIA Document A201 2007 as modified .

§ 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 negligence or failure to fulfill a specific responsibility of 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 Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Contractor. The term "related party" includes any member of the immediate family of any person identified above.

§ 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, 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, 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.

## 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 Expenses of the Contractor's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Article 7;
- .4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .5 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of 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 to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Article 7; and

- .7 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 them 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 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 by 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 and shall deliver such bids to the Owner, Owner's Project Manager and Architect. The Contractor shall procure a minimum of three (3) competitive bids for each subcontract for which the cost 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.

**§ 10.2** When a specific bidder (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.

**§ 10.3** 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 prior consent of the Owner. If, with the prior consent of the Owner, the Subcontract is awarded on a cost-plus a fee basis, 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, below.

## **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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, 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 not later than the twenty-fifth 25th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the tenth 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than fifteen (15) days after the Architect receives the Application for Payment.

§ 12.1.4 If requested by the Owner, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner, Owner's Project Manager or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 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 the various portions of the Work, except that the Contractor's Fee shall be shown as a single separate item. 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.

§ 12.1.6 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 for which the Contractor has made or intends to make actual 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 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the 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 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 7.3.8 of AIA Document A201 2007 as modified ;
- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Contractor's Fee, less retainage of five percent (5.00%). The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent (5.00%) from that portion of the Work that the Contractor self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract 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
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201 2007 as modified.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than five percent (5.00%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors. Retainage will be paid in accordance with the terms of the contract. Early partial release of retainage at any time shall be only as agreed upon by the Owner and Contractor.

**§ 12.1.9** 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 shall not be deemed to represent that 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; that the Architect has made exhaustive or continuous on-site inspections; or 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 Section 12.2.2 of AIA Document A201 2007 as modified, 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.

**§ 12.2.2** The Owner's auditors will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect by the Contractor. Based upon such Cost of the Work as the Owner's auditor's report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, 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 Section 9.5.1 of the AIA Document A201 2007 as modified. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201 2007 as modified. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

**§ 12.2.3** If the Owner's auditor's report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without a further decision of the Architect. 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.

**§ 12.2.4** 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.

**§ 12.2.5** 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 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 the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

## **ARTICLE 13 DISPUTE RESOLUTION**

### **§ 13.1 INITIAL RECOMMENDATION**

The Architect will make initial recommendations pursuant to Section 4.4 of AIA Document A201 2007 as modified, unless the parties appoint another individual, not a party to the Agreement, to make initial recommendations.



## § 13.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by mediation pursuant to Section 4.5 of AIA Document A201 2007 as modified, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, 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.)*

☒ Arbitration pursuant to Section 4.6 of AIA Document A201 2007 as modified

☐ Litigation in a court of competent jurisdiction

☐ Other (*Specify*)



## ARTICLE 14 TERMINATION OR SUSPENSION I WOULD CONFORM THESE TO RULE 30.205

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201 2007 as modified.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201 2007 as modified, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201 2007 as modified 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; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 14.3 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 14.2.1. 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.

§ 14.4 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201 2007 as modified; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201 2007 as modified, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.1 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 2007 as modified or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 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.

Eight percent (8.00%) per annum

§ 15.3 The Owner's representative:

*(Name, address and other information)*

City of King City  
Attn: Mike Weston

15300 SW 116<sup>th</sup> Ave.  
King City, OR 97224  
(503) 639-4082

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

CM/GC Contractor  
Attn: CM/GC Project Manager  
Address  
City, State and Zip Code  
Telephone Number

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

**§ 15.6** Other provisions:

**§ 15.6.1** The following terms are mandatory terms for Oregon public improvement contracts. To the extent of any conflict between the following terms and the remainder of the Contract Documents, the following terms shall control:

- (a) Contractor shall:
  - (1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the Agreement;
  - (2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract;
  - (3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished;
  - (4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167;
  - (5) Demonstrate that an employee drug testing program is in place;
  - (6) To the extent the Work includes demolition, salvage or recycle construction and demolition debris, if feasible and cost-effective;
  - (7) To the extent the Work includes lawn and landscape maintenance, compost or mulch yard waste material at an approved site, if feasible and cost-effective;
- (b) If the Contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the Agreement as the claim becomes due, Owner may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of the Agreement;
- (c) If the Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the Agreement within 30 days after receiving payment from Owner, Contractor or its subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580 (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of

interest on the amount due is nine percent per annum. The amount of interest may not be waived;

- (d) If Contractor or its subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580;
- (e) Paying a claim in the manner authorized (b) through (d) above does not relieve the Contractor or the Contractor's surety from obligation with respect to an unpaid claim;
- (f) No person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases the employee shall be paid at least time and a half pay:
  - (1)
    - (i) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
    - (ii) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
  - (2) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540;
- (g) Contractor shall give notice in writing to employees who work on Work covered by the Agreement, either at the time of hire or before commencement of work on the Agreement, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work;
- (h) Contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services;
- (i) Contractor shall comply with ORS 656.017 unless exempt under ORS 656.126;
- (j) The withholding of retainage by Contractor and its subcontractors shall be in accordance with ORS 701.420;
- (k) In accordance with ORS 279C.560, unless Owner finds in writing that accepting a bond, security or other instrument poses an extraordinary risk that is not typically associated with the bond, security or other instrument, Owner will approve the Contractor's written request to deposit bonds, securities or other instruments with the Owner or in a custodial account or other account satisfactory to Owner with an approved bank or trust company, to be held instead of cash retainage for the benefit of Owner. In such event, Owner will reduce the cash retainage by an amount equal to the value of the bonds, securities and other instruments. Interest or earnings on the bonds, securities and other instruments shall accrue to the Contractor. Bonds, securities and other instruments deposited instead of cash retainage shall be assigned to or made payable to Owner and shall be of a kind approved by the Director of the Oregon Department of Administrative Services, including but not limited to: Bills, certificates, notes or bonds of the United States; Other obligations of the United States or agencies of the United States; Obligations of a corporation wholly owned by the federal government; Indebtedness of the Federal National Mortgage Association; General obligation bonds of the State of Oregon or a



political subdivision of the State of Oregon; or Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008. The Contractor shall execute and provide such documentation and instructions respecting the bonds, securities and other instruments as Owner may require to protect its interests. When Owner determines that all requirements for the protection of Owner's interest have been fulfilled, the bonds and securities deposited instead of cash retainage will be released to the Contractor. If Owner accepts a surety bond from Contractor in lieu of retainage, Contractor shall accept like bonds from its subcontractors or suppliers from which Contractor has retainage. Contractor shall then reduce the moneys Contractor holds as retainage in an amount equal to the value of the bond and pay the amount of the reduction to the subcontractor or supplier.

- (l) Owner shall make progress payments on the Agreement monthly as work progresses. Payments shall be based upon estimates of work completed that are approved by Owner. A progress payment is not considered acceptance or approval of any work or waiver of any defects therein. Owner shall pay to Contractor interest on the progress payment, not including retainage, due the contractor. The interest shall commence 30 days after receipt of the invoice from the Contractor or 15 days after the payment is approved by Owner, whichever is the earlier date. The rate of interest charged to Owner on the amount due shall equal three times the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve district that includes Oregon on the date that is 30 days after receipt of the invoice from Contractor or 15 days after the payment is approved by Owner, whichever is the earlier date, but the rate of interest may not exceed 30 percent. Interest shall be paid automatically when payments become overdue. Owner shall document, calculate and pay any interest due when payment is made on the principal. Interest payments shall accompany payment of net due on the Agreement. Owner will not require Contractor to petition, invoice, bill or wait additional days to receive interest due. When an invoice is filled out incorrectly, when there is any defect or impropriety in any submitted invoice or when there is a good faith dispute, Owner shall so notify Contractor within 15 days stating the reason or reasons the invoice is defective or improper or the reasons for the dispute. A defective or improper invoice, if corrected by Contractor within seven days of being notified by Owner, may not cause a payment to be made later than specified in this section unless interest is also paid. If requested in writing by a subcontractor, Contractor, within 10 days after receiving the request, shall send to the subcontractor a copy of that portion of any invoice, request for payment submitted to Owner or pay document provided by Owner to Contractor specifically related to any labor or materials supplied by the subcontractor. Payment of interest may be postponed when payment on the principal is delayed because of disagreement between Owner and Contractor.
- (m) Owner will reserve as retainage from all progress payment five percent (5%) of the payment. As work progresses, Owner may (but is not required) reduce the amount of the retainage and Owner may (but is not required) eliminate retainage on any remaining monthly contract payments after 50 percent of the Work under the Agreement is completed if, in Owner's opinion, such work is progressing satisfactorily. Elimination or reduction of retainage shall be allowed only upon written application by Contractor, and the application shall include written approval of Contractor's surety. However, when the contract work is 97.5 percent completed, Owner may, at the Owner's sole discretion and without application by Contractor, reduce the retained amount to 100 percent of the value of the Work remaining to be done. Upon receipt of a written application by Contractor, the Owner shall respond in writing within a reasonable time. The retainage held by Owner shall be included in and paid to Contractor as part of the final payment of the contract price. Owner shall pay to Contractor interest at the rate of 1.5 percent per month on the final payment due Contractor, interest to commence 30 days after the work under the Agreement has been completed and accepted and to run until the date when the final payment is tendered to Contractor. Contractor shall notify Owner in writing when the contractor considers the work complete and Owner shall, within 15 days after receiving

the written notice, either accept the work or notify Contractor of work yet to be performed on the Agreement. If Owner does not, within the time allowed, notify Contractor of work yet to be performed to fulfill contractual obligations, the interest provided by this subsection shall commence to run 30 days after the end of the 15-day period.

- (n) Contractor shall include in each subcontract for property or services the contractor enters into with a subcontractor, including a material supplier, for the purpose of performing a construction contract:
- (1) A payment clause that obligates Contractor to pay subcontractor for satisfactory performance under the subcontract within 10 days out of amounts the Owner pays to Contractor under the Agreement;
  - (2) A clause that requires Contractor to provide subcontractor with a standard form that the subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from Contractor;
  - (3) A clause that requires Contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. Contractor may change the form or the regular administrative procedures Contractor uses for processing payments if Contractor: (i) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and (ii) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
  - (4) An interest penalty clause that obligates Contractor, if the Contractor does not pay the subcontractor within 30 days after receiving payment from Owner, to pay subcontractor an interest penalty on amounts due in each payment Contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. Contractor or subcontractor is not obligated to pay an interest penalty if the only reason that Contractor or subcontractor did not make payment when payment was due is that Contractor or subcontractor did not receive payment from Owner or Contractor when payment was due. The interest penalty: (i) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and (ii) Is computed at the rate specified in ORS 279C.515 (2).
- (o) Contractor shall, in each of the Contractor's subcontracts, require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (n) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.
- (p) Contractor expressly agrees to be bound by and comply with prevailing rate of wage laws applicable to Contractor's Work in accordance with ORS 279C.800 et seq. The prevailing wage rates in effect when this Project was first advertised are hereby expressly incorporated into this Agreement by reference. Information on BOLI Prevailing Wage Rates may be obtained at the following site: [www.oregon.gov/BOLI/WHD/PWR/pwr\\_state.shtml](http://www.oregon.gov/BOLI/WHD/PWR/pwr_state.shtml) . A copy of these rates may be requested by calling the Bureau of Labor and Industries directly (Bureau of Labor and Industries – (971) 673-0838). Information on the Federal Davis-Bacon Act rates may be obtained at the following site: [www.oregon.gov/ODOT/HWY/SPECS/wages.shtml](http://www.oregon.gov/ODOT/HWY/SPECS/wages.shtml) . Contractor's workers must be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838 and 279C.840.

- (q) Contractor shall have a public works bond filed with the Construction Contractors Board and shall provide Owner with a copy of such bond before starting work unless Contractor is exempt under ORS 279C.836(4), (7), (8) or (9). Contractor shall include a similar provision in any subcontract.
- (r) Contractor shall keep the prevailing rates of wage for Project posted in a conspicuous and accessible place in or about the Project and, if it provides a health and welfare plan or pension plan or both, shall post a notice describing the plan, including information on how and where to make claims and where to obtain further information, in a conspicuous and accessible place in or about the Project.
- (s) Contractor shall furnish to Owner a weekly affidavit with supporting detailed exhibits in a form that complies with the certified statement requirements of ORS 279C.845, certifying wages paid and to whom during each proceeding weekly payroll period, for itself and all subcontractor who are required to submit such certified statements under ORS 279C.845. If Contractor has failed to timely submit a required certified statement, Owner, pursuant to ORS 279C.845(8), shall withhold twenty-five percent (25%) from any amount owed to Contractor until Contractor provides the required certified statement.

**§ 15.6.2** In the event of a dispute between the parties of this agreement that is resolved by arbitration or litigation, the prevailing party shall be entitled to recover its reasonable attorney fees, and arbitration and court costs.

**§ 15.6.3** Contractor hereby certifies it will comply with Oregon tax laws according to ORS 305.385.

**§ 15.6.4** Contractor hereby certifies that it will not discriminate as to relations with subcontractors. Contractor shall comply with all federal, state, and local laws and ordinances applicable to the services to be performed pursuant to this Agreement, including, without limitation, the provisions of ORS 279B.220, 279C.515, 279B.235, 279B.230 and 279B.270. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans With Disabilities Act of 1990 (Pub. L No. 101-336), ORS 659.425, and all regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation and other applicable statutes, rules and regulations.

**§ 15.6.5** Contractor hereby certifies it will comply with any other requirements imposed by federal, state or local law, regulation, rule or ordinance that is applicable to the contract.

## **ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 16.1** The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

**§ 16.1.1** The Agreement is this modified and executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

**§ 16.1.2** The General Conditions as modified and attached hereto are AIA Document A201–2007, General Conditions of the Contract for Construction. General Conditions of the Contract for Construction, AIA Document A201 contained in the Project Manual, if any, shall be null, void and of no effect.

**§ 16.1.3** The Supplementary and other Conditions of the Contract are those contained in the General Conditions of the Contract for Construction, AIA Document A201-2007 as modified, attached hereto and made a part hereof.

**§ 16.1.4** The Specifications:

Specifications shall be delineated by the initiating Change Order (CO 00) to this Agreement.

**§ 16.1.5** The Drawings:

Drawings shall be delineated by the initiating Change Order (CO 00) to this Agreement.

**§ 16.1.6** The Addenda, if any:

Addenda, if any, shall be delineated by the initiating Change Order (CO 00) to this Agreement.

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

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

- .1 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

None

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

Contract Documents for the Project shall be delineated by the initiating Change Order (CO 00) to this Agreement.

