

New Contract Request Form

Contract Number	C1719												
Date	August 26, 2016												
Project Administrator's Name	Julie Livingston												
Project Administrator's Department	DCR												
Project Administrator's Phone	503.802.8424												
Description of Work or Services (Fill in or attach) Design/build contract for NE Grand project AIA Contract attached													
Pre-Solicitation Cost Estimate													
Procurement Process (Micro / Informal / Formal / Exempt)	Emergency												
Contract Type and Type of Payment (Personal Service / Product Purchase / Construction)	Construction												
Contract Start Date	07/20/16												
Contract Completion Date	02/17/19												
Vendor Code (Yardi)	Oneill01												
Contractor Company Name	O'Neill/Walsh Community												
Contractor Contact Person's Name	Dan Snow												
Contractor Address	2905 SW First Ave, Portland, OR 97201												
Contractor Phone													
Contractor Email Address	dsnow@walshconstruction.com												
State Certified Target Business? (M/W/ESB)													
Section 3 Certified Firm?													
Contract Amount / Not-To-Exceed Value	\$2,028,707												
BOC Approval (Y/N) & Resolution #	Y - 16-07-02												
Budget Info and finance approval (use table on reverse, if there are multiple) Federal Funds ___ yes ___ no	<table border="0"> <tr> <td>Property</td> <td>GL</td> <td>Job</td> <td>Cost Category</td> </tr> <tr> <td>DEVDPT</td> <td>↓</td> <td>DR0528A</td> <td>↓</td> </tr> <tr> <td>1640-50-00</td> <td></td> <td>DR 5308-10</td> <td></td> </tr> </table>	Property	GL	Job	Cost Category	DEVDPT	↓	DR0528A	↓	1640-50-00		DR 5308-10	
Property	GL	Job	Cost Category										
DEVDPT	↓	DR0528A	↓										
1640-50-00		DR 5308-10											
Comments	ACCOUNTING CODES FOR DESIGN PHASE ONLY! VERIFY CODES @ EXECUTION OF CONSTRUCTION GMP.												
Insurance Required (Y/N) Type? (Construction, Construction w/o bldrs risk, Supplier, Consultant)	Y-Construction												
Originator's Signature / Date	<i>Julie Livingston</i> 07/20/2016												
Management Approval Signature / Date	<i>W. Stevenson</i> 8/24/16												
Cost/Price Analysis Completed													
Purchasing Approval Signature / Date	<i>W. Stevenson</i> 9.6.16												



AIA[®]

Document A141™ – 2014

Standard Form of Agreement Between Owner and Design-Builder

Contract No. C1719

AGREEMENT made as of the 20th day of July in the year 2016.
(In words, indicate day, month and year.)

Notwithstanding the foregoing, this Agreement relates back to and is effective as of the Design-Builder's first provision of services or Work on the Project.

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

Home Forward
135 SW Ash Street
Portland OR 97204

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

O'Neill/Walsh Community Builders
2905 SW First Ave
Portland OR 97201

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

Design-Build Services for NE Grand Mixed-Use Building
Located on the west half of Block 45, Holladay's Addition, Portland OR

The Owner and Design-Builder agree as follows.

Except as permitted in Section 5.2.2, construction shall not commence prior to (1) Owner's approval of the Construction Documents and (2) execution of the GMP Amendment.

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

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

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

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(Paragraphs deleted)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

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

(Paragraph deleted)

§ 1.1.1 The Owner's program for the Project:

See Exhibit C.

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

See Exhibit C.

§ 1.1.3 The Project's physical characteristics:

See Exhibit C.

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

(Paragraph deleted)

See Exhibit C.

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

To be determined.

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:
(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Forty Four million dollars (\$44,000,000) for construction and two million five hundred twenty eight thousand seven hundred seven dollars (\$2,528,707) for architectural, engineering, and pre-construction services.

§ 1.1.7 The agreed-upon design and construction milestone dates:

.1 Design phase milestone dates:

Submit documents to the City of Portland's Bureau of Development Services for permit review no later than April 14, 2017.

.2 Substantial Completion date:

No later than February 17, 2019.

.3 Other milestone dates:

(Paragraph deleted)

Final Completion shall be achieved no later than 30 days after the achievement of Substantial Completion.

(Paragraph deleted)

§ 1.1.7.1 **Liquidated Damages.** Owner and Design-Builder agree that time is of the essence and that if Substantial Completion is not achieved by the Substantial Completion date, the amount of the Owner's actual damages for delay will be difficult, impractical or impossible to determine. Accordingly, the Owner and Design-Builder agree that in the event Design-Builder fails to achieve Substantial Completion by the Substantial Completion date, Design-Builder shall pay to the Owner as liquidated damages to compensate the Owner for damages related to delay three thousand dollars per day (\$3,000.00/day) for every day Design-Builder fails to meet the Substantial Completion date. The parties agree that Owner's actual damages resulting from delay are difficult to calculate, and that the liquidated damages represent a reasonable estimate (but not a penalty) of Owner's damages for delay. Owner may withhold liquidated damages from any payments otherwise due Contractor.

§ 1.1.8 The Design-Builder agrees to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:

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

.1 Architect of Record

LRS Architects
720 NW Davis St Suite 300
Portland OR 97209
Attn: Calista Fitzgerald

.2 Design Architect

Lever Architecture
239 NW 13th Ave Suite 303
Portland OR 97209

init.

Attn: Thomas Robinson

.3 Civil Engineer

DOWL
720 SW Washington St Suite 750
Portland OR 97205
Attn: Jeffrey Shoemaker

.4 Landscape Architect

Place Studio
735 NW 18th Ave
Portland OR 97209
Attn: Eric Bode

.3 Structural Engineer

kpff Consulting Engineers
111 SW 5th Ave Suite 2500
Portland OR 97204
Attn: Josh Richards

.3 Mechanical, Electrical & Plumbing Engineer (design assist)

Glumac
900 SW 5th Ave Suite 1600
Portland OR 97204
Attn: Kirk Davis

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

See Exhibit C.

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

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

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

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

§ 1.2 Project Team

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

Michael (Mike) Andrews
Home Forward
135 SW Ash Street
Portland, OR 97204

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

To be determined following selection of investor(s) and lender(s).

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

.1 Geotechnical Engineer

NW Geotech Inc.
9120 SW Pioneer Ct Suite B
Wilsonville OR 97070
Attn: Alan Bean

.3 Environmental Site Assessment Consultant

Hahn & Associates Inc.
434 NW 6th Ave Suite 203
Portland OR 97209
Attn: Nora Eskes

.2 Surveyor

WB Wells & Associates Inc.
6130 NE 78th Ct Suite C-11
Portland OR 97218
Attn: Teeg Mackai

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

Ali O'Neill
O'Neill/Walsh Community Builders
2905 SW First Avenue
Portland OR 97201

Daniel (Dan) Snow
O'Neill/Walsh Community Builders
2905 SW First Avenue
Portland OR 97201

§ 1.2.5 The following persons shall serve in the following roles for the Design-Builder:

- | | | |
|----|-------------------------|--|
| .1 | Project Executive: | Dan Snow |
| .2 | Project Manager: | Ali O'Neill, Dan Snow |
| .3 | Project Superintendent: | to be determined prior to execution of the GMP amendment |

Unless they leave the employ of the Design-Builder, the above-named persons shall serve in these positions throughout the duration of the Design-Builder's performance of the Contract except as approved otherwise in writing in advance by the Owner. Persons named to replace those set out above shall be approved in writing in advance by the Owner. The Owner's approvals as required by this Section shall not unreasonably be withheld.

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§ 1.3 Binding Dispute Resolution

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

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

[X] Arbitration/Litigation pursuant to Section 14.4

[] Litigation in a court of competent jurisdiction

[] Other: *(Specify)*

§ 1.4 Definitions

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

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior all prior and contemporaneous negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. Any proposed special terms or conditions proposed by Design-Builder, Architect, Consultants or Contractors (including, but not limited to, any limitations of liability or remedy or disclaimers of liability or remedy) whether in a warranty or otherwise shall expressly not be part of this Contract and shall not otherwise apply to the Project even if such terms and conditions are attached as an exhibit or otherwise. Any inconsistency between this Contract and any warranties or attachments shall be resolved in favor of this Contract, which means that, in the case of any limitations of liability or remedy or disclaimers of liability or remedy, no such limitations or disclaimers shall be allowed.

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

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

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

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

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

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

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

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

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

§ 1.4.12 Confidential Information. Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 Contract Time. Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Guaranteed Maximum Price Amendment ("GMP Amendment") for Substantial Completion of the Work.

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

§ 1.4.15 Contract Sum. The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work as identified in Section 2.1.1.

§ 1.5 Review By Others

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

§ 1.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services 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.

ARTICLE 2 COMPENSATION

§ 2.1 Compensation for Work Performed Prior To Execution of GMP Amendment

§ 2.1.1

(Paragraphs deleted)

The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract. The Contract Sum shall be the Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Sections 2.2 and 2.3 below.

§ 2.2 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ 2.2.1 The Cost of the Work is as defined in Section 2.4, Cost of the Work.

§ 2.2.2 The Design-Builder's Fee is zero percent (0.00%) of the Cost of the Work for work performed prior to the execution of the GMP Amendment. The Design-Builder's Fee shall be three and three quarters percent (3.75%) for work performed as part of the GMP Amendment.

§ 2.3 Guaranteed Maximum Price

§ 2.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed two million twenty eight thousand seven hundred and seven dollars (\$2,028,707.00) for work performed prior to the execution of the GMP Amendment, subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Such maximum sum is referred to in the Design-Build Documents as the Guaranteed Maximum Price. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner. If the parties reach agreement on the terms and conditions of the GMP Amendment, the amount of the Guaranteed Maximum Price shall be revised accordingly.

§ 2.3.2 In the event the final sum of the Cost of the Work plus the final Design-Builder's Fee is less than the final Guaranteed Maximum Price, the savings shall devolve 100% to the Owner and 0% to the Design-Builder. In the event of any such savings, upon the making of final payment, the Guaranteed Maximum Price shall be deemed to be reduced by the amount of any difference between the Guaranteed Maximum Price and the Cost of the Work plus the Design-Builder's Fee so that the final amount of the Guaranteed Maximum Price is equal to the Cost of the Work plus the Design-Builder's Fee as of the date of such final payment.

§ 2.4 Cost of the Work

§ 2.4.1 Cost To Be Reimbursed as Part of the Contract

§ 2.4.1.1 Labor Costs

§ 2.4.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 2.4.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site and wages or salaries of the Design-Builder's quality control and safety personnel whether stationed at the site or elsewhere.

§ 2.4.1.1.3 Wages and salaries of the Design-Builder'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.

§ 2.4.1.1.4 Costs paid or incurred by the Design-Builder 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 Section 2.4.1.1.1.

§ 2.4.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ 2.4.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 2.4.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 2.4.1.3.2 Costs of materials described in the preceding Section 2.4.1.3.1 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 Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 2.4.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 2.4.1.4.1 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 Design-Builder 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 Design-Builder shall mean fair market value.