**ARTICLE 17 INSURANCE AND BONDS ASSUME THESE MATCH USUAL CITY REQUIREMENTS**

The Contractor shall purchase and maintain insurance and, if required by the Owner, provide bonds as set forth in Article 11 of AIA Document A201 2007 as modified.

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

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

« »« »

\_\_\_\_\_  
(Printed name and title)

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

« »« »

\_\_\_\_\_  
(Printed name and title)

# DRAFT AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction



### ADDITIONS AND DELETIONS:

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## General Conditions of the Contract for Construction

### for the following PROJECT:

(Name and location or address):

City of King City City Hall Rehabilitation and Remodeling Project  
15300 S.W. 116<sup>th</sup> Avenue  
King City, Oregon 97224

### THE OWNER:

(Name and address):

City of King City  
15300 S.W. 116<sup>th</sup> Avenue  
King City, Oregon 97224

### THE ARCHITECT:

(Name and address):

Scott Edwards Architecture  
2525 E Burnside St.  
Portland, OR 97214



#### ADDITIONS AND DELETIONS:

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### 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        |

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# DRAFT AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### INDEX

(Numbers and Topics in Bold are Section Headings)

#### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

#### Access to Work

**3.16, 6.2.1, 12.1**

Accident Prevention

4.2.3, 10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 4.3.8, 4.4.1, 8.3.1,

9.5.1, 10.2.5, 13.4.2, 13.7, 14.1

Addenda

1.1.1, 3.11

Additional Costs, Claims for

4.3.4, 4.3.5, 4.3.6, 6.1.1, 10.3

Additional Inspections and Testing

9.8.3, 12.2.1, 13.5

Additional Time, Claims for

4.3.4, 4.3.7, 8.3.2

#### ADMINISTRATION OF THE CONTRACT

3.1.3, **4**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13, 4.5.1

#### Allowances

**3.8**

All-risk Insurance

11.4.1.1

#### Applications for Payment

4.2.5, 7.3.8, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5,

9.10, 11.1.3, 14.2.4, 14.4.3

Approvals

2.4, 3.1.3, 3.5, 3.10.2, 3.12, 4.2.7, 9.3.2, 13.4.2, 13.5

#### Arbitration

4.3.3, 4.4, 4.5.1, 4.5.2, **4.6**, 8.3.1, 9.7.1, 11.4.9,

11.4.10

#### Architect

**4.1**

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4, 3.12.7, 4.2, 4.3.6, 4.4, 5.2, 6.3, 7.1.2, 7.3.6, 7.4,

9.2, 9.3.1, 9.4, 9.5, 9.8.3, 9.10.1, 9.10.3, 12.1, 12.2.1,

13.5.1, 13.5.2, 14.2.2, 14.2.4

Architect, Limitations of Authority and Responsibility

2.1.1, 3.3.3, 3.12.4, 3.12.8,

3.12.10, 4.1.2, 4.2.1, 4.2.2,

4.2.3, 4.2.6, 4.2.7, 4.2.10,

4.2.12, 4.2.13, 4.4, 5.2.1,

7.4, 9.4.2, 9.6.4, 9.6.6

Architect's Additional Services and Expenses

2.4, 11.4.1.1, 12.2.1,

13.5.2, 13.5.3, 14.2.4

#### Architect's

#### Administration of the Contract

3.1.3, **4.2**, 4.3.4, 4.4, 9.4, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5.1, 3.10.2,

4.2.7

Architect's Authority to

Reject Work

3.5.1, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.6

Architect's Decisions

4.2.6, 4.2.7, 4.2.11, 4.2.12,

4.2.13, 4.3.4, 4.4.1, 4.4.5,

4.4.6, 4.5, 6.3, 7.3.6, 7.3.8,

8.1.3, 8.3.1, 9.2, 9.4, 9.5.1,

9.8.4, 9.9.1, 13.5.2, 14.2.2,

14.2.4

Architect's Inspections

4.2.2, 4.2.9, 4.3.4, 9.4.2,

9.8.3, 9.9.2, 9.10.1, 13.5

Architect's Instructions

3.2.3, 3.3.1, 4.2.6, 4.2.7,

4.2.8, 7.4.1, 12.1, 13.5.2

Architect's Interpretations

4.2.11, 4.2.12, 4.3.6

Architect's Project

Representative

4.2.10

Architect's Relationship

with Contractor

1.1.2, 1.6, 3.1.3, 3.2.1,

3.2.2, 3.2.3, 3.3.1, 3.4.2,

3.5.1, 3.7.3, 3.10, 3.11,

3.12, 3.16, 3.18, 4.1.2,

4.1.3, 4.2, 4.3.4, 4.4.1,

4.4.7, 5.2, 6.2.2, 7, 8.3.1,

9.2, 9.3, 9.4, 9.5, 9.7, 9.8,



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9.9, 10.2.6, 10.3, 11.3, 11.4.7, 12, 13.4.2, 13.5

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.4.7

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

4.2.2, 4.2.5, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

## **Award of Subcontracts and Other Contracts for Portions of the Work**

### **5.2**

#### **Basic Definitions**

##### **1.1**

Bidding Requirements

1.1.1, 1.1.7, 5.2.1, 11.5.1

#### **Boiler and Machinery Insurance**

11.4.2

Bonds, Lien

9.10.2

Bonds, Performance, and Payment

7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

Building Permit

3.7.1

#### **Capitalization**

##### **1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

#### **Certificates for Payment**

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

Certificates of Inspection, Testing or Approval

13.5.4

Certificates of Insurance

9.10.2, 11.1.3

#### **Change Orders**

1.1.1, 2.4.1, 3.4.2, 3.8.2.3, 3.11.1, 3.12.8, 4.2.8, 4.3.4,

4.3.9, 5.2.3, 7.1, 7.2, 7.3, 8.3.1, 9.3.1.1, 9.10.3,

11.4.1.2, 11.4.4, 11.4.9, 12.1.2

Change Orders, Definition of

7.2.1

## **CHANGES IN THE WORK**

3.11, 4.2.8, 7, 8.3.1, 9.3.1.1, 11.4.9

Claim, Definition of

### **4.3.1**

#### **Claims and Disputes**

3.2.3, 4.3, 4.4, 4.5, 4.6, 6.1.1, 6.3, 7.3.8, 9.3.3, 9.10.4, 10.3.3

#### **Claims and Timely Assertion of Claims**

### **4.6.5**

#### **Claims for Additional Cost**

3.2.3, 4.3.4, 4.3.5, 4.3.6, 6.1.1, 7.3.8, 10.3.2

#### **Claims for Additional Time**

3.2.3, 4.3.4, 4.3.7, 6.1.1, 8.3.2, 10.3.2

#### **Claims for Concealed or Unknown Conditions**

### **4.3.4**

Claims for Damages

3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4

Claims Subject to Arbitration

4.4.1, 4.5.1, 4.6.1

#### **Cleaning Up**

### **3.15, 6.3**

#### **Commencement of Statutory Limitation Period**

### **13.7**

Commencement of the Work, Conditions Relating to 2.2.1, 3.2.1, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 4.3.5, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.4.1, 11.4.6, 11.5.1

Commencement of the Work, Definition of 8.1.2

#### **Communications Facilitating Contract Administration**

3.9.1, 4.2.4

Completion, Conditions Relating to

1.6.1, 3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

## **COMPLETION, PAYMENTS AND 9**

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 9.10.4.2, 12.2, 13.7

Compliance with Laws

1.6.1, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6.4, 4.6.6, 9.6.4, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3

Concealed or Unknown Conditions

4.3.4, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 1.1.7, 6.1.1, 6.1.4

Consent, Written

1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2

## **CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of 7.3.1

#### **Construction Change Directives**

1.1.1, 3.12.8, 4.2.8, 4.3.9, 7.1, 7.3, 9.3.1.1

Construction Schedules, Contractor's



1.4.1.2, 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3

## **Contingent Assignment of Subcontracts**

### **5.4, 14.2.2.2**

## **Continuing Contract Performance**

### **4.3.3**

Contract, Definition of

1.1.2

## **CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 11.4.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.4.6, 11.5.1

## **Contract Documents, The**

### **1.1, 1.2**

Contract Documents, Copies Furnished and Use of  
1.6, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

## **Contract Sum**

3.8, 4.3.4, 4.3.5, 4.4.5, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2,  
9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.4.1, 14.2.4, 14.3.2

Contract Sum, Definition of

9.1

Contract Time

4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1.3, 7.3, 7.4, 8.1.1, 8.2,  
8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2

Contract Time, Definition of

8.1.1

## **CONTRACTOR**

### **3**

Contractor, Definition of

3.1, 6.1.2

## **Contractor's Construction Schedules**

1.4.1.2, 3.10, 3.12.1, 3.12.2, 4.3.7.2, 6.1.3

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3,  
11.1.1, 11.4.7, 14.1, 14.2.1.1,

## **Contractor's Liability Insurance**

### **11.1**

Contractor's Relationship with Separate Contractors  
and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.4.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2,  
11.4.1.2, 11.4.7, 11.4.8

Contractor's Relationship with the Architect

1.1.2, 1.6, 3.1.3, 3.2.1, 3.2.2, 3.2.3, 3.3.1, 3.4.2, 3.5.1,  
3.7.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.1.3, 4.2,  
4.3.4, 4.4.1, 4.4.7, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4,  
9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 11.4.7, 12,  
13.4.2, 13.5

Contractor's Representations

1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the  
Work

3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1,  
10

Contractor's Review of Contract Documents

1.5.2, 3.2, 3.7.3

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

4.3.10, 14.1

Contractor's Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3,  
9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.5.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction  
Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3,  
6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14

Contractual Liability Insurance

11.1.1.8, 11.2, 11.3

Coordination and Correlation

1.2, 1.5.2, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.6, 2.2.5, 3.11

Copyrights

1.6, 3.17

Correction of Work

2.3, 2.4, 3.7.4, 4.2.1, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2,  
12.2, 13.7.1.3

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

### **1.2**

Cost, Definition of

7.3.6

Costs

2.4, 3.2.3, 3.7.4, 3.8.2, 3.15.2, 4.3, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.6, 7.3.7, 7.3.8, 9.10.2, 10.3.2, 10.5, 11.3,  
11.4, 12.1, 12.2.1, 12.2.4, 13.5, 14

## **Cutting and Patching**

6.2.5, 3.14

Damage to Construction of Owner or Separate  
Contractors

3.14.2, 6.2.4, 9.2.1.5, 10.2.1.2, 10.2.5, 10.6, 11.1,  
11.4, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.6, 11.4, 12.2.4

Damages, Claims for

3.2.3, 3.18, 4.3.10, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3,  
11.1.1, 11.4.5, 11.4.7, 14.1.3, 14.2.4

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of  
8.1.2

Date of Substantial Completion, Definition of  
8.1.3  
Day, Definition of  
8.1.4  
Decisions of the Architect  
4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.3.4, 4.4.1, 4.4.5,  
4.4.6, 4.5, 6.3, 7.3.6, 7.3.8, 8.1.3, 8.3.1, 9.2, 9.4,  
9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4

## **Decisions to Withhold Certification**

9.4.1, **9.5**, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance,  
Rejection and Correction of  
2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2,  
9.9.3, 9.10.4, 12.2.1, 13.7.1.3  
Defective Work, Definition of  
3.5.1  
Definitions  
1.1, 2.1.1, 3.1, 3.5.1, 3.12.1, 3.12.2, 3.12.3, 4.1.1,  
4.3.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 7.3.6, 8.1, 9.1, 9.8.1

## **Delays and Extensions of Time**

3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1,  
7.4.1, **8.3**, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2  
Disputes  
4.1.4, 4.3, 4.4, 4.5, 4.6, 6.3, 7.3.8

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

### **3.11**

Drawings, Definition of  
1.1.5  
Drawings and Specifications, Use and Ownership of  
1.1.1, 1.3, 2.2.5, 3.11, 5.3  
Effective Date of Insurance  
8.2.2, 11.1.2

## **Emergencies**

4.3.5, **10.6**, 14.1.1.2  
Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3,  
11.1.1, 11.4.7, 14.1, 14.2.1.1  
Equipment, Labor, Materials and  
1.1.3, 1.1.6, 3.4, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.2  
Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3, 3.4, 3.5, 3.7,  
3.10, 3.12, 3.14, 4.2.2, 4.2.3, 4.3.3, 6.2.2, 7.1.3, 7.3.4,  
8.2, 9.5, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3  
Extensions of Time  
3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3, 7.4.1,  
9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2

## **Failure of Payment**

4.3.6, 9.5.1.3, **9.7**, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6  
Faulty Work  
(See Defective or Nonconforming Work)

## **Final Completion and Final Payment**

4.2.1, 4.2.9, 4.3.2, 9.8.2, **9.10**, 11.1.2, 11.1.3, 11.4.1,  
11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3  
Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.5  
Fire and Extended Coverage Insurance  
11.4

## **GENERAL PROVISIONS**

### **1**

## **Governing Law**

### **13.1**

Guarantees (See Warranty)  
Hazardous Materials  
10.2.4, **10.3**, 10.5

Identification of Contract Documents

1.5.1

Identification of Subcontractors and Suppliers

5.2.1

## **Indemnification**

3.17, **3.18**, 9.10.2, 10.3.3, 10.5, 11.4.1.2, 11.4.7

## **Information and Services Required of the Owner**

2.1.2, **2.2**, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3,  
6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3,  
11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4

## **Injury or Damage to Person or Property**

### **4.3.8, 10.2, 10.6**

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.2,  
9.8.3, 9.9.2, 9.10.1, 12.2.1, 13.5

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.3, 3.3.1, 3.8.1, 4.2.8, 5.2.1, 7, 12, 8.2.2, 13.5.2

Insurance

3.18.1, 6.1.1, 7.3.6, 8.2.1, 9.3.2, 9.8.4, 9.9.1, 9.10.2,  
9.10.5, 11

## **Insurance, Boiler and Machinery**

11.4.2

## **Insurance, Contractor's Liability**

11.1

Insurance, Effective Date of

8.2.2, 11.1.2

## **Insurance, Loss of Use**

11.4.3

## **Insurance, Owner's Liability**

11.2

## **Insurance, Project Management**

## **Protective Liability**

11.3

## **Insurance, Property**

10.2.5, **11.4**

Insurance, Stored Materials

9.3.2, 11.4.1.4

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy  
9.9.1, 11.4.1.5



Insurance Companies, Settlement with  
11.4.10

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

## **Interest**

### **13.6**

#### **Interpretation**

1.2.3, **1.4**, 4.1.1, 4.3.1, 5.1, 6.1.2, 8.1.4

Interpretations, Written

4.2.11, 4.2.12, 4.3.6

Joinder and Consolidation of Claims Required  
4.6.4

#### **Judgment on Final Award**

### **4.6.6**

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, 3.5.1, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6,  
9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1,  
13.5.2, 13.6, 14