§ 2.4.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ 2.4.1.4.2.1 Rates for rental equipment owned by the Design-Builder or by affiliated or associated firms or companies, including but not limited to firms or companies owned or controlled by officers, members or partners of the Design-Builder, shall be no higher than 75% of the market rental rates for contractor-owned equipment in the locale of the Project. Rates for rental equipment owned by other third parties shall be the Design-Builder's actual costs to rent such equipment provided such costs are reasonable in relation to market rental rates for such equipment in the locale of the Project.

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

§ 2.4.1.4.4 Costs of telephone, water, electricity and other utility services at the Project site, document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

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

§ 2.4.1.5 **Miscellaneous Costs**

§ 2.4.1.5.1 Premiums for the cost of that portion of insurance and bonds required by the Design-Build Documents that are directly attributed to the Contract. With the Owner's prior written approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents. Liability insurance is established at 1.96% of the Cost of the Work.

(Paragraphs deleted)

§ 2.4.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are specifically related to the Work and for which the Design-Builder is liable.

§ 2.4.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ 2.4.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section 2.4.1.6.3.

§ 2.4.1.5.5 Royalties and license fees paid for the use of a particular design, process, document or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights and copyrights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder 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 Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ 2.4.1.5.6 With the Owner's prior written approval, costs for electronic equipment and software directly related to the Work.

§ 2.4.1.5.7 Deposits lost for causes other than the Design-Builder's fault, negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ 2.4.1.5.8 With the Owner's prior written approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ 2.4.1.5.9 With the Owner's prior written approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ 2.4.1.5.10 Subject to Owner's prior written approval and to the extent allowed under Owner's travel reimbursement policy, that portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling more than 75 miles away from the Project site in discharge of duties connected with the Work.

§ 2.4.1.6 Other Costs and Emergencies

§ 2.4.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner and specifically identified as a Cost of the Work herein.

§ 2.4.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, but only to the extent not the result of the fault or negligence of Design-Builder, Architect, Consultants and Contractors.

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

§ 2.4.1.7 Related Party Transactions

§ 2.4.1.7.1 For purposes of Section 2.4.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder 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 Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ 2.4.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder 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 Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section 2.4.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section 2.4.4.

§ 2.4.2 Costs Not to Be Reimbursed as Part of this Contract

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

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section 2.4.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier;
- .4 Overhead and general expenses, except as may be expressly included in Section 2.4.1;
- .5 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;

- .6 Except as provided in Section 2.4.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors 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;
- .7 Any cost not specifically and expressly described in Section 2.4.1;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs incurred prior to the Owner's approval thereof, when such prior approval is required by the Design-Build Documents, and costs incurred in excess of the Owner's limitations or contrary to the Owner's limitations or instructions, when such limitations or instructions are imposed by the Owner pursuant to the Design-Build Documents;
- .10 Costs of deductibles as described in Exhibit B;
- .11 Costs of subcontractor default insurance (also known as Subguard); and
- .12 Costs expressly excluded from the Cost of the Work by the Design-Build Documents.

§ 2.4.3 Discounts, Rebates, and Refunds

§ 2.4.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ 2.4.3.2 Amounts that accrue to the Owner in accordance with Section 2.4.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 2.4.4 Other Agreements

§ 2.4.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder 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 Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.4.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section 2.4.5, below.

§ 2.4.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

§ 2.4.5 Accounting Records

The Design-Builder 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 the 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 Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of six years after final payment, or for such longer period as may be required by law.

§ 2.4.5.1 The Owner shall have the right to conduct an independent audit of the Design-Builder's records, books and other documents referenced in Section 2.4.5 at any time during the performance of the Work and thereafter until the end of the period referenced in Section 2.4.5. If such audit determines that the Design-Builder has submitted Applications for Payment or has been paid pursuant to Applications for Payment more than the amount actually due under the Design-Build Documents, the Design-Builder shall (1) issue a credit to the Owner by the amount of the overage, if the overage has not been paid, and (2) pay the amount of the overage and accumulated interest thereon, if the overage has been paid. If the amount of the overage determined by the, whether paid or not, is one hundred two percent (102%) or more of the amount actually due under the Design-Build Documents, the Design-Builder shall pay the cost of the audit. Such cost shall not be included in the Cost of the Work.

(Paragraphs deleted)

(Table deleted)

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

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

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

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

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

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

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

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work. Design-Builder shall cause its representatives, and representatives of Architect, Consultants and Contractors at all tiers as designated by Owner, if any, to attend and participate in weekly progress meetings. Design-Builder shall prepare and distribute to all attendees minutes of such progress meetings for review and correction. Progress meetings may be utilized to review the Design-Builder's design and construction schedules, requests for information, or to address any delays, unusual conditions, or critical items which have affected or could affect the progress of the Work, and to consider any other matter or subject of relevance to the Work as determined by Owner.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect, Consultants and Contractors are performed for the benefit of, the Owner. Each agreement with Architect, Consultants and Contractors at every tier shall provide that the Owner is and shall be a third-party beneficiary of such subcontract, purchase order and similar agreement, and that the Owner shall have the right, but not the obligation, to assert claims directly against the Architect, Consultants and Contractors for breach of

contract, breach of express warranties, breach of implied warranties including but not limited to warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The Owner and Design-Builder acknowledge and agree that the purpose of this Section is to enable the Owner at its discretion, in addition to the Design-Builder, to assert claims for damages and indemnification directly against Architect, Consultants and Contractors that are or may be responsible for breach of the contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project.

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

§ 3.1.8 Progress Reports

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

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14; and
- .10

(Paragraphs deleted)

Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall utilize the critical path method, shall be revised at appropriate intervals as required by the conditions of the Work and Project which shall be no less often than monthly, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

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

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

§ 3.1.9.4 Within seven (7) days after the Design-Builder's receipt of the Owner's demand for a Recovery Schedule, the Design-Builder shall present the Recovery Schedule to the Owner. The Recovery Schedule shall represent the Design-Builder's best judgment as to how the Work should be made to comply with the Design-Builder's schedule within the agreed Recovery Period. The Recovery Schedule shall be prepared to a similar level of detail as the Design-Builder's schedule.

§ 3.1.9.5 Without limiting the Owner's rights, upon demand by the Owner, the Design-Builder shall prepare and submit to the Owner a "Recovery Schedule," in a form and providing sufficient detail to explain and display how the

Design-Builder intends to reschedule those activities to regain compliance with the Design-Builder's schedule during an agreed Recovery Period.

§ 3.1.9.6 In the event the Owner determines that the performance of the Work has not progressed or reached the level of completion required by the current, approved Design-Builder's schedule, the Owner shall have the right to order the Design-Builder to take corrective measures as necessary to restore the progress of the Work to the requirements of such schedule, including but not limited to (1) working additional shifts or overtime, (2) furnishing additional labor, services, materials, equipment and facilities and (3) other similar acceleration measures. The costs incurred by the Design-Builder pursuant to this Section shall be paid by the Design-Builder.

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

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to and waives any increase in Guaranteed Maximum Price or extension of Contract Time based on delay caused by Owner's review of Submittals. If any acts or Omissions by Owner cause a delay in the submittal review process that affect the critical path of the schedule, the Design Builder shall be issued a change order for costs associated with the delay.

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

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

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner specifically in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

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

§ 3.1.11.6 Any corrections or revisions to Submittals made by the Owner shall be deemed acceptable by the Contractor, without change in the Guaranteed Maximum Price or Contract Time, unless said changes constitute changes to the Design-Build Documents and the Design-Builder provides the Owner with contrary written notice

before commencing any such changed Work. In the absence of such notice, the Design-Builder shall make all corrections requested by the Owner and provide a corrected Submittal without change in the Guaranteed Maximum Price or Contract Time.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents, will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents, and that all materials and equipment selected by Design-Builder, Architect, Consultants and Contractors will be suitable for the purposes indicated in the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, Architect, Consultants and Contractors, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.1 Without limitation of any remedy of Owner, upon Substantial Completion of the Work or termination of the Contract, the Owner shall be entitled to enforce at its option any and all Contractor warranties relating to Work performed and materials and equipment furnished by such Contractors. The Design-Builder agrees to perform the Work in such manner so as to preserve any and all such Contractor warranties. The Design-Builder also shall collect, assemble in a binder, and submit to the Owner written Contractor warranties and related documents, including without limitation from Contractors and Subcontractors at all tiers performing Work and furnishing materials, equipment, appliances and other components of the Project. All such written warranties shall extend to the Owner.

§ 3.1.12.2 Effective upon the written demand of the Owner or upon the insolvency, bankruptcy, dissolution or other incapacity of the Design-Builder, the Design-Builder assigns to the Owner all Contractors' warranties in materials and equipment and other portions or components of the Work.

§ 3.1.13 Royalties, Patents and Copyrights

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

§ 3.1.13.2 Without limiting the generality of Section 3.1.14.1, the Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers was specifically required by the Owner in Owner's Criteria, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify, hold harmless, defend and reimburse the Owner and the members, partners, officers, directors, agents, employees and successors of any of them, from, for and against suits, actions, awards, penalties, liabilities, claims, damages, losses and expenses, including but not limited to attorneys' fees and expert witness' fees, arising out of or resulting from performance of the Work, whether directly incurred or resulting from third-party claims, but only to the extent caused by (1) the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable; or (2) the failure of such person or entity to perform in accordance with the Contract. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 To the fullest extent permitted by law, the indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for

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Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

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

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement, except that the assumption of obligations under the agreement does not release Design-Builder from liability for damages attributable to breaches of the agreement.

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

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement consistent with Section 3.1.15.2.

§ 3.1.15.4 Nothing in this Article or elsewhere in the Design-Build Documents shall be interpreted to (1) constitute an assignment of the Design-Builder's rights against the Owner to the Architect, Consultants, and Contractors or (2) make the Architect, Consultant or Contractor a third-party beneficiary of the Contract.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance in accordance with Exhibit B and provide bonds as set forth in Exhibit E.

§ 3.1.16.1 Design-Builder shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Guaranteed Maximum Price, and such amount shall be adjusted as the Guaranteed Maximum Price is adjusted pursuant to the Design-Build Documents. The form of the bonds and the identity of the surety shall be in the form attached as Exhibit E.

§ 3.1.16.2 Any Change Order, Construction Change Directive, order for a minor change in the Work or other Modification under the Contract shall not be subject to inspection or approval by any surety on any required bond. The surety on such bond, by issuing the bond, expressly waives its right to approve, and consents to, any such Change Order, Construction Change Directive, order or Modification.

§ 3.1.16.3 The surety on any required bond shall be bound to mediate and arbitrate any disputes between and among it, the Owner, Owner's separate consultants and contractors and their subconsultants and subcontractors, consultants and subconsultants, contractors and subcontractors and their sureties, Contractors, Contractors' sureties, Subcontractors, Subcontractors' sureties, Architect, Architect's consultants, and other persons or entities under contract or otherwise engaged to furnish labor, services, materials or equipment for the Project in the same way and to the same extent that the Design-Builder shall be bound to mediate and arbitrate any disputes between and among such parties. The surety shall be bound by the mediated agreement in the same way and to the same extent that the Design-Builder shall be bound.

§ 3.1.16.4 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 Design-Builder shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 3.1.16.5 With the Owner's prior written approval, the Design-Builder may require one or more Contractors to furnish payment and performance bonds covering faithful performance of the particular subcontract and payment of obligations arising thereunder.

ARTICLE 4 DESIGN PHASE

§ 4.1 General

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

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

§ 4.2 Evaluation of the Owner's Criteria

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

(Paragraphs deleted)

§ 4.3 Design

§ 4.3.1 Schematic Design

§ 4.3.1.1 Upon the Owner's issuance of a written consent to proceed with the Schematic Design, the Design-Builder shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing. The Schematic Design shall be consistent with the Design-Build Documents, including but not limited to the Owner's Criteria.

§ 4.3.1.2 The Design-Builder shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's program, schedule and budget.

§ 4.3.1.3 The Design-Builder shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 4.3.2 Design Development

§ 4.3.2.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget, the Design-Builder shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 4.3.2.2 The Design-Builder shall submit the Design Development Documents to the Owner and request the Owner's approval.

§ 4.3.3 Construction Documents

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§ 4.3.3.1 Upon the Owner's written approval of the Design Development Documents submitted by the Design-Builder, the Design-Builder shall provide Construction Documents for review and written approval by the Owner. The Construction Documents shall set forth in detail the requirements for construction of the Project and shall include all items necessary for the proper execution and completion of the Work and reasonably inferable from the Design-Build Documents, including but not limited to the Owner's Criteria, as being necessary to produce the indicated results. The Construction Documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing and subject to the advance written approval of Owner. Unless the Owner and Design-Builder execute a Modification specifically identifying the particular deviation and Owner's agreement with such deviation, the Design-Builder shall correct the deviation in accordance with Article 11. The Construction Documents shall not modify the Design-Build Documents, including but not limited to the Owner's Criteria. Construction Documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved Design Development Documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

The Design-Builder shall submit the Construction Documents to the Owner and request the Owner's approval. Approval of the Construction Documents shall not constitute acceptance of a deviation unless the deviation is specifically identified as changing the Owner's Criteria and described as such in a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 4.3.3.2 The Design-Builder shall meet with the Owner not less than twice a month to review progress of the design documents.

§ 4.3.3.3 Upon the Owner's written approval of Construction Documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 4.3.3.4 If required by Owner, the Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Owner's Criteria set forth in the Design-Build Documents and the approved final programming document, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project in effect at the time of the applicable permit; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ 4.3.3.5 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section 4.3.4.4, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ 4.3.3.6 During the preparation of the Schematic Documents, Design Development Documents and Construction Documents, Design-Builder shall perform the following services:

1. Review design documents for constructability and propose revisions to reduce cost and time.
2. During the design process, participate in sustainability review(s) of costs and life-cycle analyses for "green building" options and sustainable practices, as requested by Owner.
3. Prepare and submit to Owner construction cost estimates based on design documents at:
 - a. 90% Schematic Design phase
 - b. 90% Design Development phase
 - c. 90% Construction Document phase

Use CSI or other estimating format acceptable to Owner. At Schematic Design and Design Development, the Design-Builder shall identify value engineering and cost reduction options, including projected cost savings offset with any additional design costs, if necessary to bring its construction cost estimate within Owner's construction budget. Once a Design-Builder estimate is evaluated and a reconciled, it will become the approved construction budget utilized for future budget reconciliation. If the Design-Builder's estimate at 90% Construction Document phase is greater than the approved construction budget, the Design-Builder shall work with the Owner to identify a list of add-back alternates and cost reduction strategies to achieve scope and budget alignment.

4. Prepare a Construction Schedule that indicates commencement of construction by **June 21, 2017**. Schedule format shall be critical path method ("CPM").
5. Work with Owner to develop a Contracting Plan for accomplishment of all construction. Recommend divisions of the work to facilitate bidding and award of trade contracts. Recommend which work, if any, should be procured through value-based competitive selection in lieu of low bid. Identify Work which the Design-Builder proposes to self-perform and how competitive pricing will be accomplished. Identify the plan to manage any subcontractor who is not performing in accordance with the Project's requirements for budget control, on-time schedule performance, safety and/or quality control.
6. Develop a job-specific Economic Participation Plan that achieves 35% State of Oregon Certified M/W/ESB participation, Section 3 goals, and compliance with Owner's Workforce Training and Hiring Program. For Portland Housing Bureau requirements, see Exhibit I.
7. Develop a Hazardous Materials Plan that addresses the handling of unanticipated hazardous materials that may be encountered during construction. Work with the Owner to develop a strategy for site remediation, if indicated by the Phase 1 and Phase 2 Environmental Site Assessments and/or other environmental reports.
8. Develop a job-specific Safety Plan that addresses the Project location, resident and public safety and worker safety.
9. Provide a Quality Control Plan for use during construction.
10. Prepare bid packages, solicit and receive bids.
11. After receipt of subcontractor bids, prepare an estimate for review by Owner. If the initial construction cost estimate exceeds Owner's approved construction cost estimate, the Design-Builder shall notify Owner and propose how to complete the Work within budget.

§ 4.3.4.7 As part of Design-Builder's preparation of the construction cost estimate at the 90% Construction Document phase, Design-Builder shall solicit and make a good faith effort to obtain bids from no fewer than three independent subcontractor bidders, unless Owner agrees in writing in advance to fewer than three bids for particular subcontracted or supplied Work. The Design-Builder shall solicit and make a good faith effort to obtain bids from no fewer than two independent subcontractor bidders for portions of the Work that Design-Builder desires to self-perform with its own personnel. In the event that Design-Builder provides bids for self-performed Work, such bids shall be prepared and submitted to Owner one day before receipt of subcontractor bids and considered in the same manner as if they were subcontractors. For the purposes of this Section, Design-Builder's "own personnel" shall be construed to mean both (1) Design-Builder's own personnel per se and (2) the personnel of Design-Builder's affiliated or associated firms or companies, including but not limited to firms or companies owned or controlled by Design-Builder.

§ 4.3.4.8 Design-Builder shall submit a list of all proposed Subcontractors. The list shall identify the name of each Contractor, whether the Contractor is a State of Oregon certified Minority-owned, Woman-owned or Emerging Small Business ("M/W/ESB") or HUD Section 3 business concern, and the portion of the Work to be performed by each Contractor. The information submitted by Design-Builder shall be sufficient to permit the Owner to determine the percentage of Work subcontracted for purposes of the Economic Participation Plan.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.4.1, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Construction Documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the agreed Owner's Criteria, upon which the Design-Builder's Proposal is based;

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- .2 The proposed Guaranteed Maximum Price, a detailed written statement of estimated cost organized by trade categories in such detail as Owner may reasonably require, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.1.1 Upon the Owner's receipt of the Design-Builder's Proposal, the Owner and Design-Builder agree to negotiate in good faith regarding the terms and conditions of the GMP Amendment, including but not limited to the Guaranteed Maximum Price. If the Owner and Design Builder are unable to agree on the terms and conditions of the GMP Amendment, the Owner shall have the right to terminate the Contract. The amount of time allotted for negotiations and the timing of any termination shall be determined in Owner's sole discretion.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions at which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree, the Owner and Design-Builder shall execute the GMP Amendment setting forth the terms of their agreement, including but not limited to the adjustment of the Guaranteed Maximum Price.

(Paragraphs deleted)

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE GMP AMENDMENT

§ 5.1 Prevailing Wages

§ 5.1.1 This project is subject to regulation under the Oregon BOLI PWR law and uses federal funds that require compliance with the federal Davis-Bacon Act. On projects subject to both state and federal prevailing wage laws, contractors must pay the higher of the state or federal prevailing wage rates to workers.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to (1) execution of the GMP Amendment and (2) Owner's approval of the Construction Documents.

§ 5.2.2 If the Owner and Design-Builder agree in a Modification, construction may proceed prior to the execution of the GMP Amendment. However, such Modification shall not waive the Owner's right to reject the Design-Builder's Proposal or otherwise limit Owner's rights and remedies under this Contract.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, design and construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. Design-Builder shall notify Owner in writing, before commencement of any portion of the Work, of any defect, deficiency, or incompatibility of any portion of the Project performed by others, including but not limited to Owner's consultants and separate contractors, which defect, deficiency, or incompatibility would in any manner affect the performance or quality of the Work. The failure to so notify Owner shall preclude Design-Builder from any claim, which otherwise may have been available under this Contract, for additional compensation, damages, or an extension of time relating to the affected Work. Contractor's commencement of its Work in any aspect or area where others have performed services or work shall constitute acceptance of the services or area and confirmation that Design-Builder can proceed with its Work.

§ 5.2.5 The Design-Builder shall perform such detailed examination, inspection and quality surveillance of the Work as will ensure that the Work is progressing and is being completed in strict accordance with the Design-Build Documents, including but not limited to Owner's Criteria. The Design-Builder shall be responsible for evaluation, examination, inspection and quality surveillance of all Work performed by Architect, Consultants and Contractors. The Design-Builder shall determine when it is necessary to perform and shall perform, or arrange for the performance of, tests (in addition to those requested by the Owner or required by the Design-Build Documents) to

verify its inspections or to ensure that the Work is being completed in strict accordance with the Design-Build Documents.

§ 5.3 Labor and Materials

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

§ 5.3.1.1 The Design-Builder's obligations under Section 5.3.1 shall include without limitation the obligation to pay the Architect, Consultants and Contractors and any other person or entity having mechanics', material suppliers', construction or similar lien rights or stop notices regarding the Project due to their performance of the Design-Builder's obligations under the Contract. Provided the Owner has fulfilled its payment obligations hereunder, the Design-Builder agrees to keep the Project and the Project site free and clear of any and all such lien claims or stop notices filed by any person or entity at any tier performing the Work or the Design-Builder's obligations under the Contract, excluding any lien filed by Design-Builder.