Liens

2.1.2, 4.4.8, 8.2.2, 9.3.3, 9.10

#### **Limitation on Consolidation or Joinder**

### **4.6.4**

Limitations, Statutes of

4.6.3, 12.2.6, 13.7

Limitations of Liability

2.3, 3.2.1, 3.5.1, 3.7.3, 3.12.8, 3.12.10, 3.17, 3.18,  
4.2.6, 4.2.7, 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.10.4,  
10.3.3, 10.2.5, 11.1.2, 11.2.1, 11.4.7, 12.2.5, 13.4.2

Limitations of Time

2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1,  
4.2.7, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4,  
8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9,  
9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5,  
13.7, 14

#### **Loss of Use Insurance**

### **11.4.3**

Material Suppliers

1.6, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5

Materials, Hazardous

10.2.4, 10.3, 10.5

Materials, Labor, Equipment and

1.1.3, 1.1.6, 1.6.1, 3.4, 3.5.1, 3.8.2, 3.8.23, 3.12, 3.13,  
3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.6, 9.3.2, 9.3.3,  
9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.2

Means, Methods, Techniques, Sequences and  
Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

4.4.8

## **Mediation**

4.4.1, 4.4.5, 4.4.6, 4.4.8, **4.5**, 4.6.1, 4.6.2, 8.3.1, 10.5

## **Minor Changes in the Work**

1.1.1, 3.12.8, 4.2.8, 4.3.6, 7.1, **7.4**

## **MISCELLANEOUS PROVISIONS**

### **13**

Modifications, Definition of

1.1.1

Modifications to the Contract

1.1.1, 1.1.2, 3.7.3, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1,  
9.7, 10.3.2, 11.4.1

#### **Mutual Responsibility**

### **6.2**

#### **Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.3, 2.4, 3.5.1, 4.2.6, 6.2.5, 9.5.1, 9.8.2, 9.9.3, 9.10.4,  
12.2.1, 13.7.1.3

Notice

2.2.1, 2.3, 2.4, 3.2.3, 3.3.1, 3.7.2, 3.7.4, 3.12.9, 4.3,  
4.4.8, 4.6.5, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 11.1.3,  
11.4.6, 12.2.2, 12.2.4, 13.3, 13.5.1, 13.5.2, 14.1, 14.2

#### **Notice, Written**

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5,  
5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6,  
12.2.2, 12.2.4, **13.3**, 14

Notice of Testing and Inspections

13.5.1, 13.5.2

Notice to Proceed

8.2.2

#### **Notices, Permits, Fees and**

2.2.2, **3.7**, 3.13, 7.3.6.4, 10.2.2

Observations, Contractor's

1.5.2, 3.2, 3.7.3, 4.3.4

Occupancy

2.2.2, 9.6.6, 9.8, 11.4.1.5

Orders, Written

1.1.1, 2.3, 3.9, 4.3.6, 7, 8.2.2, 11.4.9, 12.1, 12.2,  
13.5.2, 14.3.1

## **OWNER**

### **2**

Owner, Definition of

2.1

#### **Owner, Information and Services**

#### **Required of the**

2.1.2, **2.2**, 3.2.1, 3.12.4, 3.12.10, 4.2.7, 4.3.3, 6.1.3,  
6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3,  
11.2, 11.4, 13.5.1, 13.5.2, 14.1.1.4, 14.1.4

Owner's Authority

1.6, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2,  
4.1.3, 4.2.4, 4.2.9, 4.3.6, 4.4.7, 5.2.1, 5.2.4, 5.4.1,  
6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1,  
9.9.1, 9.10.2, 10.3.2, 11.1.3, 11.3.1, 11.4.3, 11.4.10,  
12.2.2, 12.3.1, 13.2.2, 14.3, 14.4

Owner's Financial Capability

2.2.1, 13.2.2, 14.1.1.5

## **Owner's Liability Insurance**

### **11.2**

Owner's Loss of Use Insurance

11.4.3

Owner's Relationship with Subcontractors

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

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

### **2.4, 12.2.4, 14.2.2.2**

## **Owner's Right to Clean Up**

### **6.3**

## **Owner's Right to Perform Construction and to Award Separate Contracts**

### **6.1**

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

### **2.3**

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2

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

1.1.1, 1.6, 2.2.5, 3.2.1, 3.11.1, 3.17.1, 4.2.12, 5.3

## **Partial Occupancy or Use**

9.6.6, 9.9, 11.4.1.5

## **Patching, Cutting and**

### **3.14, 6.2.5**

Patents

3.17

## **Payment, Applications for**

4.2.5, 7.3.8, 9.2, 9.3, 9.4, 9.5.1, 9.6.3, 9.7.1, 9.8.5, 9.10.1, 9.10.3, 9.10.5, 11.1.3, 14.2.4, 14.4.3

## **Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7.1, 9.10.1, 9.10.3, 13.7, 14.1.1.3, 14.2.4

## **Payment, Failure of**

4.3.6, 9.5.1.3, 9.7, 9.10.2, 14.1.1.3, 14.2.1.2, 13.6

Payment, Final

4.2.1, 4.2.9, 4.3.2, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.3.1, 13.7, 14.2.4, 14.4.3

## **Payment Bond, Performance Bond and**

7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

Payments, Progress

4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3

## **PAYMENTS AND COMPLETION**

### **9**

Payments to Subcontractors

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 11.4.8, 14.2.1.2

PCB

10.3.1

## **Performance Bond and Payment Bond**

7.3.6.4, 9.6.7, 9.10.3, 11.4.9, 11.5

## **Permits, Fees and Notices**

2.2.2, 3.7, 3.13, 7.3.6.4, 10.2.2

## **PERSONS AND PROPERTY,**

## **PROTECTION OF**

### **10**

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

## **Product Data and Samples, Shop**

## **Drawings**

3.11, 3.12, 4.2.7

## **Progress and Completion**

4.2.2, 4.3.3, 8.2, 9.8, 9.9.1, 14.1.4

## **Progress Payments**

4.3.3, 9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3

Project, Definition of the

1.1.4

## **Project Management Protective Liability Insurance**

### **11.3**

Project Manual, Definition of the

1.1.7

Project Manuals

2.2.5

Project Representatives

4.2.10

## **Property Insurance**

10.2.5, 11.4

## **PROTECTION OF PERSONS AND PROPERTY**

### **10**

Regulations and Laws

1.6, 3.2.2, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 4.4.8, 4.6, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14

Rejection of Work

3.5.1, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

1.5.2, 3.5.1, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.10, 5.1.1, 5.1.2, 13.2.1

## **Resolution of Claims and Disputes**

### **4.4, 4.5, 4.6**

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 4.3.8, 5.3.1, 6.1.3, 6.2, 6.3, 9.5.1, 10



Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

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

1.5.2, **3.2**, 3.7.3, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

## **Rights and Remedies**

1.1.2, 2.3, 2.4, 3.5.1, 3.15.2, 4.2.6, 4.3.4, 4.5, 4.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, **13.4**, 14

## **Royalties, Patents and Copyrights**

**3.17**

Rules and Notices for Arbitration

4.6.2

## **Safety of Persons and Property**

**10.2, 10.6**

## **Safety Precautions and Programs**

3.3.1, 4.2.2, 4.2.7, 5.3.1, **10.1**, 10.2, 10.6

Samples, Definition of

3.12.3

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

3.11, **3.12**, 4.2.7

## **Samples at the Site, Documents and**

**3.11**

## **Schedule of Values**

**9.2, 9.3.1**

Schedules,

1.4.1.2, 3.10, 3.12.2, 4.3.7.2, 6.1.3

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 4.6.4, 6, 8.3.1, 11.4.7, 12.1.2, 12.2.5

Shop Drawings, Definition of

3.12.1

## **Shop Drawings, Product Data and**

## **Samples**

3.11, **3.12**, 4.2.7

## **Site, Use of**

**3.13, 6.1.1, 6.2.1**

Site Inspections

1.2.2, 3.2.1, 3.3.3, 3.7.1, 4.2, 4.3.4, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

4.2.2, 4.2.9, 4.3.4, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of the

1.1.6

## **Specifications, The**

1.1.1, **1.1.6**, 1.1.7, 1.2.2, 1.6, 3.11, 3.12.10, 3.17

Statute of Limitations

4.6.3, 12.2.6, 13.7

Stopping the Work

2.3, 4.3.6, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4, 11.4.1.4

Subcontractor, Definition of

5.1.1

## **SUBCONTRACTORS**

**5**

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

## **Subcontractual Relations**

**5.3, 5.4, 9.3.1.2, 9.6, 9.10 10.2.1, 11.4.7, 11.4.8, 14.1, 14.2.1, 14.3.2**

Submittals

1.6, 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.6, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

## **Subrogation, Waivers of**

6.1.1, 11.4.5, **11.4.7**

## **Substantial Completion**

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 9.10.4.2, 12.2, 13.7

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5.1, 7.3.7

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

4.3.4

## **Successors and Assigns**

**13.2**

## **Superintendent**

**3.9, 10.2.6**

## **Supervision and Construction Procedures**

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 4.3.3, 6.1.3, 6.2.4, 7.1.3, 7.3.6, 8.2, 8.3.1, 9.4.2, 10, 12, 14

Surety

4.4.7, 5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

## **Suspension by the Owner for**

## **Convenience**

**14.4**

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

4.3.6, 5.4.1.1, 11.4.9, 14

## **Taxes**

**3.6, 3.8.2.1, 7.3.6.4**

## **Termination by the Contractor**

4.3.10, 14.1

## **Termination by the Owner for Cause**

4.3.10, 5.4.1.1, 14.2

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

**14**

## **Tests and Inspections**

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2,

9.10.1, 10.3.2, 11.4.1.1, 12.2.1, 13.5

## **TIME**

**8**

## **Time, Delays and Extensions of**

3.2.3, 4.3.1, 4.3.4, 4.3.7, 4.4.5, 5.2.3, 7.2.1, 7.3.1,

7.4.1, 8.3, 9.5.1, 9.7.1, 10.3.2, 10.6.1, 14.3.2

Time Limits

2.1.2, 2.2, 2.4, 3.2.1, 3.7.3, 3.10, 3.11, 3.12.5, 3.15.1,

4.2, 4.3, 4.4, 4.5, 4.6, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4,

8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9,

9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5,

13.7, 14

## **Time Limits on Claims**

**4.3.2, 4.3.4, 4.3.8, 4.4, 4.5, 4.6**

Title to Work

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

**12**

## **Uncovering of Work**

**12.1**

Unforeseen Conditions

4.3.4, 8.3.1, 10.3

Unit Prices

4.3.9, 7.3.3.2

Use of Documents

1.1.1, 1.6, 2.2.5, 3.12.6, 5.3

## **Use of Site**

**3.13, 6.1.1, 6.2.1**

## **Values, Schedule of**

**9.2, 9.3.1**

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

4.3.10, 9.10.5, 11.4.7, 13.4.2

Waiver of Claims by the Owner

4.3.10, 9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7,

12.2.2.1, 13.4.2, 14.2.4

## **Waiver of Consequential Damages**

**4.3.10, 14.2.4**

Waiver of Liens

9.10.2, 9.10.4

## **Waivers of Subrogation**

6.1.1, 11.4.5, 11.4.7

## **Warranty**

**3.5, 4.2.9, 4.3.5.3, 9.3.3, 9.8.4, 9.9.1, 9.10.4,**

**12.2.2, 13.7.1.3**

Weather Delays

4.3.7.2

Work, Definition of

1.1.3

Written Consent

1.6, 3.4.2, 3.12.8, 3.14.2, 4.1.2, 4.3.4, 4.6.4, 9.3.2,

9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2

Written Interpretations

4.2.11, 4.2.12, 4.3.6

## **Written Notice**

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 4.3, 4.4.8, 4.6.5,

5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6,

12.2.2, 12.2.4, 13.3, 14

Written Orders

1.1.1, 2.3, 3.9, 4.3.6, 7, 8.2.2, 11.4.9, 12.1, 12.2,

13.5.2, 14.3.1





# DRAFT AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 BASIC DEFINITIONS

##### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement, Instructions to Bidders, sample forms, or portions of Addenda relating to bidding requirements).

##### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor (except as provided in Paragraph 5.4 hereof or otherwise required by law), (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations of Contractor under the Contract intended to facilitate performance of the Architect's duties.

##### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. If the Contractor is aware that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, rules or regulations, the Contractor shall promptly notify the Architect in writing and necessary changes shall be accomplished by appropriate modification.

##### § 1.1.4 THE PROJECT

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



#### 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.

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### § 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

### § 1.1.8 ADDENDUM

A change to the Contract Documents issued by the Architect with Owner's approval prior to the execution of the Agreement and specifically listed in the Agreement.

### § 1.1.9 ALTERNATE

A variation in Contract requirements on which a separate price is to be received as a part of the bid. If the Alternate is accepted in writing by the Owner, the variation is then a part of the Contract and the amount of money quoted to be added or deducted from the Base Bid is taken into account in determining the Contract Sum.

### § 1.1.10 BASE BID

The bid before any Alternates are considered.

### § 1.1.11 FINAL COMPLETION

The date the Contract has been fully performed, all the Work has been completed and a final Certificate for Payment approved by the Owner has been issued by the Architect.

### § 1.1.12 NOT IN CONTRACT (N.I.C.)

Work not included in the Contract.

### § 1.1.13 OR APPROVED EQUAL and EQUAL TO

Shall mean products by manufacturers other than those specified in the Contract Documents which the Contractor may submit for substitution and prove to be equal to those specified in the Contract Documents and which may be incorporated in the Work after review and acceptance by the Architect and acceptance by the Owner.

### § 1.1.14 INDICATED and SHOWN

Shall mean as detailed, scheduled, or called for in the Contract Documents.

## § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

**§ 1.2.4** In the event of conflicts or discrepancies among the Contract Documents, interpretations by the Architect will be based on the following priorities in descending order:

1. The Agreement.
2. Change Orders.
3. Addenda, with those of a later date having precedence over those of an earlier date.
4. The Supplementary General Conditions, if any.
5. The General Conditions of the Contract for Construction.
6. The Drawings and Specifications or within either Document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with the Owner's or Architect's interpretation.



### § 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 American Institute of Architects.

### § 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.

### § 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.5.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

### § 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 the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the 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 the Architect or the Architect's consultants. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. 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 copyrights or other reserved rights. This section shall not affect the ownership or rights to the drawings, specifications or other instruments of service between the Owner and Architect.