§ 5.3.1.2 In the event a claim of lien or stop notice is filed, whether due to nonpayment of the claimant or otherwise, and whether contested or not, the Design-Builder within ten (10) days after receipt of the Owner's demand and at the Design-Builder's expense shall cause the lien or stop notice to be removed by payment, compromise or the furnishing and perfection of a release bond or deposit pursuant to applicable law. If the Design-Builder fails to perform its obligation under the prior sentence, the Owner, without waiving or limiting its rights or remedies or those of any interested persons or entities, and at the Owner's sole discretion, may cause the lien or stop notice to be removed by paying the claimant directly, by paying the Design-Builder and claimant with a multiple-payee check or by furnishing and perfecting a lien release bond or deposit pursuant to applicable law; provided that in such instance the Owner shall be entitled to retain from any payments then due or which otherwise will become due to the Design-Builder, whether under the Contract or otherwise, an amount sufficient to hold the Owner harmless considering such payment or such furnishing and perfecting a release bond or deposit and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 5.3.1.3 Provided the Owner has fulfilled its payment obligations hereunder, and without limiting Design-Builder's other indemnity and related obligations under the Contract, Design-Builder agrees to indemnify, hold harmless, reimburse and defend (with counsel approved by the Owner) the Owner and any other person or entity with an interest in the Project or Project site from, for and against any and all liens, stop notices, actions, suits or proceedings relating to such liens, and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6. In addition, if Design-Builder desires to submit a substitute product or method for that Work in lieu of what has been specified, the Design-Builder shall provide written notice to the Owner setting forth the following information and documents:

- .1 a full explanation of the proposed substitution and a submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operation procedures and other like information necessary for a complete evaluation of the substitution;
- .2 reasons the substitution is advantageous and necessary, including but not limited to the benefits to the Owner and the Work in the event the substitution is accepted;
- .3 the adjustment, if any, in the Guaranteed Maximum Price, in the event the substitution is accepted;
- .4 the adjustment, if any, in the Contract Time and the Design-Builder's construction schedule in the event the substitution is accepted; and
- .5 an affidavit stating that (1) the proposed substitution meets all the requirements of the Design-Build Documents and (2) the Design-Builder will perform or cause to be performed the warranty and correction of Work obligations with respect to the proposed substitution that would have been performed for the specified product or method.

Proposals for substitutions shall be submitted to the Owner in sufficient time to allow the Owner no less than fourteen (14) days for review.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Design-Builder shall not permit at the site of the Work the use of alcohol or tobacco (including but not limited to smokeless tobacco), illegal use of drugs or other controlled substances, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, or their respective contractors. The Design-Builder agrees to take prompt and effective corrective action in the event of violations of these standards of conduct.

§ 5.3.4 The Design-Builder shall coordinate, supervise and otherwise administer the Work so as to maintain labor harmony between and among the trades performing the Work and so as to avoid lockouts, strikes and other labor-related events or circumstances which delay or otherwise impact the Work; provided that the Design-Builder's obligations under this Section shall be limited to events and circumstances which occur substantially where the Work is performed or which result substantially from the actions of persons or entities performing the Work.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, if any, required for the Work, that are legally enacted when the GMP Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Owner shall secure and pay for the building permit as well as any other legal authorizations and entitlements necessary to begin the Work, including but not limited to land use review fees, plan check fees, system development charges, public works permits, and operational term use easements. The Design-Builder shall secure and pay for permits, fees, licenses, and inspections by government agencies necessary to achieve and Substantial Completion of the Project, including but not limited to mechanical, plumbing, electrical and similar special permits, street closure permits, air discharge permits and all other necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures.

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

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Guaranteed Maximum Price or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

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

§ 5.6 Allowances

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

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

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Guaranteed Maximum Price but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

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

§ 5.7 Key Personnel, Contractors and Suppliers

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

§ 5.7.2 If the Design-Builder changes any of the Architect, Consultants, or Contractors identified in the GMP Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new Architect, Consultants, or Contractors. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed Architect, Consultants, or Contractors or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

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

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

§ 5.8 Documents and Submittals at the Site

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

§ 5.9 Use of Site

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

§ 5.10 Cutting and Patching

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

§ 5.11 Cleaning Up

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

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

§ 5.12 Access to Work

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

§ 5.13 Construction by Owner or by Separate Contractors

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

§ 5.13.1.1 The Owner reserves the right to perform construction or operations or services related to the Project, and to furnish materials and equipment for the Project, with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 The cost of any materials or equipment to be provided by the Owner shall not be included in the Guaranteed Maximum Price. The cost of installing such materials or equipment shall be included in the Guaranteed Maximum Price to the extent the Design-Build Documents require the Design-Builder to install such materials or equipment as part of the Work. Handling and storage of any such materials or equipment supplied by the Owner and delivered to the site for installation by the Design-Builder shall be the responsibility of the Design-Builder.

§ 5.13.1.3 The Design-Builder shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder. The Owner shall require its own forces and separate contractors to cooperate with the Design-Builder with respect to such coordination. Owner's own forces and separate contractors shall be subject to the Design-Builder's reasonable work and safety rules to the extent their work locations overlap. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. If the Design-Builder claims that any adjustment in the Guaranteed Maximum Price is necessary because of revisions to the Design-Builder's schedule, the Design-Builder shall make a Claim as provided in Article 14. The construction schedules so established shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

(Paragraph deleted)

§ 5.14 Mutual Responsibility

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

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 5.15 Owner's Right to Clean Up

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

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

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

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

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

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

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Guaranteed Maximum Price and Contract Time being adjusted accordingly.

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

§ 6.3.3 If the Change Directive provides for an adjustment to the Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

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

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with and diligently continue performance of the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Guaranteed Maximum Price or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Guaranteed Maximum Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and cost savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

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

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost decrease. When both additions and credits covering related Work or substitutions are involved in a change, the overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.4 Change Proposals

§ 6.4.1 Within the time limits set out in this Section, after receipt of a Request For Change Order Proposal or a Change Directive, the Design-Builder shall submit to the Owner a written Change Order Proposal setting out any

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proposed adjustment in the Guaranteed Maximum Price or Contract Time, or both, to which the Design-Builder believes it (1) would be entitled as a result of the change in the Work proposed in the Request For Change Order Proposal or (2) is entitled as a result of the change in the Work directed by the Change Directive. Such Change Order Proposal may, at Owner's option, be in the form of a lump sum proposal or a unit price proposal, or a combination thereof, for a proposed increase in the Guaranteed Maximum Price, and in similar form for a proposed extension of the Contract Time, and otherwise shall be in such form and in such detail as the Owner may require. Such Change Order Proposal shall be submitted as soon as practicable after the Contractor's receipt of the Request For Change Order Proposal or the Change Directive, but in no event later than twenty one (21) days after the Contractor's receipt of the Request For Change Order Proposal or the Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

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

§ 7.2 Information and Services Required of the Owner

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

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

§ 7.2.3 The Owner shall promptly obtain easements, zoning adjustments, and legal authorizations or entitlements regarding site utilization where essential to the completed Project. The Design-Builder shall promptly obtain easements (including but not limited to swing-way easements) and other property rights required for the construction activities of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Contract or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to reasonably rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.5.1 Notwithstanding the provisions of Section 7.2.5, the Design-Builder shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Design-Builder shall coordinate with utility and other involved third party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

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

§ 7.2.7 Prior to the execution of the GMP Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Guaranteed Maximum Price; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

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

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Design-Builder agrees that the Owner shall have no obligation to deliver copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract or on the Project, and that the Owner's failure to deliver copies of such notices to the Design-Builder shall have no effect on the obligations of the Design-Builder to hold harmless and indemnify the Owner for mechanics', material suppliers', design professionals', construction or similar liens as required by the Contract or applicable law. However, the Owner shall make a good faith attempt to deliver promptly to the Design-Builder copies of notices of right to a lien received by the Owner from parties purporting to be performing or furnishing Work under the Contract.

§ 7.3 Submittals

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

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the design or construction means, methods, techniques, sequences or procedures, or for

the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

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

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

§ 7.8 Owner's Right to Stop Work

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

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out all or a portion of the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies, including but not limited to the Owner's attorneys' fees, and related costs, disbursements and expenses. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

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

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

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

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes not caused or contributed to by the Design-Builder, Architect, Consultants or Contractors, fire, unusual delay in deliveries beyond Design-Builder's reasonable control, abnormally adverse weather conditions not reasonably anticipatable, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes

that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner and Design-Builder may agree. If Owner and Design-Builder cannot so agree, Design-Builder may make a Claim for an extension of the Contract Time pursuant to Article 14.

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

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

(Paragraphs deleted)

§ 9.1.1 Progress Payments

§ 9.1.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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

§ 9.1.1.3 Provided that an Application for Payment is received not later than the first day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the first day of the following month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

§ 9.1.1.4 With each Application for Payment the Owner may request the Design-Builder submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment. With each Application for Payment, the Design-Builder also shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work. Compensation for design services, if any, shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.1.1.5 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 9.1.1.4 or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. 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.

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

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

§ 9.1.1.8 Subject to other provisions of the Design-Build 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 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 6.3.9;

- .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 completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing);
- .3 Subtract retainage of five percent (5%);
- .4 Subtract the aggregate of previous payments made by the Owner; and
- .5 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5.

§ 9.1.1.9 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ 9.1.2 Final Payment

§ 9.1.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ 9.1.2.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1.

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

§ 9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 Duly executed lien and claim waivers in the forms attached as Exhibit D, executed and acknowledged sworn statement from the Design-Builder showing the Architect, Consultants, Contractors and any other person or entity with whom the Design-Builder has entered into agreements with related to the Work, the amount of each such agreement the amount requested for payment to each such person or entity, and

the amounts to be paid to and retained by the Design-Builder from such progress payment, together with similar sworn statements from all such persons and entities. The waiver and release forms submitted by the Design-Builder shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.

- .2 Duly executed lien and claim waivers in the forms attached as Exhibit D executed by the Architect, Consultants, Contractors and any other person or entity with whom the Design-Builder has entered into agreements with related to the Work if requested by Owner. The lien and claim waiver forms submitted by such person or entities shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment.

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

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

§ 9.4 Certificates for Payment

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

§ 9.5 Decisions to Withhold Approval

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

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

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- .9 failure of the Design-Builder to provide satisfactions of claims of Architect, Consultants, Contractors or others; or
- .10 failure of the Design-Builder to provide waivers and releases from Architect, Consultants, Contractors and others.

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

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractors, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment for a progress payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents unless Owner has a good faith believe that withholding of payment is necessary to protect Owner from Design-Builder's failure to perform its obligations under the Contract.

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

§ 9.6.2.1 Should the Design-Builder withhold payment from Architect, Consultants, Contractors or others due to a bona fide dispute, the Design-Builder shall notify the Owner in writing. The Owner may then withhold such funds from the Design-Builder until the dispute is resolved; provided that this Section shall not be construed or applied to prevent the Design-Builder from receiving payment from the Owner for Work when such Work is the subject of a good faith backcharge by the Design-Builder against the person or entity involved in the bona fide dispute.

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

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

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

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

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Guaranteed Maximum Price, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held

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by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.6.8 Upon reasonable evidence of the unjustified nonpayment of the Architect, Consultants, Contractors or others by Design-Builder, the Owner may, after giving reasonable notice and opportunity to cure to the Design-Builder, make payment of amounts due to such persons or entities by direct payments or by means of multiple-payee checks. Upon request of the Owner, the Design-Builder shall timely furnish to the Owner such information as the Owner reasonably will need to make such direct or multiple-payee check payments, including but not limited to the names and addresses of the persons or entities and the amounts due to each of them.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, Architect, Consultants, or Contractors, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 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 Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.1.1 For Substantial Completion of the Work or designated portion thereof to be achieved, the Owner also must have received a temporary or final certificate of occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose. The requirement shall be deemed satisfied if all construction, submittals and other performance by the Design-Builder required for issuance of the certificate of occupancy and other approvals have been completed but the certificate and approvals have not been issued solely because of factors beyond the reasonable control of the Design-Builder.

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

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

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

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the

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date of Substantial Completion and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 When the Design-Builder believes that the Work or designated portion thereof has been finally completed, the Design-Builder shall submit to the Owner written notice that the Work is ready for final observation and upon receipt of a final Application for Payment, the Owner will promptly make such observation. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed (except for those obligations which, by their nature, extend beyond Final Completion), the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.1.1 The term "Final Completion" as used in the Design-Build Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved, (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose and (3) the Design-Builder has performed all of its obligations under the Contract except for those obligations that, by their nature, extend beyond Final Completion.

§ 9.10.2 Final payment shall not become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner, and (8) as-built Drawings in CAD format acceptable to the Owner and all other documents and items required by the Contract to be provided as a condition of achieving Final Completion. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release and waiver required by the Owner, the Design-Builder shall furnish a bond or other security satisfactory to the Owner to

indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 In addition to other documentation required by the Architect and Owner as a condition of final payment, the application for final payment shall be accompanied by final conditional waivers and releases of stop notices, mechanics', material suppliers', construction or similar liens and other claims, executed by the Design-Builder, Architect, Consultants and Contractors at all tiers. The forms of the waivers and releases shall be as set out in Exhibit D.

§ 9.10.3 If, after Substantial Completion of the Work, Final Completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting Final Completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.3.1 If the Owner makes such payment in advance of Final Completion, the Owner shall retain an amount no less than one hundred fifty percent (150%) of the sum of the cost of the Work for the Design-Builder to finally complete the Work.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the
(Paragraphs deleted)
Owner.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract and the entirety of the Work. In addition, Design-Builder shall be responsible for the security and protection (i) of its equipment, supplies and tools used in connection with the Work, and (ii) for all of the other property owned or leased by Design-Builder or any of its Contractors located at the Project site.

§ 10.2 Safety of Persons and Property

§ 10.2.1 Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs, commensurate with industry best practices in connection with the performance Design-Builder's obligations under this Contract. Without limiting Design-Builder's obligation to indemnify Owner or any of its other obligations under the Contract, Design-Builder is solely responsible for the conduct, safety, and health of its employees, agents, Architect, Consultants, Contractors and others performing the Work or entering into the Work area, and any impact they or their agents may have on the public arising out of this Contract. Design-Builder represents and warrants that information provided to Owner with regard to the safe conduct of its business, if requested by Owner, is accurate and complete. Failure by Owner to review any information provided by Design-Builder shall not relieve Design-Builder of its obligations under the Contract. Further, Design-Builder shall notify Owner immediately upon any change in such information. Design-Builder shall comply with all applicable federal, state, provincial and local safety laws and regulations. These requirements include, but are not limited to, posting and maintaining required material safety data sheets; labeling, handling, transporting, storing and disposing of any hazardous materials; training of all on site employees and Design-Builder employees regarding safe work practices, and mitigation of any hazards identified; inspection of work sites for any unsafe conditions and prompt correction of any such conditions identified. Design-Builder's failure to comply with this Section constitutes a material breach of this Agreement, and without limitation to other remedies, subjects Design-Builder to all rights and remedies available to Owner under

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law and equity, including, but not limited to, immediate termination of this Agreement. The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on and those performing labor or services or furnishing equipment or materials at the Work site and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction;
- .4 other structures contiguous to the Work site and otherwise located at or contiguous to the premises, and trees, shrubs, lawns, walks, pavements, roadways and utilities serving such structures and premises; and
- .5 the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors.

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

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including but not limited to posting danger signs and other warnings against hazards, promulgating safety rules and regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

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

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except to the extent such damage or loss is attributable to negligent acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

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

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

§ 10.2.8 Owner and Design-Builder acknowledge and agree that ORS § 654.150 (relating to sanitary facilities at construction projects) applies at the site for the Work. Design-Builder shall be responsible for complying with ORS § 654.150 and any costs incurred for such compliance. This Section is included in this Agreement in accordance with ORS § 654.150(1).

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon

recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

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

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

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

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

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

(Paragraphs deleted)

§ 10.4 Spill Responsibility

§ 10.4.1 The Design-Builder is responsible for any and all releases of environmental pollution during performance of the Contract which occur as a result of, or are contributed by, actions of its agents, employees, suppliers, or Contractors. The Design-Builder agrees to promptly remediate such releases to satisfaction of the Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner.

§ 10.4.2 Design-Builder shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Design-Builder, at all times, shall:

- .1 properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;

- .2 be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials that the Design-Builder has brought onto the Work site; and
- .3 promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

§ 10.4.3 The Design-Builder shall be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Design-Builder's (i) fault or (ii) failure to perform in accordance with the Design-Build Documents. Nothing in this Section shall limit the Contractor's liability or responsibility under any other provision of the Design-Build Documents.

§ 10.4.4 The Design-Builder shall report all reportable quantity releases described in this Section 10.4 to applicable federal, state, and local regulatory and emergency response agencies. Upon discovery, regardless of quantity, the Design-Builder must telephonically report all releases to the Owner. A written follow-up report shall be submitted to the Owner within 48 hours of the telephonic report. Such written report shall contain, at a minimum:

- .1 Description of items released (identity, quantity, manifest number, and all other documentation required by law).
- .2 Whether amount of items released is EPA/DOE reportable and, if so, when it was reported.
- .3 Exact time and location of release, including a description of the area involved.
- .4 Containment procedures initiated.
- .5 Summary of communications about the release the Design-Builder has had with members of the press or state officials other than the Owner.
- .6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue.
- .7 Personnel injuries, if any, resulting from, or aggravated by, the release.

§ 10.5 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

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

§ 11.2 Correction of Work

§ 11.2.1 Before or After Substantial Completion. The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, and the Owner's attorneys' fees and related costs, disbursements, all of which shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12 and all other rights and remedies of Owner, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be defective or not in accordance

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with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder. If the Design-Builder fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

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

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

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

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

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

§ 11.3 Acceptance of Nonconforming Work

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

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and all other documents furnished by the Design-Builder, including those in electronic form ("Instruments of Service") to the extent prepared specifically for this Project shall become the property of Owner and all copyrights and other rights shall hereby be assigned to Owner. The Owner shall have all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the Owner's rights.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service to the extent not prepared specifically for this Project solely and exclusively in connection with the Project, including but not limited to the Project's further development by Owner and others retained by Owner for such purposes. Such license shall extend to those parties retained by Owner for such purposes, including but not limited to other design professionals.

§ 12.3.1 The Design-Builder shall obtain ownership rights, including but not limited to copyrights and licenses, from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service on other projects without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service on other projects under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the GMP Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the GMP Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, to the extent the suspension is not attributable to the Design-Builder's failure to comply with the Contract, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Guaranteed Maximum Price for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Guaranteed Maximum Price for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 180 consecutive days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice and opportunity to cure should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

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

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder be entitled to its fee or other payment, including but not limited to lost profits, on account of Work not performed.

§ 13.2 Termination or Suspension Following Execution of the GMP Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 180 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of a lawful order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not made a required payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 [Intentionally deleted.]

§ 13.2.1.3 If a basis for termination described in Section 13.2.1.1 exists, the Design-Builder may, upon seven days' written notice to the Owner, and if the Owner fails to cure such reason during the seven-day period, terminate the Contract and recover from the Owner payment for Work executed, reasonable overhead and profit on Work executed, and costs incurred by reason of such termination.

(Paragraph deleted)

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract in whole or in part pursuant to Section 13.2.2.2 if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 persistently or substantially refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, workers or proper materials or equipment;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 persistently or substantially disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .5 persistently or substantially fails to carry out the Work pursuant to the Design-Build Documents;
- .6 persistently or substantially fails to comply with the current Design-Builder's schedule;
- .7 submits one or more Applications for Payment that the Design-Builder overstates the amount to be paid, by the Owner; or
- .8 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 If a basis for termination as described in Section 13.2.2.1 exists, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate the Contract in whole or in part and may:

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

§ 13.2.2.3 In the event of termination of the Contract in whole or in part under Section 13.2.2.1, the compensation of the parties as to the terminated part of the Contract shall be determined as follows:

- .1 Add value of the Work performed as of the time of the termination, provided that this sum shall not exceed the Contract Sum for that Work as of the time of the termination. For purposes of this Section, the term "Terminated Contract Sum" shall mean the sum determined under this Item.
- .2 Determine the amount of all costs incurred by the Owner in completing the Work. For purposes of this Section, the term "Owner's Costs" shall mean the sum determined under this Item .2. The Owner's Costs shall include, but not be limited to, the cost of labor, services, materials, equipment, supervision and "general conditions" to complete the Work; the cost of any additional architectural, construction management, and Project administrative costs required to facilitate completion; any costs incurred in retaining another contractor or subcontractors; any additional interest or other fees paid by the Owner; any attorneys' fees and other legal expenses related to the termination of the Contract and transactions to arrange for the completion of the Work; and all other costs, damages and

expenses incurred by the Owner by reason of the termination of the Contract, the completion of the Work and the Project, and delay in the completion of the Work and the Project.

- .3 Subtract the Terminated Contract Sum from the Contract Sum as of the time of the termination.
- .4 If the Owner's Costs exceed the amount determined under Item .3, then the Design-Builder shall pay the Owner the amount of the excess less the amount of the Terminated Contract Sum not previously paid, if any.
- .5 If the amount determined under Item .3 exceeds the Owner's Costs, then the Owner shall pay the Design-Builder the amount of the Terminated Contract Sum not paid, if any.

§ 13.2.2.4 In the event the Owner terminates the Contract for cause under this Section 13.2.2 and such termination subsequently is determined in a final arbitrated award or a final judgment to have been wrongful, the termination shall automatically be converted to and deemed a termination for the Owner's convenience pursuant to Section 13.2.4.

§ 13.2.3 Suspension by the Owner for Convenience

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

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

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

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience.