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Owner has designated a Project Manager, Shields Oblatz Johnsen, Inc., hereinafter referred to as "Owner's Project Manager", to act as its authorized representative and agent in the administration of the Contract Documents. Many of the responsibilities of the Owner as provided in the Contract Documents may be carried out by the Owner's Project Manager unless otherwise provided in the Contract Documents, or unless otherwise directed by the Owner in writing.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Owner will have no obligation to forward to Contractor within the applicable time period as may be required by State law, copies of Notices of Right to a Lien or any similar instrument received by Owner from any party purporting to provide services and/or materials to the Project. Owner nonetheless will make a good faith effort to forward to Contractor copies of Notices of Right to a Lien received by Owner.

## **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for the plan check and building permit fees, system development charges, necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.2.2** The 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. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

**§ 2.2.4** Unless otherwise provided in the Contract Documents, upon written approval of the Owner the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

## **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

**§ 2.3.1** If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. This right shall be in addition to, and not in restriction of, the Owner's rights under Subparagraph 12.2.

**§ 2.3.2** If, after consultation with the Architect, suspension of the Work is warranted by reason of unforeseen conditions that may adversely affect the quality of the Work if such Work were continued, the Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time shall be adjusted accordingly, and the Contract Sum shall be adjusted to the extent, if any, that additional costs are incurred by reason of such suspension. If the Contractor, in its reasonable judgment, believes that a suspension is warranted by reason of unforeseen circumstances that may adversely affect the quality of the Work if the Work were continued, the Contractor shall immediately notify the Owner and the Architect of such belief and describe with particularity the reasons therefore.

## **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

**§ 2.4.1** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

**§ 3.1.3** The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the 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, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, 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. The Contractor shall confirm the location of each utility before connection to the utility lines by contacting the service provider. The Contractor shall exercise care in executing subsurface work in proximity of known subsurface utilities, improvements and easements. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Owner and Architect may require.

**§ 3.2.2** Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The 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 the Contractor shall be reported promptly to the Owner and Architect.

**§ 3.2.3** If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Owner and Architect.

## **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

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

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

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

**§ 3.3.4** If any of the Work is required to be inspected or approved by any public authority or independent inspection laboratory, the Contractor shall coordinate such inspection or approval.

**§ 3.3.5** The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel necessary for the proper and diligent prosecution of the Work.

### **§ 3.4 LABOR AND MATERIALS**

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

**§ 3.4.2** The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

### **§ 3.5 WARRANTY**

**§ 3.5.1** The Contractor warrants to the Owner and Architect 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 not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** Effective upon the written demand of the Owner or upon the insolvency, bankruptcy, dissolution or other incapacity of the Contractor, the Contractor assigns to the Owner all Subcontractors' warranties in materials and equipment and other portions or components of the Work.

### **§ 3.6 TAXES**

**§ 3.6.1** The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the 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, the Contractor shall secure and the Owner shall pay for the building permit. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the mechanical (including HVAC and plumbing), electrical and similar "trade permits", design-build (deferred submittal) permits, and other permits and governmental fees, licenses and inspections (including sidewalk or right-of-way rental, and sewer and water line connection costs, but not system development charges) 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. The Contractor shall coordinate inspections, and occupancy and use permits.

**§ 3.7.2** The 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** It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

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

### **§ 3.8 ALLOWANCES**

**§ 3.8.1** The 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 the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

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

- .1** allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3** whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

### **§ 3.9 SUPERINTENDENT**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare in consultation with the Owner and Architect and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

### **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

**§ 3.11.1** The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work. These documents, when delivered to the Architect, shall be accompanied by a transmittal listing the documents, signed and dated by the Contractor, and including the following statement: "The Contractor certifies that these record documents, to the best of the Contractor's knowledge, show complete and exact "as-built" conditions".



### **§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**

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

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

**§ 3.12.3** Samples are physical examples 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 the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

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

**§ 3.12.6** By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the 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** The Contractor shall perform no portion of the Work at any time for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals for such portion of the Work, in accordance with the provisions of Division 1 of the Specifications, "General Requirements", until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

**§ 3.12.10** The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings

and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the compliance with governing codes, adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

**§ 3.12.11** Shop Drawings for architectural, structural, plumbing, mechanical and electrical elements of the Work shall be submitted for review of the Architect. Submittal shall be in accordance with procedures designated in the specifications, under Submittal Procedures, and the various technical sections of the Specifications.

**§ 3.12.12** Contractor shall submit to the Owner one copy of all submissions made to and approved by the Architect pursuant to this Paragraph 3.12.

### **§ 3.13 USE OF SITE**

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

### **§ 3.15 CLEANING UP**

**§ 3.15.1** The 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, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials. The Contractor shall maintain streets, sidewalks and other public areas around the Project site in a clean and safe condition on a daily basis. The Contractor shall remove all spillage and tracking arising from the public use and performance of the Work from such areas and shall establish a regular maintenance program of sweeping, vacuuming or hosing to minimize the accumulation of dirt and dust upon such areas.

In addition to general broom cleaning, the Contractor shall perform minimum final cleaning for all trades at completion of the Work in accordance with the Specifications and the following:

- .1 remove temporary protections;
- .2 remove marks, stains, fingerprints and other soil or dirt from painted, decorated and natural-finished woodwork and other Work;
- .3 remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
- .4 clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition;
- .5 clean aluminum in accordance with recommendations of the manufacturer;
- .6 clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to a sheen; and

.7 Remove spots and other foreign material from carpeted areas using cleaning methods in accordance with the carpet manufacturer's recommendations, and vacuum all areas, and mechanically clean any areas which have been subjected to high traffic during completion of construction activities.

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

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

### § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, reimburse and hold harmless the Owner, Owner's Project Manager, and the executives, managers, directors, officers, attorneys, designees, agents, employees and volunteers of either of them (collectively, "Indemnitees") from, for and against suits, claims, damages, losses, injuries, liabilities, costs and expenses, of any and all kinds (collectively, "Damages") including but not limited to (1) attorneys' fees and expert witness' fees, and costs and disbursements; (2) economic and non-economic Damages; and (3) Damages relating to personal injury, sickness, disease or death or injury to real or personal property (including the Work itself and loss of use of the Work), arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions or by breach of contract or other failure of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such Damage is caused in part by a party indemnified hereunder. The obligations of this Section (i) shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18 and (ii) shall not be limited to Damages arising from third party claims. Such indemnification shall also cover claims brought against the City under state or federal workers' compensation laws. If any aspect of this indemnity shall be found to be illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this indemnification.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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

## ARTICLE 4 ADMINISTRATION OF THE CONTRACT

### § 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.



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

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

## § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Owner and Architect will jointly provide administration of the Contract as described in the Contract Documents. The Owner has designated a Project Manager (Owner's Project Manager) to be the Owner's representative. The Architect generally shall assist the Owner and Owner's Project Manager in fulfilling the responsibility to administer the Contract. The Architect will be a representative of the Owner during construction and until final payment. If so requested by the Owner, the Owner's Project Manager, and/or Owner's lender, if any, the Architect shall interpret and advise the Owner and Owner's Project Manager with respect to matters set forth in the Drawings and Specifications. The Architect will have the authority to act on behalf of the 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 The Architect, as a representative of the Owner, will periodically visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Owner and the Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner and Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration: With the exception of routine communications, the Architect and the Contractor shall endeavor to communicate with each other through the Owner's Project Manager. Routine communications between the Architect and Contractor may occur, provided the Owner's Project Manager is apprised through copies of appropriate correspondence, meeting minutes or other records of such communications. All instructions and other communications to the Contractor prepared by the Architect will be issued through the Owner's Project Manager. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with subcontractors and material suppliers of the Contractor shall be through the Contractor. Communications by and with Owner's separate contractors shall be through the Owner's Project Manager.

§ 4.2.5 Based on the Architect's observations and the representations by the Contractor made in the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue to the Owner Certificates for Payment in such amounts as provided in Paragraph 9.4.

§ 4.2.6 The Architect will have authority and responsibility to advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority and responsibility to advise the Owner to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and recommend to the Owner approval or other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** In each instance, upon request of the Owner, the Architect will prepare documentation for Change Orders and Construction Change Directives for issuance by the Owner's Project Manager, and may authorize, with the Owner's prior approval, minor changes in the Work as provided in Section 7.4.

**§ 4.2.9** Upon request of the Owner, the Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive, review and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor and; following an inspection by the Owner, Contractor and Architect arranged by the Architect, and approval of the finished Work by the Owner; will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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

**§ 4.2.11** Subject to Paragraph 4.3 in respect to Claims, the Architect will, in the first instance, interpret matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them. Upon receipt of such request from either the Owner or Contractor, the Architect shall promptly notify the non-requesting party in writing of the details of such request. The Architect's response to such requests will be made (after notifying the non-requesting party as provided in the preceding sentence) with reasonable promptness, and in no event later than five business days after the date on which such request is made.

**§ 4.2.12** Interpretations of the Architect will be consistent with the language and intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings, as required by the Owner. When making such initial interpretations, the Architect will endeavor to secure faithful performance by both Owner and Contractor, and will not show partiality to either.

**4.2.13** In reviewing the quality and progress of the Work and submittals received from the Contractor, the Architect is acting solely for the convenience of the Owner in following the Work. Neither the Owner nor Architect has any responsibility to assist the Contractor in the supervision or performance of the Work. Unless otherwise expressly agreed in writing by Owner in each instance, no action, approval, or omission to act or failure to advise the Contractor as to any matter by the Owner or Architect shall in any way relieve the Contractor from its responsibility for the performance of the work in strict accordance with the Contract Documents.

## **§ 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 the 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. Claims may, upon request of both the Contractor and the Owner, be referred initially to the Architect for action as provided in Paragraph 4.4.

**§ 4.3.2 Time Limits on Claims:** Except as provided in Subparagraph 4.3.4, claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes, or reasonably should have recognized the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice containing a description thereof to the other party. Failure to deliver the claim or notice within the time limits specified above shall completely foreclose consideration of and adjustment in the Contract Sum and/or the Contract Time and all rights and remedies arising therefrom.

**§ 4.3.3 Continuing Contract Performance.** Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make 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 (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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

**§ 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. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. No such claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

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

**§ 4.3.7 Claims for Additional Time**

**§ 4.3.7.1** If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. Said notice shall include detailed documentation of the cause or event resulting in the need for an extension of time, and a schedule analysis, based upon the approved Contractor's construction schedule and periodic updates thereof, showing the impact of the cause or event on the critical path of the approved Contractor's construction schedule. No such claim shall be valid unless so made. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

**§ 4.3.7.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be valid only (i) to the extent documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction and (ii) if Contractor submits the notice required by Section 4.3.2 within 21 days after occurrence of the event giving rise

to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

#### **§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES**

**§ 4.4.1 Recommendation of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, may be referred initially to the Architect for a recommendation. An initial recommendation by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no recommendation having been rendered by the Architect. The Architect will not make recommendations concerning disputes between the Contractor and persons or entities other than the Owner.

**§ 4.4.2** The Architect (if the matter is referred to the Architect for an initial recommendation) will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) recommend rejection of the Claim in whole or in part, (3) recommend approval of the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to make a recommendation to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to make a recommendation to resolve the Claim.

**§ 4.4.3** In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a recommendation. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 4.4.4** If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either make a recommendation to reject or approve the Claim in whole or in part.

**§ 4.4.5** The Architect will make a recommendation to approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any proposed change in the Contract Sum or Contract

Time or both. The recommendation for approval or rejection of a Claim by the Architect shall be final but subject to mediation and arbitration.

**§ 4.4.6** When a written recommendation of the Architect states that (1) the recommendation is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such recommendation must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect makes a recommendation after arbitration proceedings have been initiated, such recommendation may be entered as evidence, but shall not supersede arbitration proceedings unless the recommendation is acceptable to all parties concerned.

**§ 4.4.7** Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 4.4.8** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to receiving a recommendation for resolution of the Claim by the Architect, by mediation or by arbitration.

#### **§ 4.5 MEDIATION**

**§ 4.5.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial recommendation by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

**§ 4.5.2** The parties shall endeavor to resolve their Claims by mediation with a mediator jointly agreed to by the parties. Request for mediation shall be filed in writing with the other party to the Contract. 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 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. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

#### **§ 4.6 ARBITRATION**

**§ 4.6.1** Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, may, after recommendation by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. The arbitration shall be held in the State of Oregon, unless another location is mutually agreed upon. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

**§ 4.6.2** Claims not resolved by mediation may be decided by arbitration and, if mutually agreed by both parties, be in accordance with arbitration rules currently in effect. The request for arbitration shall be filed in writing with the other party to the Contract and shall be administered by JAMS in accordance with rules in effect on the date of this Agreement, and a copy shall be filed with the Architect. The arbitration 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 another involved party will not consent to arbitration, Owner, in its sole discretion, has the option to elect consolidated litigation in court to resolve the dispute. Each party expressly waives its right to a jury. The agreements contained in this paragraph shall be specifically enforceable in accordance with applicable law in any court having jurisdiction. Any award rendered by an arbitrator shall be final (except as set forth below), and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. The Arbitrator shall be required to issue a decision in conformance with Oregon law and to follow the Oregon rules on evidence. Any party may appeal the award to the Circuit Court for where the Project is located as not being in conformance with Oregon law. If the Circuit Court finds the award to not be in accordance with



Oregon law, the Court shall vacate the award and remand the matter to the arbitrator for entry of an award in conformance with Oregon law. It is understood that the purpose of this paragraph is to allow Owner to determine the best means of achieving a single consolidated proceeding that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (1) a consolidated arbitration of all significant parties, if possible; or (2) alternatively, at the Owner's discretion, consolidated litigation in court of all significant parties, if possible.

**§ 4.6.3** A request for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases 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 such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

**§ 4.6.4** Claims and Timely Assertion of Claims. The party filing a notice of request for arbitration must assert in the request all Claims then known to that party on which arbitration is permitted to be requested.

**§ 4.6.5** Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final (except as set forth below), and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The Arbitrator shall be required to issue a decision in conformance with Oregon law and to follow the Oregon rules on evidence. Any party may appeal the award to the Circuit Court for where the Project is located as not being in conformance with Oregon law. If the Circuit Court finds the award to not be in accordance with Oregon law, the Court shall vacate the award and remand the matter to the arbitrator for entry of an award in conformance with Oregon law.

#### **§ 4.7 ATTORNEYS' FEES**

**§ 4.7.1** Should any arbitration, suit or action be commenced in connection with any claims, disputes or other matters in question arising out of or relating to the Contract or the breach thereof, to obtain a construction of or enforce any provision of the Contract or rescind the Contract, or to enforce or collect any award obtained during arbitration or any judgment or decree of any court related to the Contract, the prevailing party shall be entitled to recover its attorneys' and expert witnesses' fees and related costs, disbursements and expenses incurred prior to and during the arbitration or trial, on review for appeal, on appeal, on review for reconsideration or on reconsideration, regardless of when such reconsideration should be sought or granted, as the arbitrator(s) or court shall adjudge reasonable.