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

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, and also except for Work not covered by the termination, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment as to the terminated part of the Contract pursuant to the provisions of Article 13, but otherwise shall be paid the total of (1) the cost of the Work incurred by the Design-Builder to the date of termination, (2) an amount for overhead and profit on the Cost of the Work, or if no such amount is set forth, a reasonable amount, (3) fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Design-Builder which the Owner elects to retain and which is not otherwise included in the cost of the Work under subitem (1), and (4) fair compensation for the Design-Builder's demobilization costs and other costs directly incurred relating to the termination which are not otherwise included in the cost of the Work under subitem (1). In no event, however, shall Design-Builder be entitled to payment of its fee or other payment, including but not limited to lost profits or consequential damages on this Project or any other project, on account of Work not performed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

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

§ 14.1.2 Time Limits on Claims. The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the within the time period specified by applicable law.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 Prior To Final Payment. Prior to Final Payment, Claims by Design-Builder must be initiated by written notice to the Owner (1) within 21 days after occurrence of the event giving rise to such Claim or (2) within 21 days after the Design-Builder first recognizes or, in the exercise of reasonable care, should have first recognized the condition giving rise to the Claim, whichever of (1) or (2) occurs earlier. Failure of the Design-Builder to deliver notice of a Claim within the time period required by this Section shall result in a waiver of the Claim and all rights and remedies arising from the Claim.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by Design-Builder, that have not otherwise been waived pursuant to Section 9.10.5, must be initiated by prompt written notice to the Owner.

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

§ 14.1.5 Claims for Additional Cost. If the Design-Builder knows or has a reason to know before performing a particular portion of the Work that it will have a Claim for an increase in the Guaranteed Maximum Price for performing that portion of the Work, written notice as provided herein shall be given by the Design-Builder before proceeding to execute the particular portion of the Work that relates to the Claim. Otherwise, notice of a Claim for an increase in the Guaranteed Maximum Price shall be made as required by Section 14.1.3. Within a reasonable time after delivery of notice of the Claim, Design-Builder shall submit to Owner substantiating data and other information sufficient to permit evaluation of the Claim by Owner. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an extension in the Contract Time, written notice as provided herein shall be given to the Owner. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time, and a schedule analysis based upon the approved Design-Builder's construction schedule, showing the impact of the cause or event on the critical path of the approved Design-Builder's construction schedule. No Claim under this Section shall be valid unless so made. If a Claim for additional cost related to this Claim is to be asserted, it shall be made as provided in Section 14.1.5.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the critical path of scheduled construction.

(Paragraphs deleted)

§ 14.2 Forum

Any mediation or arbitration arising out of or related to this Contract or the Work, including but not limited to any consolidated mediation or arbitration, shall be commenced and conducted in Portland, Oregon.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 Request for mediation shall be filed in writing with the other party to this Agreement. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If the parties cannot agree on the choice of a mediator, the parties shall apply to the local state court to appoint a mediator.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place identified in Section 14.2, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 Any claim, dispute or other matter in question arising out of or related to this Contract shall be decided by arbitration in the place identified in Section 14.2, unless another location is mutually agreed upon. The demand for arbitration shall be filed in writing with the other party to this Contract. The parties shall mutually select the arbitrator and the rules applicable to the arbitration process. If the parties cannot agree on the choice of an arbitrator, the parties shall apply to the local state court to appoint an arbitrator. 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. The venue for such litigation shall be in the place where the Project is located, and the outcome shall be decided by the judge only (bench trial). Both parties expressly waive their right to a jury trial. If another involved party will not consent to a bench trial, Owner, in its sole discretion, has the option to elect a consolidated jury trial. The arbitrator is specifically empowered to award attorney fees and costs to the extent allowed by contract or law.

§ 14.4.1.1 It is understood that the purpose of Section 14.4.1 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, a consolidated bench trial of all significant parties, if possible; or (3) alternatively, and as a last resort, a consolidated jury trial of all significant parties.

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

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

(Paragraphs deleted)

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

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

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. The Design-Builder shall not assign its rights or obligations under the Contract in whole or in part without prior written consent of the Owner. If Design-Builder attempts to make such an assignment without such consent, the Design-Builder shall nevertheless remain legally responsible for all obligations under the Contract and such assignment shall be void.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract and the Design-Builder shall execute all consents reasonably required to facilitate such assignment.

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

§ 15.3 Written Notice

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

§ 15.4 Rights and Remedies

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

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

§ 15.5 Tests and Inspections

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

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

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

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

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

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

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those

employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

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

§ 15.8 Interpretation

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

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

§ 15.8.3 This Contract incorporates all provisions as required by law. Such incorporated provisions will have priority over any conflicting provision herein. Should any provision of the Contract, at any time, be in conflict with any law, statute, code, ordinance, rule, regulation or lawful order of a public authority, or be unenforceable or inoperative for any reason, then the remaining provisions of the Contract nonetheless shall continue in full force and effect and the court or arbitrator shall give the offending provision the fullest meaning and effect allowed by law.

§ 15.9 Attorneys' Fees

§ 15.9.1 Should any arbitration or legal proceeding be commenced in connection with any Claim, dispute or other matter in question between the Owner and Design-Builder arising out of or relating to the Contract or the breach thereof, to obtain a construction of or to enforce any provision of the Contract, to rescind the Contract, or to enforce or collect any judgment or decree of any court relating to the Contract, the prevailing party shall be entitled to recover its attorneys' and expert witnesses' fees and related costs, disbursements and expenses incurred before and at hearing or trial, on review, on appeal or in bankruptcy court.

§ 15.10 Oregon Public Contracting Provisions

§ 15.10.1 ORS Chapters 279A and 279C and the Home Forward Public Contracting Rules and Procedures Manual ("Home Forward Rules") contain certain requirements for public contracts, including but not limited to, certain required contract provisions. The required contract provisions are attached as Exhibit F and are incorporated herein by this reference. Furthermore, Design-Builder and Owner agree to comply with all requirements of ORS Chapters 279A and 279C, the Home Forward Rules and other Oregon laws whether or not such provisions are included in Exhibit F and whether or not such provisions are excised in Exhibit F.

§ 15.11 Final Ledger

§ 15.11.1 The Design-Builder shall submit to Owner a Final Ledger containing all cost information related to the Work in a format approved by Owner no later than 75 days after the date of Substantial Completion of the Work. This submittal is necessary to issue the tax credits to the Project's tax credit investor(s) and must be submitted within the 75-day period in order to insure timely issuance of tax credits. The Contractor acknowledges that the Owner will incur significant damages if the Final Ledger is not timely submitted to Owner, including without limitation damages in the form of inability to deliver tax credits to tax credit investor(s) within established time frame (i.e., loss of tax credit revenue). The Owner and Contractor acknowledge and agree that if the Final Ledger is not submitted within 75 days of Substantial Completion, the amount of the Owner's damages for loss of tax credit revenue will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if the Final Ledger is not submitted within 75 days of the date of Substantial Completion, the Contractor shall pay to the Owner as liquidated damages for the loss of tax credit revenue the sum of Three Hundred Dollars (\$300) for each partial day or full of delay beyond the deadline for submittal of the Final Ledger. The parties further acknowledge and agree that the Contractor's obligation to pay liquidated damages under this Section shall be in lieu of the obligation to pay actual delay damages for loss of tax credit revenue, that the daily sums in liquidated damages to be paid as set out above are reasonable in comparison to the approximate scope of actual damages that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for loss of tax credit revenue damages and that Owner reserves the right to claim additionally other

types of damages against Contractor, including but not limited to the liquidated damages for delay set forth in Section 1.1.7.1.

§ 15.12 Operation and Maintenance Manuals and Training

§ 15.12.1 As part of the Work, Design-Builder shall submit one hard copy and two electronic media copies (on memory stick, CD or DVD and in standard Microsoft or Adobe format) completed operation and maintenance manual ("O & M Manual") for review by the owner's representative prior to submission of any pay request for more than 90 percent of the work. No payments beyond 90 percent will be made by the Owner until the O & M Manual has been received. The O & M Manual shall contain a complete set of all submittals; all product data as required by the specifications; training information; a telephone list of consultants, manufacturers, installer and suppliers; manufacturer's printed data; balance reports; record and shop drawings; schematic diagrams of systems; appropriate equipment indices; warranties; and bonds, etc. The owner's representative shall review and return one O & M Manual for any modifications or additions required. Prior to submission of its final pay request, complete and approved sets of O & M Manuals shall be delivered to the owner's representative by the Design-Builder.

§ 15.12.2 As part of the Work, and prior to submission of the request for final payment, the Design-Builder shall schedule with the owner's representative training sessions for all equipment and systems, as required in the individual specifications sections. The Design-Builder shall schedule training sessions at least two weeks in advance of the date of training to allow the Owner's personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment or system is completely installed and operational in its normal operating environment.

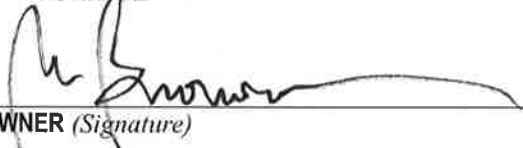
ARTICLE 16 CONTRACT EXHIBITS

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

- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder as modified by Owner and Design-Builder, dated as of the first date set forth above.
- .2 Exhibit A: GMP Amendment
- .3 Exhibit B: Insurance Requirements
- .4 Exhibit C: Owner's Criteria
- .5 Exhibit D: Project Fee
- .6 Exhibit E: Project Schedule
- .7 Exhibit F: Forms of Waivers and Releases
- .8 Exhibit G: Forms of Payment and Performance Bonds
- .9 Exhibit H: Public Contracting Provisions
- .10 Exhibit I: Portland Housing Bureau Contracting Requirements

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

HOME FORWARD



OWNER (Signature)
Michael Buonocore, Executive Director
(Printed name and title)

O'NEILL/WALSH COMMUNITY BUILDERS



DESIGN-BUILDER (Signature)
Daniel Snow, Vice President
(Printed name and title)

Init.

EXHIBIT A | FORM OF GMP AMENDMENT

GMP AMENDMENT

This contract amendment (the "GMP Amendment") is dated _____, and amends the AIA Document A141-2014 dated _____ (the "Contract") between Home Forward ("Owner") and _____ ("Design-Builder").

RECITALS

- A. The Owner and Design-Builder desire to amend the Contract.
- B. AIA Document A141-2014 Section 4.4.3 provides for certain provisions to be modified and supplemented in a "GMP Amendment" setting out the agreed remaining terms and conditions of the Contract. This Amendment is that GMP Amendment.
- C. The Drawings and Specifications for the Work have been completed.
- D. The Owner and Design-Builder have reached agreement regarding the remaining terms and conditions of the Contract and have agreed to amend the contract as follows.

AMENDMENT

Owner and Design-Builder hereby agree to amend the Contract as follows:

- 1. The date of commencement of the Work shall be _____.
- 2. The Design-Builder shall achieve Substantial Completion of the entire Work not later than _____ and Final Completion of the entire Work not later than _____.
- 3. The Guaranteed Maximum Price is hereby adjusted as follows:

[INSERT SUMMARY OF THE GUARANTEED MAXIMUM PRICE, INCLUDING ANY PREVIOUS CHANGE ORDERS.]

Upon execution of this Amendment by Owner and Design-Builder, the sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed _____ Dollars (\$ _____), subject to additions and deductions by Change Order as provided in the Contract Documents.