### **ARTICLE 5 SUBCONTRACTORS**

#### **§ 5.1 DEFINITIONS**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor or Subcontractor to perform a portion of the Work at the site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor, but does include subcontractors, suppliers and consultants of the Contractor at all tiers.

**§ 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 or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

**§ 5.2.1** The Contractor shall procure a minimum of three (3) competitive bids for each subcontract for which the cost of the subcontracted work will exceed \$50,000. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) that bid on each subcontract, the amount of the bids, and the Contractor's recommendation of the person or entity proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

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

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

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

**§ 5.2.5** It is understood that in the event of a conflict between Owner and Architect regarding the selection of subcontractors, the Owner's decision in selection of subcontractors shall govern.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

**§ 5.3.1** By appropriate written agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

**§ 5.3.2** Each subcontract shall, where the context so requires, contain provisions that:

- .1 require that such Work be performed in accordance with the requirements of the Contract Documents;
- .2 waive all rights the Contractor or Owner may have against one another or that the Subcontractor may have against the Contractor or Owner for damages caused by fire or other perils covered by the insurance described in Paragraph 11.4;
- .3 require each major Subcontractor ("major" meaning a contract in the amount of \$20,000 or greater) carry and maintain insurance coverage in accordance with the Contract Documents which shall be endorsed as primary insurance and non-contributory with the Owner's insurance naming the Owner, Owner's Project Manager, and the Architect, and without limitation, their respective partners, officers, commissioners, directors, agents and employees as additional insureds, and to file certificates of such coverage with the Contractor;
- .4 require the Subcontractor to submit certificates and waivers of liens for work completed by it and by its Sub-subcontractors as a condition to the disbursement of the progress payment next due and owing;

- .5 require submission to Contractor or Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Contractor is a party;
- .6 report, so far as practicable, unit prices and any other feasible formula for use in the determination of costs of changes in the Work;
- .7 require each Subcontractor to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein;
- .8 require that each Subcontractor continue to perform under its subcontract in the event the Contract is terminated and the Owner shall take an assignment of said subcontract and request such Subcontractor to continue such performance; and
- .9 require each Subcontractor to remove all debris created by its activities.

**§ 5.3.3** Contractor agrees to notify Owner if Contractor enters into any subcontract, contract, agreement, purchase order or other arrangement (“Arrangement”) with an Affiliated Entity. The term “Affiliated Entity” means any entity related to or affiliated with the Contractor or with respect to which the Contractor has a direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Contractor; any holder of more than 10% of the issued and outstanding shares of, or the holder of any interest in, the Contractor; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Contractor or any entity owned by the Contractor as a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder.

#### **§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS**

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 or stoppage of the Work by Owner pursuant to Subparagraph 2.3.1, and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under these or similar Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3. The Contractor acknowledges the Owner's option and/or intent to cause the installation of tenant finish and other work to be performed by others and that a portion of such work may take place before Substantial Completion by the Contractor. The Contractor shall afford such parties ample access to the site and all areas of the Work as may be reasonably necessary for the performance of such work including, without limitation, storage of materials and equipment, vertical transportation, and connection to utilities and services.

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

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with



other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule as requested by the Owner. If the Contractor claims additional cost is involved because of any such revision to the Contractor's Construction Schedule, the Contractor shall make such Claim as provided elsewhere in the Contract Documents. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

## **§ 6.2 MUTUAL RESPONSIBILITY**

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

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results, or would render it incompatible with the Contractor's Work. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, and is fully compatible with the Contractor's Work.

**§ 6.2.3** The Owner shall be reimbursed by the Contractor for costs, subject to Paragraph 8.3 hereof, incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

**§ 6.2.4** The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5. or to other completed or partially completed construction or property on the site or to property of any adjoining owner or other party.

**§ 6.2.5** Should the Contractor cause damage to the work or property of any separate contractor and/or in the event of any other claim, dispute, or matter in question between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with such other contractor by agreement, or otherwise to resolve the dispute. In any event, the Contractor shall indemnify, defend, and hold harmless the Owner, the partners, and the directors, officers, shareholders, employees and agents of the above-mentioned parties, to the full extent as agreed to under Paragraph 3.18 of the General Conditions.

## **§ 6.3 OWNER'S RIGHT TO CLEAN UP**

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

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

### **§ 7.1 GENERAL**

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

- .1 An order for minor changes in the Work including, but not limited to, a Supplemental Instruction, response to a Request for Information (RFI), clarification drawing and/or detail, field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time and the Contractor shall have no claim therefore unless it shall, prior to complying with same and in no event no later than seven (7) calendar days from the date such direction or order

was given, submit to the Owner a written request for a change in the Contract Sum and/or Contract Time.

- .2 A Change Proposal, Proposal Request or similar notice with detailed supporting data shall be delivered to the Owner no later than fourteen (14) calendar days from the date such direction or order was given. When submitting its Change Proposal, the Contractor shall include and set forth in clear and precise detail breakdowns of labor and materials for all trades involved and the estimated impact on the construction schedule. The Contractor shall furnish spread sheets from which the breakdowns were prepared, plus spread sheets if requested of any Subcontractors.

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

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

## **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument prepared by the Architect, issued by the Owner's Project Manager and signed by the Owner, Contractor and Architect, stating their agreement, for the item(s) covered in each Change Order as well as the cumulative effect and impact of all previous Change Orders, upon all of the following:

- .1 change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

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

## **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

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

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

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

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

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

**§ 7.3.6** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, or if time requirements dictate (in the Owner's reasonable opinion), the Architect shall make all required certifications with respect to such Work, and the cost of such Work shall then be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee increase or General Contractor's fee deduction for overhead and profit not to exceed \_\_\_% of such Work's actual cost to Contractor and \_\_\_% of such Work's actual cost to be apportioned by Contractor between any and all Subcontractors and Sub-subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed \_\_%. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and Architect may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this Section 7.3.6 actual costs shall be defined and limited to the cost of the following:

- .1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' 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 the Contractor or others based on applicable rental rates shown in the Rental Rate Book (published by Data Quest, Machinery Information Division, Department 05755, San Francisco, current edition;
- .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.

**§ 7.3.7** Pending final determination of actual cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall include a percentage deduction for overhead and profit equal to the percentage applied to increases in actual net cost as confirmed by the Architect and Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.8** Pending final determination of the total cost of a Construction Change Directive to the 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, the Architect 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 the adjustments in the Contract Sum and Contract Time are determined as provided herein, such determination shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

**§ 7.3.10** When either the Owner or the Contractor or both do not agree with the adjustments in the Contract Sum and Contract Time determined as provided herein, such disagreement shall be resolved in the manner prescribed by Paragraph 4.3.

## **§ 7.4 MINOR CHANGES IN THE WORK**

**§ 7.4.1** The Architect will have authority, subject to the approval of the Owner in each instance, 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 language and intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.4.2 The Owner will have the 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 language and intent of the Contract Documents. Such changes shall be administered in accordance with the procedures set forth in Paragraph 7.3 hereof, except that a Construction Change Directive issued to the Contractor pursuant to this Subparagraph 7.4.2 may or may not be signed by the Architect.

## 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 the Architect and approved by the Owner 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 Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The 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 the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work as reflected in Change Orders approved by the Owner that provide for the Contract Time to be extended, or by occurrences beyond the control and without the fault or negligence of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including labor disputes (other than disputes limited to the work force of, or provided by, the Contractor or its Subcontractors), fire, unusual delay in deliveries not reasonably anticipatable, unavoidable casualties, or by other occurrences which the Architect, subject to the Owner's approval, determines may justify delay, then, provided that the Contractor is in compliance with Subparagraph 4.3.2 hereof, the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time actually and directly caused by such occurrence as recommended by the Architect and approved by the Contractor and Owner (such approval not to be unreasonably withheld, delayed, or conditioned); provided, however, that such extension of Contract Time shall be net of any delays caused by or due to fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. Unless otherwise provided in the Change Order, no such Change Order extending the Contract Time shall result in any increased payments to the Contractor for overhead, extended overhead or for any other amounts of any nature. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3. A copy of any claim for extension shall be delivered to the Owner, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay on Owner.

**§ 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 the Owner to the Contractor for performance of the Work under the Contract Documents.

**§ 9.1.2** Notwithstanding anything to the contrary contained in the Contract Documents, the Owner may withhold any payment to the Contractor hereunder if and for so long as the Contractor is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to 150% of the amount sufficient in the reasonable opinion of the Owner to cure any such default or failure of performance by the Contractor. Owner shall promptly release all withheld funds when the default has been cured by the Contractor.

### **§ 9.2 SCHEDULE OF VALUES**

**§ 9.2.1** Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, which in aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as the Architect may direct or as required by the Owner. This schedule, when approved by the Architect and Owner, shall be used to monitor the progress of the Work and as a basis for reviewing the Contractor's Applications for Payment. All items with entered values will be transferred by the Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directive values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by the Architect and approved by the Owner and Owner's lender. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** At least five days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and if requested by the Owner supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents. Such Application for Payment shall be certified as correct by Contractor and shall be accompanied by waivers of liens and other documentation from the Contractor, Subcontractors and Sub-subcontractors as may be required by the Owner and /or Owner's lender, if any, under its loan agreement with Owner or title insurer. Upon request by Owner, copies of all Applications for Payment shall be submitted by Contractor directly to Owner's lender for the Project.

**§ 9.3.1.1** As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Subject to the approval of the Owner's lender for the Project, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work within thirty (30) days after such request for payment or such longer period as may be approved in advance by Owner and Owner's lender or specifically authorized by the Contract Documents. If approved in advance by the Owner and the Owner's lender, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's and Owner's lender's title to



such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants and agrees that title to all Work will pass to the Owner either by incorporation in the construction or upon receipt of payment therefore by the Contractor, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that the Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents, and that no Work covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

**§ 9.3.4** Duplicate originals of the periodic Subcontractor and materialmen's lien waivers and releases shall remain on file at the Contractor's office for inspection by the Owner or Owner's lenders. Duplicate originals of final lien waivers and releases supplied by each Subcontractor and materialmen shall remain on file at the Contractor's office for a period of one (1) year from the date of final payment and shall be available for inspection by the Owner or Owner's lenders.

**§ 9.3.5** When Application for Payment includes materials stored off the project site or stored on the Project site but not incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the application. Suitable storage which is off the Project site shall be a bonded warehouse or appropriate storage approved by Owner and Owner's lenders with the stored materials properly tagged and identifiable for this Project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of off-site storage is made. Such approval may be withheld in Owner's sole discretion.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

**§ 9.4.2** The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

**§ 9.4.3** The provisions for payment and Certificates for Payment are solely for the benefit of Owner and no other party (including sureties of the Contractor) shall have any negligence claim or other action against the Owner, the Architect or anyone acting on behalf of either of them for waiving or misapplying these provisions.

#### **§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION**

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

make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents.; or
- .8 failure of the Contractor to submit required Progress Schedule or Progress Schedule update information.

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

**§ 9.5.3** If the Contractor disputes any determination by the Architect with regard to any Certificate of Payment, the Contractor nevertheless shall continue to prosecute the Work.

**§ 9.5.4** The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents provided the Architect has approved the Owner's action or the Work for which payment is being withheld shall have been rejected by any governmental authority, the Owner or the Owner's lender, if any; provided, however, that such rejection must be due to the failure of Contractor to comply with the Contract Documents.

## **§ 9.6 PROGRESS PAYMENTS**

**§ 9.6.1** All payments by the Owner shall not constitute approval or acceptance of any item of cost in an Application for Payment. No partial payment made hereunder shall be, or be construed to be, final acceptance or approval of that portion of the Work to which such partial payment relates or relieve the Contractor of any of its obligations hereunder with respect thereto.

**§ 9.6.2** The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the 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 the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. All such payments shall comply with the timelines imposed by Oregon Prompt Payment laws.

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

**§ 9.6.4** Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

**§ 9.6.5** Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

**§ 9.6.7** Payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both,

under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

## **§ 9.8 SUBSTANTIAL COMPLETION**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed and scheduled, all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of system has been completed, all final finishes within the Contract are in place, and the Contractor has secured and delivered to the Owner written warranties and guaranties from its Subcontractors, Sub-subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. In general, the only remaining work shall be minor in nature, so that the Owner or Owner's tenants could occupy the building on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's or Owner's tenants' (or those claiming by, through or under Owner) occupancy or normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. The Contractor is responsible for the warranty of all Work, whether performed by it, or by its Subcontractors, at any tier during the twelve (12) month period following Substantial Completion.

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

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

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 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 the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments,



retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

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

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

## **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement satisfactory to the Owner that there is no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by the 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 the Owner and the Owner's lender, and (6), evidence of compliance with all requirements of the Contract Documents (notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents) including but not limited to:

- (a) instruction of Owner's representatives in the operation of mechanical, electrical, plumbing and other systems,
- (b) delivery of keys to Owner with keying schedule (master, sub-master and special keys),
- (c) delivery to Architect of Contractor's General Warranty (as described in Paragraph 3.5) and each written warranty and assignment thereof prepared in duplicate, certificates of inspections, and bonds for Architect's review and delivery to Owner,
- (d) delivery to Architect of printed or typewritten operating, servicing, maintenance and cleaning instructions for all Work; parts lists and special tools for mechanical and electrical Work, in approved form,
- (e) delivery to the Architect of specified Project record documents and
- (f) delivery to Owner of a Final Conditional Waiver of Liens (AIA Document G-706 or other form satisfactory to Owner or as required by state law), covering all Work including that of all Subcontractors, vendors, labor, materials and services, executed by an authorized officer and duly notarized.

In addition to the foregoing, all other submissions required by other articles and paragraphs of the Specifications including final construction schedule shall be submitted to the Architect before approval of final payment. If a Subcontractor refuses to furnish a release or waiver required by the Owner or the Owner's lender, the Contractor may furnish a bond satisfactory to the Owner and the Owner's lender to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

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

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

**§ 9.10.6** If the Owner has a construction loan agreement or similar agreement between the Owner and any lender for the Project, the Contractor agrees to cooperate with the Owner in complying with the provisions thereof and agrees to furnish all reasonable information, reports and certificates that are required thereunder.

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

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

- .1 all persons who may be involved in, or affected by the Project;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

**§ 10.2.5** The Contractor shall promptly remedy at its sole cost and expense damage and loss (other than damage or loss paid by first-party property insurance required by the Contract Documents as described in Article 11, subject to

Contractor's liability to pay any deductible amount) to property referred to in Sections 10.2.1.2 and 10.2.1.3 except damage or loss caused by the negligent acts or omissions of the Owner. The obligations of the Contractor under this paragraph shall not extend to the liability of the Architect, its agents, or employees, arising out of (1) the preparation of approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications, or (2) the giving or failure to give directions or instructions by the Architect, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage. The foregoing obligations of the Contractor are in addition to its obligations under Article 11 of the General Conditions and are in addition to the Contractor's obligations under Section 3.18.

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

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

**§ 10.2.8** Contractor shall protect adjoining private or municipal property with barricades, temporary fences, and covered walkways if necessary to protect the safety of passers-by.

**§ 10.2.9** Contractor shall take reasonable precautions to maintain the Work, free from injury or damage from rain, wind, storms, frost or heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease Work and notify the Owner and the Architect of such cessation. The Contractor shall not permit open fires on the Project site.

**§ 10.2.10** In addition to its other obligations pursuant to this Article 10, the Contractor shall promptly repair any damage to walls, utilities, sidewalks, curbs and the property of third parties (including municipalities) resulting from the performance of the Work, whether by it, or by its Subcontractors, at any tier. The Contractor shall maintain streets in good repair and clean, traversable condition.

### **§ 10.3 HAZARDOUS MATERIALS/WETLANDS/ARCHAEOLOGICAL SITES**

**§ 10.3.1** Unless otherwise provided in the Contract Documents, in the event the Contractor encounters at the Project site any of the following:

- .1** materials which Contractor reasonably believes or has reason to reasonably believe are hazardous materials which are not controlled or have not been rendered harmless; or
- .2** a condition which it reasonably believes or has reason to reasonably believe is a wetland condition which is not protected; or
- .3** items or a circumstance which it reasonably believes or has reason to reasonably believe is a Native American archeological site which is not protected;

then the Contractor immediately shall cease the Work in the affected area, shall take such emergency measures as are reasonably necessary to contain any suspected hazardous materials, or limit their effects, or to protect the suspected wetland condition or the suspected Native American archeological site, shall notify others working in the affected area, and shall notify the Owner and the Architect as soon as reasonably possible with prompt confirmation in writing. The Contractor shall not resume the Work until receiving a written order from the Owner to do so. As used in subparagraph 10.3.1:

- .1** the term "hazardous materials" shall mean and include all "hazardous substances" as defined in the federal Comprehensive Environmental Response Compensation Liability Act (CERCLA), all "hazardous waste as defined in the federal Resource Conservation Recovery Act (RCRA), and similar terms as used in the applicable federal, state and local statutes, rules and regulations; and
- .2** the term "wetland condition" shall mean and include all "wetland" and "water bodies" subject to regulation under the federal Clean Water Act and similar terms as used in applicable federal, state and local statutes, rules and regulations; and
- .3** the term "Native American archeological site" shall mean and include "archeological site" as defined in ORS 358.905 and similar phrases and terms as used in applicable federal, state and local statutes, rules and regulations.

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

**§ 10.4** The Owner shall not be responsible under Section 10.3 for hazardous materials and substances brought to the site by the Contractor unless such hazardous materials or substances were required by the Contract Documents.

## **§ 10.6 EMERGENCIES**

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

## **ARTICLE 11 INSURANCE AND BONDS**

### **§ 11.1 CONTRACTOR'S LIABILITY INSURANCE**

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. If Owner's lender or insurance carrier for the Project requires that the insurance requirements set forth in the Contract Documents be varied, Contractor agrees to enter into suitable modifications of the provisions hereof, provided Owner bears any additional cost reasonably occasioned thereby:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed including private entities performing work at the site and exempt from the coverage on account of number of employees or occupations, which entities shall maintain voluntary compensation coverage of the same limits specified for mandatory coverage for the duration of the Project;
- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of Clause 11.1.1.1 but required by the Contract Documents to provide insurance required by that Clause;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage;
- .5 claims for damages, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims for bodily injury or property damage arising out of completed operations;
- .8 claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.; and
- .9 Contractor's liability insurance shall be endorsed as primary insurance and non-contributory with the Owner's insurance naming the Owner, Owner's Project Manager, and without limitation, their respective partners, members, officers, commissioners, directors, agents and employees as additional

insureds. Coverage will be endorsed to provide a per project aggregate and shall include all major divisions of coverage and be on a comprehensive basis including:

- .1 Premises/Operations, including X, C and U coverages as applicable.
- .2 Owner's and Contractors' Protective.
- .3 Products and Completed Operations.
- .4 Personal Injury Liability with Employee Exclusion deleted.
- .5 Blanket Contractual, including specific provision for Contractor's obligation under Paragraph 3.18.
- .6 Owned, non-owned and hired motor vehicles.
- .7 Broad Form Property Damage, including Completed Operations.
- .8 Umbrella Liability.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. The procuring of such required insurance shall not be construed to limit the Contractor's liability hereunder. Notwithstanding said insurance, Contractor shall be obligated for the total amount of any damage, injury, or loss caused by negligence or wrongful acts in the performance of the Work of this Agreement.

- .1 The insurance required by Subparagraph 11.1.1 shall be written for not less than the following limits, or greater if required by law: I ASSUME THESE MATCH THE USUAL CITY REQUIREMENTS

- .1 *Workers' Compensation Insurance.* The Contractor, its subcontractors, if any, and all employers providing work, labor or materials under this Agreement who are subject employers under the Oregon Workers' Compensation Law shall comply with ORS 656.017, which requires them to provide workers' compensation coverage that satisfies Oregon law for all their subject workers. Out-of-state employers must provide workers' compensation coverage for their workers that complies with ORS 656.126. Employer's Liability Insurance with coverage limits of not less than \$1,000,000 each accident shall be included.;
- .2 *Comprehensive General Liability Insurance.* Contractor shall obtain, at Contractor's expense, and keep in effect during the term of this Agreement, Commercial General Liability Insurance covering Bodily Injury and Property Damage on an "occurrence" form. This coverage shall include Contractual Liability insurance for the indemnity provided under this contract and shall include the following coverages:
  - .1 Premises and Operations;
  - .2 Completed Operations for one (1) year after completion of the Work;
  - .3 Broad Form Comprehensive General Liability Endorsement to include Blanket Contractual Liability, Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property Damage coverage;
  - .4 Independent Contractors;
  - .5 Delete Exclusions relative to Collapse, Explosion and Underground Property Damage Hazards; and
  - .6 Cross Liability endorsement.

The following insurance limits will be carried:

Coverage	Limit
General Aggregate	\$3,000,000
Products-Completed Operations Aggregate	3,000,000
Personal & Advertising Injury	3,000,000
Each Occurrence	2,000,000



Fire Damage (Any one fire)	500,000
Medical Expense (Any one person)	5,000

- .3 *Comprehensive Automobile Liability Insurance.* Contractor shall also obtain, at Contractor's expense, and keep in effect during the term of this Agreement, Commercial Automobile Liability coverage including coverage for all owned, hired, and non-owned vehicles. The Combined Single Limit per occurrence shall not be less than \$2,000,000.
- .4 *Umbrella (Excess) Liability Insurance.* Umbrella Liability with limits of not less than \$5,000,000 to be excess of 11.1.2.1.1, 11.1.2.1.2 and 11.1.2.1.3 above. Such coverage shall be at least as broad as the primary coverages in 11.1.2.1.1, 11.1.2.1.2 and 11.1.2.1.3 above. All such policies shall be endorsed to provide defense coverage obligations.
- .5 *Extended Reporting Coverage.* If any of the aforementioned liability insurance is arranged on a "claims-made" basis, Extended Reporting coverage will be required at the completion of this Agreement to a duration of 24 months or the maximum time period the Contractor's insurer will provide such if less than 24 months. Contractor will be responsible for furnishing certification of Extended Reporting coverage as described or continuous "claims-made" liability coverage for 24 months following Agreement completion. Continuous "claims-made" coverage will be acceptable in lieu of Extended Reporting coverage, provided its retroactive date is on or before the effective date of this Agreement. Coverage will be endorsed to provide a per project aggregate.
- .6 *Primary Coverage Clarification.* The parties agree that Contractor's coverage shall be primary to the extent permitted by law. The parties further agree that other insurance maintained by the Owner is excess and not contributory insurance with the insurance required in this section.

**§ 11.1.3** Certificates of insurance, certified as a true copy by an authorized representative of the issuing insurance company and acceptable to the Owner shall be filed with the Owner prior to commencement of the Work as provided in Clauses 11.1.3.1 and 11.1.3.2. 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, reduced or allowed to expire until at least 30 days' prior written notice has been given to the Owner. Any failure to comply with this provision will not affect the insurance coverage provided to the Owner. The 30-day notice of cancellation provision shall be physically endorsed on the policy. No Agreement shall be effected until the required certificates have been received and approved by the Owner. The certificate will specify and document all provisions within this Agreement. A renewal certificate will be sent to the address below ten days prior to coverage expiration. Certificates of Insurance should read "Insurance certificate pertaining to Agreement for Ledding Library of Milwaukie Renovation and Expansion." The City of Milwaukie, its officers, directors and employees and volunteers shall be added as additional insureds with respects to this Agreement. A notation stating that "Insured coverage is primary" shall appear in the description portion of certificate. 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 as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished promptly by the Contractor.

1. The Contractor shall furnish one copy each of Certificates of Insurance herein required for each copy of the Agreement which shall specifically set forth evidence of all coverage required by Paragraph 11.1. Insurance coverage must be on an "occurrence form" policy with an authorized insurance carrier authorized to do business in the state of Oregon. Best "A" rated or better insurers desired. The Owner reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating. If the insurance is written on the Comprehensive General Liability policy form, the Certificates shall be AIA Document G705, Certificate of Insurance. If the insurance is written on a Commercial General Liability policy form, ACORD form 255 will be acceptable. Additionally, the insurance shall provide an endorsement specifying separation of insureds or a cross-liability provision.

2. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. The Contractor's obligation to furnish Owner with copies of any endorsements does not relieve the Contractor of the obligation to provide insurance coverages as required in this Article.

3. Insurance certificates shall be forwarded to:

City of Milwaukie  
Attn: Finance  
10722 SE Main Street  
Milwaukie, OR 97222

Business Phone: 503-786-7555  
Business Fax: 503-653-2444  
E-mail address: [finance@milwaukieoregon.gov](mailto:finance@milwaukieoregon.gov)



## § 11.2 OWNER'S LIABILITY INSURANCE

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

## § 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

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## § 11.4 PROPERTY INSURANCE

§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 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, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.4.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

- .1 Owner's all-risk builder's risk policy shall carry a deductible of \$1,000 per occurrence, except \$250,000 for flood and \$250,000 for earthquake.

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

- .1 Owner's all-risk builder's policy shall provide coverage of \$250,000 for temporary storage and \$250,000 for in-transit.



**§ 11.4.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, 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** Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

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

**§ 11.4.4** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by first-party property insurance under policies separate from those insuring the Project, or if after final payment first-party property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.6 for damages caused by fire or other causes of loss paid by this separate first-party property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

**§ 11.4.5** The parties shall file with the other a copy of each policy that includes insurance coverages required 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 30 days' prior written notice has been given to the party named as an additional insured or loss payee.

**§ 11.4.6** Waivers of Subrogation. The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent paid by property insurance obtained pursuant to this Section 11.4 or other first-party property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The foregoing waiver afforded the Architect, its consultants, agents and employees or any of them shall not extend to the liability imposed by Subparagraph 3.18.3. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.4.7** A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.9. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

**§ 11.4.8** If required in writing by a party in interest, the party serving as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of such party's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The fiduciary shall deposit in a separate account proceeds so received, which the fiduciary shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged

property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.4.9** The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. If such objection be made, the Owner shall not make any settlement with respect to such loss until a resolution has been reached by agreement between such parties in interest and the insurers or by a court of competent jurisdiction. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

**§ 11.4.10** Contractor shall secure, pay for and maintain whatever fire extended coverage insurance the Contractor may deem necessary to protect the Contractor against loss of owned or rented capital equipment and tools, including any tools owned by mechanics and any tools, equipment, scaffolding, staging, towers and forms owned or rented by the Contractor. The requirement to secure and maintain such insurance is solely for the benefit of the Contractor. Failure of the Contractor to secure such insurance or to maintain adequate levels of coverage shall not obligate the Owner, the Architect or the Architect's consultants or their agents or employees for any losses of owned or rented equipment. If the Contractor secures such insurance, the insurance policy shall include a waiver of subrogation clause as follows: "It is agreed that in no event shall this insurance company have any right of recovery against the Owner or Architect."

## **§ 11.5 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.5.1** Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder for the full Contract Sum as stipulated in bidding requirements and specifically required in the Contract Documents on the date of execution of the Contract. The bonds shall be in the form required by Owner and compliant with Oregon law.

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

## **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

### **§ 12.1 UNCOVERING OF WORK**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect, the Owner or any governmental authority, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time or Contract Sum.

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

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.1.1** The Contractor shall promptly correct Work rejected by the Architect, the Owner or any governmental authority (unless the governmental authority rejects the Work for a reason other than Contractor's failure to perform the Work in accordance with the Contract Documents) 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 the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

## **§ 12.2.2 AFTER SUBSTANTIAL COMPLETION**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

**§ 12.2.2.3** The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The 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 the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work 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 the 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 the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

## **§ 12.3 ACCEPTANCE OF NONCONFORMING WORK**

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

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 GOVERNING LAW**

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

**§ 13.1.2** Historical lack of enforcement of any local law shall not constitute a waiver of Contractor's responsibility for compliance with such law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

### **§ 13.2 SUCCESSORS AND ASSIGNS**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Contractor may not assign its rights or obligations under this Contract. Owner may assign its rights and obligations hereunder to its lender, if any, and Contractor agrees to enter into an agreement with such lender pursuant to which, at such lender's request, Contractor will complete the Work upon appropriate provision for payment of the balance of the Contract Sum and performance by lender of all other terms and conditions of this Contract. Any entity that shall succeed to

the rights of the Owner shall be entitled to enforce its rights hereunder. If the Contractor attempts to make such an assignment without such consent, it shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### **§ 13.3 WRITTEN NOTICE**

**§ 13.3.1** All notices to be given hereunder shall be in writing, and may be given, served or made by depositing the same in the United States mail addressed to the authorized representative (as specified in Subparagraph 13.3.2 hereof) of the party to be notified postpaid and registered or certified with return receipt requested or by delivering the same in person to the said authorized representative of such party. At Owner's request, a copy of all written notices by the Contractor to it shall be delivered to the lender for the Project, if any. Notice deposited in the mail in accordance with the provisions hereof shall be effective unless otherwise stated in the Agreement from and after the fourth day next following the date postmarked on the envelope containing such notice, or when actually received, whichever is earlier. Notice given in any other manner shall be effective only if and when received by the party to be notified. All notices to be given to the parties hereto shall be sent to or made at the addresses set forth below. By giving the other parties at least seven (7) days' written notice thereof, the parties hereto shall have the right to change their respective addresses and specify as their respective addresses for the purposes hereof any other address in the United State of America.