- 4. The Drawings and Specifications are listed in Exhibit ____, which is incorporated herein by this reference.
- 5. The Guaranteed Maximum Price is based on the allowances, if any, set forth in Exhibit ____, which is incorporated herein by this reference.
- 6. The Design-Builder's Assumptions and Qualifications are set forth in Exhibit ____, which is incorporated herein by this reference.
- 7. The Design-Builder's construction schedule is attached as Exhibit ____ which is incorporated herein by this reference.
- 8. The Guaranteed Maximum Price is based on the alternates, if any, set forth in Exhibit ____, which is incorporated herein by this reference.
- 9. The Owner and Design-Builder agree upon the unit prices, if any, set forth in Exhibit ____, which is incorporated herein by this reference.

10. The list of Contractors is set forth in Exhibit ____, which is incorporated herein by this reference.

11. The Design-Builder's revised Schedule of Values is set forth in Exhibit ____, which is incorporated herein by this reference.

12. Except as otherwise stated above, the terms, conditions and provisions of the Contract remain unaltered by this Amendment.

OWNER:
HOME FORWARD

By: _____

Date: _____

Its: _____

DESIGN-BUILDER:

By: _____

Date: _____

Its: _____

EXHIBIT B | INSURANCE REQUIREMENTS

As a condition precedent to payment, Design-Builder will at all times specified herein provide and maintain for itself and require the Architect, Contractors, Subcontractors and major subconsultants to provide and maintain the following types and the following minimum limits of insurance written on an occurrence basis by a company or companies rated A/IX or better in the most recent edition of "Best's Insurance Guide" (or such lesser rating as may be approved by Owner in writing) and authorized to do business in the state where the Project is located.

A. Workers' Compensation and Employer's Liability:

- (i) Workers Compensation, with limits as required by applicable law. Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
- (ii) Employers Liability:
 - \$1,000,000 Each Accident
 - \$1,000,000 Disease, Policy Limit
 - \$1,000,000 Disease, Each EmployeeCoverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.

B. Commercial General Liability and Other Coverages (Occurrence Form):

- (i) Combined Bodily Injury and Property Damage:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - \$50,000 Fire Damage Legal Liability
 - \$10,000 Medical Expenses Per Person
- (ii) The scope of coverage must meet the following:
 - (1) Premises Operations must be included.
 - (2) Elevators and Escalators must be included.
 - (3) Coverage for Independent Contractors and work performed on Design-Builder's behalf by Contractors and Subcontractors must be included.
 - (4) Pollution Liability and Hazardous Materials Liability must be included.
 - (5) Contractual Liabilities must be included (including the contract obligations specified in the indemnification paragraph(s) of the Contract)
 - (6) The Products and Completed Operations Insurance will be maintained for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
 - (7) There can be no exclusions for subsidence, collapse, explosion or underground property damage.
 - (8) There can be no insured vs. insured cross-suit exclusion. The policies will provide for cross-liability coverage as would be achieved under the standard Insurance Services Office "separation of insureds" clause.
 - (9) The limits will not be eroded or wasted by defense costs.
 - (10) The policy will be endorsed to be primary and non-contributory with any insurance maintained by Owner, its affiliates, subsidiaries, members, directors, officers, employees and agents. (This endorsement must be shown on the insurance certificate provided to Owner by Design-Builder.)

C. Commercial Business Auto:

- (i) Combined Bodily Injury and Property Damage
\$1,000,000 Each Accident
- (ii) The following coverages must be included:
 - (1) Owned Automobiles
 - (2) Non-Owned and Hired Automobiles

D. Professional Liability:

- (i) \$2,000,000 Each Claim
- (ii) \$2,000,000 Aggregate
- (iii) There can be no exclusion for mold, fungus, water intrusion or water damage.
- (iv) The professional liability insurance described in this Paragraph D and Subparagraphs (i), (ii) and (iii) will be maintained by Design-Builder for the duration of the applicable statute of repose in the state in which the Project is located.

E. Excess/Umbrella Liability Coverage:

- (i) \$20,000,000 Each Occurrence
- (ii) \$20,000,000 Aggregate
- (iii) Coverage will be at least as broad as the General Liability, Commercial Business Auto and Employer's Liability policies described above.
- (iv) Coverage will be carried for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
- (v) The policy must provide that coverage will be triggered by exhaustion of the General Liability, Commercial Business Auto, Employer's Liability and Pollution policies above only and not any other policies; exhaustion of the applicable policies above will be achieved by reasonable compromise for amounts less than the full limits of such applicable policies.

F. Pollution Liability

- (i) \$2,000,000 Each Claim
- (ii) \$2,000,000 Aggregate

G. Property Insurance:

- (i) The Design-Builder 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 or equivalent policy form in the amount of the Guaranteed Maximum Price, plus the value of subsequent Design-Build 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 including costs to cover professional fees without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Substantial Completion of the Project or the Owner has taken beneficial occupancy, whichever is earlier. This insurance shall include interests of the Owner, Design-Builder, Contractors and Subcontractors in the Project.
- (ii) Property insurance 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, earthquake, collapse, including resulting damage arising out of any faulty workmanship, design error or omission, , 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 Design-Builder's services and expenses required as a result of such insured loss.

- (iii) If the property insurance requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles except to the extent such costs are caused by (1) the negligent or other wrongful acts or omissions of the Owner, its consultants, Owner's separate consultants or contractors, or anyone for whose acts or omissions any of them are responsible or (2) Acts of God. Otherwise, the Design-Builder shall pay such costs.
- (iv) This property insurance may cover portions of the Work stored off the site and also portions of the Work in transit.
- (v) Partial occupancy or use of the Work 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 Design-Builder 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.
- (v) The Owner and Design-Builder waive all rights against each other and any of their consultants, separate contractors, Contractors, Subcontractors, agents and employees, each of the other, and any of their contractors, subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance (or any deductible) obtained pursuant to this Paragraph F or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Design-Builder. The Owner or Design-Builder, as appropriate, shall require of the separate contractors, if any, and the Contractors, 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, even though the person or entity 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.
- (vi) A loss insured under Design-Builder's property insurance shall be adjusted by Design-Builder and made payable to the Design-Builder for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Design-Builder shall pay the Owner and Contractors their just shares of insurance proceeds received by the Design-Builder, and, by appropriate agreements, written where legally required for validity, shall require Contractors to make payments to their Subcontractors in similar manner.
- (vii) If required in writing by a party in interest, the Design-Builder shall, upon occurrence of an insured loss, give bond for proper performance. The cost of required bonds shall be charged against proceeds received. The Design-Builder shall deposit in a separate account proceeds so received, which shall be distributed in accordance with such agreement as the parties in interest may reach. The Design-Builder 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 Design-Builder's exercise of this power. The Design-Builder shall, in the case of a decision or award, make settlement with insurers in accordance with directions of a decision or award. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

H. Certificates and Certified Copies of Policies. Certificates of insurance for Design-Builder, Architect, Contractors', Subcontractors' and all major subconsultants' insurance along with copies of all endorsements necessary to evidence compliance with all insurance requirements will be filed with Owner and be acceptable to Owner prior to commencement of the Work. For those insurance coverages that are required to remain in force after Final Completion, additional certificate evidencing continuation of such coverage will be submitted as part of the application for final payment and upon each annual renewal for the duration of coverage required. Upon Owner's request at any time, Design-Builder will immediately provide an actual certified copy of its insurance policies. Provision of the certificates and copies of policies as required herein will be a condition precedent to payment.

- I. Notice of Cancellation, Reduction or Expiration.** Design-Builder shall give Owner (i) 30 days' prior written notice of any non-renewal of any policies required herein and (ii) written notice within three business days after learning that the coverages required herein will be cancelled or reduced. When Design-Builder becomes aware of cancellation, expiration or reduction in coverage or available limits, Design-Builder will immediately pursue procuring other policies of insurance that meet all requirements of this Exhibit.
- J. Owner's Right To Terminate or Cure.** Failure of Design-Builder, Architect, or a Contractor, Subcontractor, or major subconsultant to secure and maintain insurance with the coverages and limits required by this Exhibit will be a material breach of the Contract entitling Owner, in its discretion and without waiving any other remedies, to (i) withhold payments or recoup payments already made to Design-Builder for work on the Project, (ii) terminate the Design-Builder for cause, and (iii) purchase any additional insurance it deems reasonable necessary to protect itself at the expense of the Design-Builder. Design-Builder consents to Owner procuring replacement insurance in Design-Builder's name and will cooperate in all respects with Design-Builder's efforts in procuring additional or replacement insurance. Owner will have the discretion to purchase an Owner's protective policy or other similar policy that affords to Owner coverages and limits providing reasonably equivalent protections as Owner would have received if Design-Builder, Architect, Contractors, Subcontractors and major subconsultants maintained the insurance required by this Exhibit. Owner's costs incurred in finding replacement insurance or an Owner's protective policy will either be reimbursed directly by Design-Builder or may be offset against amounts owed by Owner to Design-Builder on the Project or other projects. This requirement will remain enforceable for the duration of the applicable statute of repose or for ten (10) years after Final Completion, whichever is longer.
- K. Insurance In Excess of Requirements.** In the event Design-Builder, Architect, or any Contractor, Subcontractor, or major subconsultant purchases insurance in excess of the coverages or limits required under this Exhibit, such excess coverages or limits will apply to the Project and inure to the benefit of Owner.
- L. No Waiver by Owner.** The insurance requirements under this Exhibit can only be waived or modified by Owner by an express written instrument signed by Owner acknowledging the reduced coverages or limits. No other act or omission by Owner or its agents, including but not limited to (i) implicit or verbal acceptance or approval of reduced coverages or limits or (ii) failure to require proof of compliant insurance, will amount to Owner's waiver of the insurance requirements of this Exhibit.
- M. Contractor and Subcontractor Insurance.** All Contractors' and Subcontractors' insurance will meet all insurance requirements of Design-Builder as provided in this Exhibit, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for Contractors and Subcontractors will be no less than the following:
- (i) Workers' Compensation and Employer's Liability: same as above.
 - (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Personal and Advertising Injury
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
 - (iii) Professional Liability: same as above, except that none will be required if a Contractor or Subcontractor will not be performing design services on the Project.
 - (iv) Business Auto: same as above.
 - (v) Excess/Umbrella Liability Coverage: none required.
 - (vi) Pollution – Liability and Hazardous Materials Liability - same as above.

N. Architect and Major Subconsultant Insurance. Architect and all major subconsultants (listed below) of Design-Builder shall carry insurance which meets the all requirements provided in this exhibit, including, but not limited to, the types of insurance, extent and durations of coverages, and notice requirements, except that the limits of insurance for subconsultants shall be no less than the following:

- (i) Workers' Compensation and Employer's Liability: same as above.
- (ii) Commercial General Liability (Occurrence Form): Combined Bodily Injury and Property Damage:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Personal and Advertising Injury
 - \$1,000,000 General Aggregate
 - \$1,000,000 Products/Completed Operations Aggregate
- (iii) Business Auto Policy: same as above
- (iv) Professional Liability per occurrence and aggregate limits:
 - (1) Architect \$2,000,000
 - (2) structural subconsultant: \$2,000,000
 - (3) civil subconsultant: \$2,000,000
 - (4) mechanical subconsultant: \$2,000,000
 - (5) landscape architect: \$2,000,000
 - (6) envelope consultant: \$2,000,000
 - (7) electrical subconsultant \$2,000,000

O. Waiver of Subrogation. To the fullest extent permitted by law, all of Design-Builder's, Architect's, Contractors', Subcontractors' and major subconsultants' liability insurance policies, including worker's compensation, will contain a waiver of subrogation against Owner.