- |                               |  |
|-------------------------------|--|
| .1 Address of the Owner:      | City of King City<br>15300 SW 116 <sup>th</sup> Ave<br>King City, OR 97224 |
| .2 Address of the Contractor: | CM/GC Contractor<br>Address<br>City, State and Zip Code                    |
| .3 Address of the Architect:  | Scott Edwards Architecture<br>2525 E Burnside St.<br>Portland, OR 97214    |

**§ 13.3.2** The parties hereby designate and appoint the following persons, whose addresses are as designated in subparagraph 13.3.1 hereof, as their representatives, respectively, to receive all notices and communications hereunder and, to the extent of their obligations hereunder, to act for them in all respects:

- |                        |                           |
|------------------------|---------------------------|
| .1 For the Owner:      | Mike Weston, City Manager |
| .3 For the Contractor: | TBD                       |
| .3 For the Architect:  | TBD                       |

Either party may designate from time to time, by appropriate written notice to the other as provided for in Subparagraph 13.3.1 hereof, other or additional representatives.

### **§ 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.

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

§ 13.4.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

### § 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, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. The Architect or Owner may at any time request and receive from Contractor satisfactory evidence that material, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve the Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

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

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, or reveal faulty or otherwise defective Work, or if the necessity of any such testing, inspection or approval procedures arises out of the fault, neglect or omission of Contractor, the Contractor shall bear all costs of such testing, inspection, and approval procedures and all other costs made necessary by Contractor's failures, including, without limitation, those costs of repeated and additional procedures and compensation for the Architect's services and expenses of Owner's personnel and consultant fees and expenses. Such costs shall be paid by Contractor within ten (10) days of receipt of invoice from Owner with supporting data attached.

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

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

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

### § 13.6 INTEREST

§ 13.6.1 In no event shall any interest be due and payable by the Owner to the Contractor, any Subcontractor or any other party on any of the sums payable by the Owner or sums which the Owner is authorized to retain pursuant to the Contract Documents, unless under the terms of the Agreement sums are due and unpaid.

### § 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 13.7.1 As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged



cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE CHECK AGAINST RULE 30.205

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

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials and/or equipment or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 disregards the instruction of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 is adjudged a 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
- .6 otherwise does not fully comply with the Contract Documents.

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

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

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

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

### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

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

## § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

§ 14.4.2 The Owner may, at its option, subject to applicable notice provisions under this Agreement, terminate this Contract in whole, or from time to time, in part at any time by written notice thereof to the Contractor. Upon any such termination, Owner shall pay Contractor in accordance with 14.4.2.3 below.

The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.

- .1 Upon receipt of any such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the Work on that date and to the extent specified in the notice; place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work as is not discontinued; promptly make every reasonable effort to procure cancellation upon terms satisfactory to Owner of all orders and subcontracts to the extent they relate to the performance of the discontinued portion of the Work and shall thereafter do only such Work as may be necessary to preserve and protect work already in progress and to protect materials, plants and equipment on the site or in transit thereto.
- .2 Upon such termination, the obligations of the Contract shall continue as to portions of the Work already performed and as to bona fide obligations assumed by Contractor prior to the date of termination.
- .3 Upon termination, Contractor shall be entitled to be paid the full cost of all Work properly done by Contractor to the date of termination not previously paid for, less sums already received by Contractor on account of the portion of the Work performed. If at the date of such termination Contractor has properly prepared or fabricated off the site any goods for subsequent incorporation in the Work, and if Contractor delivers such goods to the site or to such other place as the Owner shall reasonably direct, then Contractor shall be paid for such goods or materials. In no event shall Contractor be entitled to receive payment for overhead and profit on unperformed Work.



Mike,

Thank you. I'm sending over our 2 requests.

#1 request is the request for a rate increase. We've presented a few different options for council to consider.

#2 request is the request for code changes to model the CPI increase proposal that Tigard and Sherwood have implemented. I figured it'd be best to do this as 2 separate requests so council could consider each one independently. One document is the request, the other is the solid waste portion of the code with edits/additions to accomplish the change as well as some other housekeeping changes.

Please feel free to reach out if you have questions or need anything else from us. We will plan on attending both meetings on May 16<sup>th</sup> and June 6<sup>th</sup>.

Kristin Leichner  
Pride Disposal Co.  
(503) 625-6177 ext: 1124  
[www.priededisposal.com](http://www.priededisposal.com)  
[Facebook](#)  
[Twitter](#)



May 8, 2018

Mike Weston, City Manager  
City of King City  
15300 SW 116<sup>th</sup> Ave  
King City, OR 97224

Re: Request for code changes regarding solid waste rates

We are proposing modifications to sections 8.16 and 8.20 of the King City Municipal Code, related to solid waste. This proposed change would implement an annual cost of living index, similar to code language that exists in both City of Tigard and City of Sherwood. These proposed changes would provide transparency regarding rate setting. The changes would also provide annual incremental rate changes, if necessary, rather than infrequent and larger rate increases.

There are a few other proposed changes to the code language, which are minor housekeeping changes to modify the code to match current practices.

The proposed changes are attached to this letter.

Thank you,

Kristin Leichner  
Pride Disposal



May 8, 2018

Mike Weston, City Manager  
City of King City  
15300 SW 116<sup>th</sup> Avenue  
King City, OR 97224

Dear Mr. Weston:

Pride Disposal is requesting a rate increase effective July 1, 2018 to continue providing quality services specified under our franchise agreement with the City of King City. The city's last rate increase was effective June 1, 2017.

Since last June a number of factors have impacted Pride. Our company has very little ability to control the following types of operating cost increases.

- Commingled recycling value drop nearly \$100/ton
- Inflation increased 3.9%
- Insurance rates increased over 8%

Our company took the following actions to offset increases in other operating costs. These actions help us to maintain our high standard of service that King City has come to expect and deserve.

- Stringent maintenance programs that ensure the longevity of our trucks
- Continued investment in CNG equipment, fuel pricing is lower and more stable without relying on foreign oil markets
- Maximize commodity pricing with our recycle partners
- Continuous review and adjustments of routes to maximize efficiency

The most significant negative impact has been the value of commingled recycle material. As of January 2018 China is no longer allowing the importation of post-consumer plastics and unsorted paper, in response to poor quality of material shipped from the U.S. and Europe; pollution caused by poor recycling practices and small-scale operations; and the need for China to develop its own domestic recovery system for recyclable materials. There are not enough domestic markets for the materials in the US. Most of the domestic markets in the US are on the east coast and they do not have the capacity to process all of the material in the US. The processors

in Oregon where Pride (and other haulers) take their recyclables are the ones who ship the recyclables after they've sorted them, so they are no longer mixed together. Those facilities are trying to improve the quality of the material by slowing down their sorting lines so they can remove more contaminants and do a cleaner sort. This means higher sorting costs as well as material backing up, and because there is a lot of recycling done in Oregon, the incoming material to these facilities is not slowing down. As China has stopped purchasing this material the market price has plummeted.

The crash of the recycling market has been felt across Oregon, the United States, and around the world. China was buying approximately 60% of the world's recycling; this is a global issue. Cities and Counties across Oregon have implemented emergency rate increases to help offset the change. The DEQ, Metro, and other government officials continue to meet to work through this situation with the consensus that the market will continue to drop.

Pride is requesting council approval of one of the following proposals.

Proposal 1:

5.5% increase across all lines of business, residential, commercial, drop box, and medical waste

- This represents a \$1.37/month increase for residential 32-gallon carts (60% of King City residents)
- Equal percentage increase for all cart sizes
- This option spreads the cost across businesses as well as residents

Proposal 2:

7.5% increase for all residential customers.

- This represents a \$1.87/month increase for residential 32-gallon carts (60% of King City residents)
- Equal percentage increase for all cart sizes
- Commingled material represents largest negative impact and this places the cost on those generating it

Proposal 3:

\$2.00/month increase for all residential customers.

- This represents an 8% increase for residential 32-gallon carts
- Equal dollar increase for all cart sizes
- Commingled material represents largest negative impact and this places the cost on those generating it

It is a pleasure to be of service to the citizens of King City. Thank you for this opportunity.

Respectfully,

Kristin Lechner  
Pride Disposal Co.

## **Chapter 8.16 SOLID WASTE DISPOSAL**

### **Sections:**

- 8.16.010 Purpose of chapter.**
- 8.16.020 Definitions.**
- 8.16.030 Franchise required for collection.**
- 8.16.040 Collection equipment requirements.**
- 8.16.050 Disposal sites.**
- 8.16.060 Collection schedules.**
- 8.16.080 Collector—Seasonal pickups.**
- 8.16.090 Collection rates.**
- 8.16.100 Insurance or bond in lieu of fee.**
- 8.16.110 Collection area—Containers.**
- 8.16.120 Ownership of solid waste.**
- 8.16.130 Collector—Recycling.**
- 8.16.140 Council duties—Contracts.**
- 8.16.150 Council—Additional duties.**
- 8.16.160 Violation—Penalty.**
- 8.16.170 Franchise fee.**

### **8.16.010 Purpose of chapter.**

The council finds that it is a governmental obligation to provide for the safe, efficient and dependable collection and removal of solid waste within the city to protect the health, peace and safety of the inhabitants of the city from disease and reduction in property values that could occur from accumulated unremoved solid waste. The council further finds that it is a proper and necessary exercise of its police powers to adopt and enforce a solid waste management program to:

- A. Insure safe accumulation, storage, collection, transportation, disposal or resource recovery of solid waste;
- B. Insure maintenance of a financially stable, reliable solid waste collection and disposal service;
- C. Insure rates that are just, fair, reasonable and adequate to provide necessary service to the public;
- D. Prohibit rate preference and other discriminatory practices which benefit one user at the expense of other users of the service or the general public;
- E. Conserve energy and material resources;
- F. Eliminate overlapping service to reduce truck traffic, street wear, air pollution and noise;
- G. Provide standards for solid waste service and public responsibilities; and
- H. Provide to each resident and inhabitant the opportunity to recycle recyclable materials generated within the city. (Ord. O-89-3 § 1, 1988)

### **8.16.020 Definitions.**

For purposes of this chapter, the following definitions shall apply:

“Collector” means the franchisee under this chapter.

“Compensation” means and includes:

1. Any type of consideration paid for services including, without limitation, rent, lease payments, and any other direct or indirect provision for the payment of money, goods, services or benefits by owners, tenants, lessees, occupants or similar persons;
2. The exchange of services between persons; and

3. The flow of consideration from the person owning or possessing the solid waste to the person providing the service or from the person providing the service to the person owning or possessing the solid waste.

“Council” means the city council of the city.

“Franchise” means the right to provide service granted to a person pursuant to this chapter.

“Person” means any individual, partnership, association, corporation, trust, firm, estate, joint venture, or other public or private legal entity.

“Putrescible material” means organic materials that can decompose and may give rise to foul smelling, offensive odors or products.

“Recyclable materials” mean solid waste that can be recycled or reused.

“Recycling” means any process by which solid waste materials are transformed into new products in such a manner that the original products lose their identity.

“Resource recovery” means the process of obtaining useful material or energy resources from solid waste and including energy recover, materials recovery, recycling and reuse of or from solid waste.

“Reuse” means the return of a commodity into the economic stream for use in the same kind of application as before without a change in its identity.

“Service” means the collection, storage, transportation, transfer or disposal of, or resource recovery from, solid waste.

“Solid waste” means all wastes, in solid or liquid form, including but not limited to, garbage, rubbish, ashes, street refuse, waste paper, corrugated and cardboard, commercial, industrial, demolition and construction wastes, swill, discarded vehicle parts, discarded home and industrial appliances, vegetable or animal solid and semisolid wastes, small dead animals, and other wastes. It does not include sewage, sewage sludge, or sewage hauled as an incidental part of a septic tank or cesspool cleaning service.

“Waste” means material that is no longer wanted by or usable by the source generator or producer of the material and which material is to be disposed of or to be resource recovered by another person, and includes both source separated material and nonsource separated material. (Ord. O-89-3 § 2, 1988)

#### **8.16.030 Franchise required for collection.**

Except as otherwise provided in this chapter, it is unlawful for any person to provide service, offer to provide service or advertise for the performance of service or to collect solid waste or recyclable materials in the city without having obtained a franchise from the city. Nothing in this chapter is to be construed to prevent any resident or household of the city from hauling his or her own solid waste or refuse and disposing of the same in a lawful manner; provided, however, that no resident or householder shall be permitted to haul solid waste for another person. (Ord. O-89-3 § 3, 1988)

#### **8.16.040 Collection equipment requirements.**

The collector shall use proper and suitable equipment for the hauling and transportation of solid waste. All equipment for handling solid waste, ashes, and rubbish shall be covered and all equipment for handling liquids shall be equipped with a metal body, watertight and drip-proof. All equipment shall be kept clean at all times. Sufficient equipment shall be kept on hand to promptly and adequately remove all solid waste subject to the terms of this chapter. Employees of the collector shall be attired in neat and proper uniforms. (Ord. O-89-3 § 4, 1988)

#### **8.16.050 Disposal sites.**

The collector shall secure, at his own expense, an approved location for the disposal of solid waste collected from the city, and the collector shall conform to all rules, regulations and requirements

of any public authority or agency having jurisdiction over any such disposal site or sites. (Ord. O-89-3 § 5, 1988)

#### 8.16.060 Collection schedules.

The collector shall provide collections of solid waste at least weekly in all residential districts of the city. The collector may provide collection services on legal holidays and Sundays, however, Sunday service shall be limited to emergency pickup of a commercial account in response to a request made by a commercial customer. No residential collection shall be made ~~at any hour when the collection would disturb the peace or sleep of the residents before 6am or after 7pm~~. The collector shall perform his obligations under this chapter under the supervision and to the satisfaction of the city manager in compliance with all sanitary regulations of the city and of the state. (Ord. O-89-3 § 6, 1988)

#### 8.16.080 Collector—~~Seasonal pickups~~Yard Debris service.

The collector shall provide an optional ~~monthly every other week~~ yard debris collection service in all residential districts of the city including providing a yard debris cart to each customer who chooses yard debris service to place on the curb on collection day. The rates for this service shall be established pursuant to Section 8.16.090 of this chapter. (Ord. O-05-06 § 1, 2005; Ord. O-89-3 § 8, 1988)

#### 8.16.090 Collection rates.

A. The rates to be charged to all persons, firms or corporations by the collector shall be reasonable and uniform, taking into consideration the service rendered, and shall be in substantial compliance with and not in excess of those rates adopted by resolution of the council.

B. The collector shall provide pro rata billing to those customers requesting temporary suspension of service. The collector shall suspend service when notified via a telephone call or a written request no less than ten days before the designated pickup date on which suspension is to begin. The suspension of service must be for a period of time involving no less than two successive pickup dates. Notice requesting suspension of service must include the date on which service is to be resumed.

C. Nothing in this section shall be construed to limit, modify or preclude the right on the part of the city to amend this chapter to regulate or provide other or different rates or prescribe additional classifications and charges, provided that rate changes or classifications shall not become effective except thirty days after enactment and shall be reasonable in consideration of service required to be rendered by the collector to the public.

D. ~~The collector shall prepare an annual report by March 1<sup>st</sup> of each year. The collector may once a year request that the city amend this chapter to provide an adjustment of rates to reflect changes in the collector's costs. These annual requests shall be made during March of each year in which an adjustment is requested utilizing the annual report format prescribed by the city. The annual report shall provide an opportunity for the collector to document changes in the collector's costs of operation in rates at any other time if the collector's disposal costs increase by twenty-five percent or more over the existing disposal costs. Unless there is good cause shown and recorded in the minutes of the council, the council shall approve the request, and the adjustment shall take effect thirty days after the council's approval of the request. Unless a governmental unit or legislative body has raised or lowered the cost of providing service or there is a substantial increase in the cost of doing business that was not provided for in the previous rate adjustment, rate adjustments shall be made annually on the following schedule:~~

~~1. On or before March 15<sup>th</sup>, the collector shall file an annual report with the city manager for the year ended the previous December 31<sup>st</sup>.~~

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2. The city manager shall report to the council by April 15<sup>th</sup> on the franchise reports and propose rate adjustments, if any. The city manager may make such recommendations as appropriate to the rate determination. A copy shall be delivered to the collector.

3. Unless there is good cause shown and recorded in the minutes of the council, if a rate adjustment is proposed, the council shall set a hearing on the proposed rate adjustment within sixty days of receiving the report from the city manager and shall either approve or disapprove the proposed rate adjustment within thirty days of said hearing.

4. The rate adjustment proposed by the city manager under subsection 2 above shall be based on the following:

a. if the rate of return of the collector is less than eight percent or more than twelve percent, then the city will undertake a rate study to recommend new rates. The study will be designed to recommend new rates that will be effective on the immediately following January 1 and intended to produce a rate of return of ten percent for the calendar year beginning on that date. The study will also determine the expected rate of return for the collector during the current calendar year, and that information shall be reported to the collector. So long as the actual rate of return for that calendar year is within two percent more or less than the reported rate of return, no rate study will be needed based on that calendar year's report.

b. If the rate of the return for the collector is between eight and twelve percent, the proposed rate adjustment will be effective on the immediately following January 1 and will be indexed to the US Department of Labor, Bureau of Labor Statistics CPI-U Over-the-Year Percent Change Annual Average for Portland-Salem (the "index"). If the rate of return is between eight to nine percent, then the proposed rate adjustment will be 1.25 times the index. If the rate of return is between nine to eleven percent, then the proposed rate adjustment will be equal to the index. If the rate of return is between eleven to twelve percent, then the proposed rate adjustment will be .75 times the index.

5. Cost of services studies will be conducted at a minimum of every six years. (Ord. O-05-06 § 2, 2005; Ord. O-95-4 § 1, 1995; Ord. O-89-3 § 9, 1988)

#### **8.16.100 Insurance or bond in lieu of fee.**

A. The collector shall pay, save harmless and indemnify the city from any loss, damages, costs, penalties, expenses, liabilities, or charges of any kind arising out of or related to the city's enforcement or defense of proceedings relating to the privileges and obligations granted by this chapter. If an action shall be filed against the city, either independently or jointly with the collector, to recover for any claim or jointly with the collector, to recover for any claim or damages relating to the privileges and obligations granted by this chapter, the collector upon notice to it by the city shall defend the city against the action and in the event of a final judgment being obtained against the city, either independently or jointly with the collector, the collector will pay the judgment and all costs and reasonable attorney fees and hold the city harmless therefrom.

B. The collector shall, concurrently with his acceptance of the franchise, file with the city recorder and at all times thereafter maintain in full force and effect for the term of the franchise or any renewal thereof, at the collector's sole expense, a corporate surety bond with a responsible company licensed to do business in the state in the amount of ten thousand dollars guaranteeing full and faithful performance by the collector under this chapter. The bond shall be subject to the review and approval of the city attorney. The collector shall annually furnish proof to the city recorder that the bond remains in effect.

C. The collector shall maintain insurance in such forms and with such companies as shall be approved by the city attorney, which shall cover the collector's business operation, including each vehicle operated by the collector. The insurance coverage shall include not less than one hundred

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thousand dollars for one person nor less than three hundred thousand dollars for bodily injury due to each occurrence and not less than three hundred thousand dollars for damage to property due to each occurrence.

D. All such insurance coverage shall provide a thirty-day notice to the city recorder in the event of material alteration or cancellation of any coverage afforded in the policies prior to the date the material alteration or cancellation shall become effective. Copies of all policies required under this section shall be furnished to and filed with the city recorder not more than thirty days after the effective date of the franchise granted by this chapter. The provisions of this section, any bonds accepted to the city pursuant thereto and any damage recovered by the city under this chapter shall not be construed to excuse unfaithful performance by the collector or limit the liability of the collector under this chapter or the collector for damages, either to the full amount of the bond, or otherwise. (Ord. O-91-9 § 1 (part), 1991; Ord. O-91- 7 § 1, 1991; Ord. O-89-3 § 10, 1988)

#### **8.16.110 Collection area—Containers.**

All solid waste collection and disposal shall be performed by the collector for properties located within the city unless otherwise provided by this chapter. The owner, contract purchaser, or person in control of any residential structure offered to others for rent, lease or occupation within the city shall provide through the collector for the collection and disposal of solid waste from any such structure.

~~Solid waste cans designed for manual pickup shall (1) have sides tapering outward to the opening at the top that provides for unobstructed dumping of the contents, (2) two handles on opposite sides, (3) a close fitting lid with a handle, (4) shall hold no more than thirtytwo gallons of material, and (5) shall not weigh more than sixty pounds. Solid waste cans shall be placed above ground by the owner for collection by the collector. The only exception to the size limitation stated in this section shall be cans provided by Pride Disposal Company for the use of customers consistent with the rate schedule. Sunken refuse cans or containers shall not be used, unless they are placed above ground by the owner for service.~~  
Pride Disposal will provide all equipment for customers. (Ord. O-93-3 § 1, 1993; Ord. 166-93.8.16 § 1, 1992; Ord. O-90-23 § 1, 1990; Ord. O-89-3 § 11, 1988)

#### **8.16.120 Ownership of solid waste.**

All solid waste located, placed or deposited in a ~~can~~cart, container, or drop box ~~or receptacle~~ ~~provided by the collector to a customer or~~ placed out by a customer for collection by the collector shall belong to the collector. It is unlawful for any person other than the collector to remove any solid waste from such receptacles. Any person removing such materials in violation of this section shall be subject to the penalties defined in Section 8.16.160 of this chapter. (Ord. O-89-3 § 12, 1988)

#### **8.16.130 Collector—Recycling.**

The collector shall provide on-route recycling subject to the following provisions:

A. The collector shall collect at least ~~monthly~~every other week source separated recyclable materials. The collector shall give notice to each person of the opportunity to recycle, encouraging source separation of recyclable materials.

B. In the event the council wishes to establish, modify or enlarge the collector's recycling program, the collector shall be given not less than thirty days notice of a hearing before the council on the matter and be given an opportunity to be heard and participate in the hearing.

C. If, after the hearing and on the basis of written findings, the council directs recycling be provided, modified or enlarged, the collector shall be given a reasonable opportunity to provide recycling or subcontract with other persons to provide it.

D. Nothing in this section shall prevent the collector from modifying or expanding on-route recycling prior to a council hearing and determination.

E. Nothing in this section shall prohibit a nonprofit, charitable, benevolent or civic organization from recycling materials which have not been set out for collection by the collector. (Ord. O-89-3 § 13, 1988)

**8.16.140 Council duties—Contracts.**

A. The council may suspend, modify, revoke or terminate the franchise granted under the provisions of this chapter after written notice and hearing upon finding that the collector has:

1. ~~Willfully~~Willfully violated this chapter or ORS Chapter 459 or the rules and regulations promulgated thereunder; or
2. ~~Willfully~~Willfully refused to provide adequate service after written notice and a reasonable opportunity to do so.

B. In any case where the city manager finds a serious danger to public health or safety, the city manager may suspend the franchise without a hearing but shall notify the collector of the reasons for the action and afford the collector the opportunity for a hearing before the council within fourteen days from the date of the suspension. In lieu of immediate suspension, modification or revocation of the franchise, the council may order compliance and make suspension, modification or revocation contingent upon compliance with the order within the time stated in the order.

C. The collector agrees as a condition of the franchise that whenever the city manager finds that the failure of service, threatened failure of service, or the need for a suspension of the franchise would result in creation or continuation of an immediate and serious health hazard or serious public nuisance, the council may, after a minimum of twenty-four hours actual notice to the collector and a public hearing if the collector requests it, provide or otherwise authorize another person to provide temporarily the service or provide emergency service. (Ord. O-89-3 § 14, 1988)

**8.16.150 Council—Additional duties.**

In addition to all other authority granted to or inherent in the council, the council may issue temporary restraining orders enjoining the alleged violation of any of the provisions of the franchise, this chapter or rules and regulations issued pursuant thereto which order shall direct the alleged violator to immediately cease and desist from an act or acts described in the order until the council determines whether or not a violation has occurred. Before issuing a temporary restraining order, the council must have reasonable grounds to believe that a violation has occurred. In no event shall the council make and issue such an order without first receiving a sworn affidavit containing allegations of the violation, which affidavit shall specify the alleged violation in short and concise language sufficient to apprise the alleged violator of the act or acts to be enjoined. The order shall direct the alleged violator to appear at the time and place stated in the order and show cause, if any, why the alleged violator should not be immediately enjoined from doing the act or acts specified in the order. If the council determines that the alleged violator has committed a violation of this chapter, the council may make and enter an order permanently enjoining further violation. (Ord. O-89-3 § 15, 1988)

**8.16.160 Violation—Penalty.**

A. Any person violating the provisions of this chapter shall be subject to a penalty not to exceed one thousand dollars. Each day a violation of this chapter continues shall be deemed a separate violation. In addition to the above penalties, any condition caused or permitted to exist in violation of this chapter shall be deemed to be a public nuisance and the city attorney may, in addition to other remedies provided by law, institute injunction, mandamus, abatement or other appropriate legal proceedings to temporarily or permanently enjoin or abate such violation. Penalties and other remedies may be enforced pursuant to ORS 30.310, 30.315 and 30.410. The penalties and remedies provided in

this chapter are not exclusive and are in addition to any penalties and remedies available to the city under any other ordinance or law.

B. In addition to any other remedy available to the city to enforce the provisions of this chapter, the city may impose a charge or fee, not to exceed one thousand dollars per day upon any person who, without complying with the provisions of this chapter, provides service or collects or hauls solid waste or recyclable materials over the streets and ways within the city. Collection of the fee may be enforced by civil proceedings pursuant to ORS 30.315. (Ord. O-89-3 § 16, 1988)

#### **8.16.170 Franchise fee.**

Effective July 1, 1991, as compensation for the franchise granted to the franchisee for use of the streets and ways within the corporate limits of the city, the franchisee shall pay to the city a fee equal to three percent of the gross receipts resulting from the solid waste services conducted under the franchise. The franchise fee shall be computed on a quarterly basis and paid within thirty days following the end of each quarterly calendar year. The franchisee shall maintain an adequate record of gross cash receipts resulting from the solid waste services conducted under the franchise. Records shall be open at all times for audit by authorized personnel designed by the city administrator. ~~Willful~~ Willful misrepresentation of gross cash receipts by the franchisee shall constitute cause for revocation of this franchise pursuant to Section 8.16.140 of this chapter. The franchise fee shall be in lieu of any business license or regulatory fee or tax, but shall not be in lieu of any ad valorem tax, imposed by the city. (Ord. O-91-9 § 2, 1991: Ord. O-91-7 § 2, 1991: Ord. O-89-3 § 17, 1988)

### **Chapter 8.20 COMMERCIAL GARBAGE CONTAINERS**

#### **Sections:**

**8.20.010 Standards for approval.**

**8.20.020 Special conditions and enforcement.**

**8.20.030 Violation—Penalty.**

#### **8.20.010 Standards for approval.**

A. All commercial garbage receptacles, and covered containers/drop boxes (one yard to ~~thirty~~ forty yards) located within the residential and commercial zones shall be in an enclosed area on the property or at the building being served and shall be screened from public view unless otherwise specified in this chapter.

B. The height of the screening shall not exceed six feet.

C. The screen shall enclose the receptacle on all four sides, with one side being a gate, and shall be constructed to be compatible with materials and color of surrounding buildings.

D. Enclosures must be approved by the collector before construction to ensure access is acceptable.

~~D~~E. Chain link fences with slats, wood, or brick or any combination will qualify as appropriate materials. Other commonly used materials may be approved by the planning commission.

~~E~~F. Shrubbery and evergreens will not qualify alone for screening but may be included in addition to materials listed in subsection D of this section. (Ord. O-90-9 § 1, 1990; Ord. O-89-14 § 1, 1989)

#### **8.20.020 Special conditions and enforcement.**

A. The homeowner, or property owner, shall assume all responsibility for the safety and maintenance of the containers and screens. No additional garbage or refuse may be visible at any time.

B. No commercial sized container or enclosure, visible from the golf course, shall be located on property abutting the golf course.

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C. In order to place a rented commercial container temporarily on site, the property owner who proposes to rent a commercial container or drop box temporarily for construction, destruction project or for tree removal must notify the city manager to obtain permission to place the drop box on site for a limited period of time. The city manager shall determine if the placement of the container, length of use and maintenance of the facility, is appropriate. If the city manager approves the placement of the drop box/container, the property owner must agree to all conditions as specified by the city manager prior to placement of the container. (Ord. O-89-14 § 2 (A—D), 1989)

#### **8.20.030 Violation—Penalty.**

It is a violation not to comply with any of the provisions of this chapter. Each noncompliance will be considered a separate violation and each day that a violation exists shall constitute a separate violation. The penalty for each violation shall be a fine as required by the city's schedule of fees and penalties as approved through resolution of the city council. (Ord. O-94-1 § 19, 1994; Ord. O-90-9 § 2, 1990; Ord. O-89-14 § 2 (D), 1989)

**Commented [KL1]:** This practice has changed at the request of the City