P. Additional Insureds. To the fullest extent permitted by law, all of Design-Builder's, Architect's, Contractors', Subcontractors' and major subconsultants' liability insurance policies will be endorsed to expressly name Owner, its affiliates, subsidiaries, directors, officers, employees and agents (including but not limited to those listed below) as additional insureds. The coverage under the additional insured endorsement will (i) be primary and noncontributory with respect to any insurance of the additional insureds, (ii) provide the same coverages and limits to the additional insured as are afforded to the primary insured as required by this Exhibit, and will not be limited to vicarious liability, (iii) not be limited to on-going operations, (iv) be maintained for the same durations as the coverages afforded to the primary insured as required by this Exhibit and blanket endorsements will not be acceptable. The following persons or entities affiliated with Owner will be expressly named as additional insureds:

EXHIBIT C | OWNER'S CRITERIA

Site: East half of Block 45, Holladay's Addition, Portland, Oregon.

Building: Approximately 11 floors of housing on a single floor of commercial/retail space and a mezzanine above some portion of the first floor. Housing program includes studios, one bedroom units, two bedroom units and appropriate amenities.

Public Works: Improvements as required by the City of Portland.

EXHIBIT D | PROJECT FEE

SCOPE	PROVIDER	UNIT COST	TOTAL
1. Pre-Construction Services	O'Neill / Walsh Community Builders	\$0	\$0
2. A&E Services			\$1,750,488
<i>Architect of Record</i>	<i>LRS Architects</i>	\$696,908	
<i>Design Architect</i>	<i>Lever Architecture</i>	\$637,545	
<i>Civil Engineering</i>	<i>Dowl</i>	\$57,520	
<i>Landscape Architecture</i>	<i>Place (DBE, ESB)</i>	\$36,950	
<i>Structural Engineering</i>	<i>kpff Consulting Engineers</i>	\$175,000	
<i>MEP Design Assist</i>	<i>Glumac</i>	\$62,250	
<i>Lighting Design</i>	<i>Biella Lighting Design (DBE, WBE, ESB)</i>	\$16,660	
<i>Acoustical Engineering</i>	<i>A3 Acoustics</i>	\$16,455	
<i>LEED Administration</i>	<i>Earth Advantage</i>	\$20,400	
<i>Envelope Consulting</i>	<i>Morrison Herschfield</i>	\$23,300	
<i>Traffic Engineering (allowance)</i>	<i>TBD</i>	\$7,500	
3. A&E Reimbursables		\$50,000	\$50,000
4. MEP Design Assist Services	TBD	\$85,000	\$85,000
5. Contractor Deliverables	O'Neill / Walsh Community Builders		\$58,250
<i>Contracting Plan</i>		\$4,750	
<i>Target Business Plan</i>		\$3,250	
<i>Safety Plan</i>		\$4,500	
<i>Quality Control Plan</i>		\$4,750	
<i>Cost Estimates (SD & DD)</i>		\$32,500	
<i>CPM Schedule</i>		\$8,500	
6. GMP Preparation/Bidding/Negotiation	O'Neill / Walsh Community Builders	\$32,500	\$32,500
8. SUBTOTAL			\$1,976,238
9. Fee	not included this phase, otherwise 3.75%	\$0	\$0
10. Liability Insurance	1.96%	\$38,734	\$38,734
11. Builder's Risk	not included this phase, otherwise tbd	\$0	\$0
12. Payment & Performance Bond	0.6950%	\$13,735	\$13,735
13. TOTAL	Not-to-Exceed Fee Prior to GMP Amendment		\$2,028,707

NOTES

1. Construction phase costs will be added via contract modification following GMP approval and prior to start of construction.
2. A&E fee includes the following phases: Schematic Design, Design Development, Construction Documents, Bidding & Permitting.

EXHIBIT E | PROJECT SCHEDULE

ITEM	START	FINISH	DURATION	NOTES
Contracts / Procurement				
PHB / Home Forward Agreement	05/06/2016			
D/B Contract BOC Approval	07/19/2016			3 rd Tuesday
Misc Consultant Contracts				
Due Diligence				
Title Report	06/07/2016			
Permit of Entry	06/17/2016			
Background Documents				
Phase 1 / Phase 2				
Topo Survey				
Haz Mat Survey				
Environmental Assessment				
Publish Draft EA / PHB Review	07/28/2016	08/11/2016		Wannamaker
Publish Final EA / PHB Review	10/03/2016			
NOA / FONSI / Public Comment	10/13/2016			
HUD Review	11/02/2016	11/17/2016		
RE Certification	11/18/2016			
Conceptual Design / Programming				
	05/06/2016	06/24/2016	7 weeks	
Schematic Design				
	06/27/2016	09/02/2016	10 weeks	
EA/FLS Meeting Applications	06/27/2016			
EA/FLS Meeting	07/21/2016			
Design Advice Request	09/06/2016	10/06/2016	5 weeks	
3 rd Party Cost Estimate	09/02/2016			
Owner Review / Reconciliation	09/02/2016	09/09/2016		
Design Development				
	09/06/2016	12/09/2016	14 weeks	
Type III Design Review	12/16/2016	05/05/2017	20 weeks	DD + 1 week
3 rd Party Cost Estimate	12/09/2016			
Owner Review / Reconciliation	12/09/2016	12/16/2016		
Construction Documents				
	12/19/2016			
Permit 01 (90% CDs)				
	04/14/2017	07/10/2017	12 weeks	
Submittal	04/14/2017			
1 st Check Sheet	05/05/2017		3 weeks	
Response Cycle	05/08/2017	07/07/2017		
Permit Issuance	07/10/2017			
Permit 02 (90% CDs)				
	07/17/2017	10/09/2017	12 weeks	
Submittal	07/17/2017			
1 st Check Sheet	08/04/2017		3 weeks	
Response Cycle	08/07/2017	10/06/2017		
Permit Issuance	10/09/2017			
Public Works Permitting Submittals				
Public Works Pre-App Conference	09/30/2016			SD + 4 weeks
30% Concept Development	11/18/2016		+ 7 weeks	
60% Design Development	01/20/2017		+ 9 weeks	
90% Plan Review	03/10/2017		+ 7 weeks	
Permit Issuance	04/14/2017		+ 4 weeks	
Financing				
Issue Financial Partner RFP	09/19/2016	10/10/2016	3 weeks	
Select Financial Partners	10/11/2016	10/21/2016	2 weeks	
4% LIHTC Application	01/09/2017	03/31/2017	12 weeks	
SLR Submission	01/09/2017	03/03/2017	8 weeks	
PAB Bond Allocation	01/15/2017			
Closing	07/14/2017			follows Permit Issuance
Bidding, Package 01				
	04/17/2017	06/09/2017	8 weeks	
GMP BOC Approval, Mod 02	06/20/2017			3 rd Tuesday
Bidding, Package 02				
	07/17/2017	09/08/2017	8 weeks	
BOC Approval, Mod 03	09/19/2017			3 rd Tuesday
Construction				
	06/21/2017	04/05/2019	92 weeks	
Mobilization	06/21/2017			follows GMP Approval
Ground Breaking	07/17/2017			follows Closing
Certificate of Occupancy	03/29/2019			
FFE Installation	04/15/2019	05/03/2019	3 weeks	
Commissioning	05/06/2019	05/24/2019	3 weeks	
Operations				
Residential Lease Up Planning	12/10/2018	05/24/2019	24 weeks	
Residential Lease Up Begins	05/27/2019			
Residential Occupancy 100%	01/31/2020		36 weeks	
Commercial Lease Up				

EXHIBIT F | FORMS OF WAIVERS AND RELEASES

**CONTRACTOR/SUBCONTRACTOR/SUPPLIER
CONDITIONAL WAIVER AND RELEASE**

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Contractor/Subcontractor/Supplier, upon receipt of a check in the sum of _____ Dollars (\$ _____) payable to Contractor/Subcontractor/Supplier, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, hereby waives and releases any construction lien claim, stop notice, payment and performance bond claim, and any and all other claims Contractor/Subcontractor/Supplier has with respect to its Work on the _____ (“Project”) under and related to the prime contract for the Project between _____ (“Design-Builder”) and Home Forward (“Owner”) dated _____, 201_, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Contractor/Subcontractor/Supplier and its subcontractors and suppliers at all tiers during the period commencing on and including _____, 201_ and ending on and including _____, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, Design-Builder, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Contractor/Subcontractor/Supplier of the full amount set out above.

Date: _____

CONTRACTOR/SUBCONTRACTOR/SUPPLIER

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

**CONTRACTOR/SUBCONTRACTOR/SUPPLIER
UNCONDITIONAL WAIVER AND RELEASE**

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Contractor/Subcontractor/Supplier has been paid and has received a final/progress payment (identify which) in the sum of _____ Dollars (\$ _____), and hereby waives and releases any stop notice, payment and performance bond claim, and any and all other claims Contractor/Subcontractor/Supplier has with respect to its Work on the _____ ("Project") under and related to the prime contract for the Project between _____ ("Design-Builder") and Home Forward ("Owner") dated _____, 201_, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Contractor/Subcontractor/Supplier and its subcontractors and suppliers at all tiers during the period commencing on and including _____, 201_ and ending on and including _____, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, Design-Builder, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Contractor/Subcontractor/Supplier of the full amount set out above.

Date: _____

CONTRACTOR/SUBCONTRACTOR/SUPPLIER

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

**DESIGN-BUILDER
CONDITIONAL WAIVER AND RELEASE**

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Design-Builder, upon receipt of a check in the sum of _____ Dollars (\$_____) payable to Design-Builder, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, hereby waives and releases any construction lien claims, stop notice and any and all claims Design-Builder has with respect to its Work on the _____ ("Project") under and related to its prime contract for the Project with Home Forward ("Owner") dated _____, 201_, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Design-Builder and its architect, consultants, contractors, subcontractors and suppliers at all tiers during the period commencing on and including _____, 201_ and ending on and including _____, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Design-Builder of the full amount set out above.

Date: _____

DESIGN-BUILDER

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

**DESIGN-BUILDER
UNCONDITIONAL WAIVER AND RELEASE**

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Design-Builder has been paid and has received a final/progress payment (identify which) in the sum of _____ Dollars (\$ _____), and hereby waives and releases any construction lien claims, stop notice and any and all claims Design-Builder has with respect to its Work on the _____ (“Project”) under and related to its prime contract for the Project with Home Forward (“Owner”), dated _____, 201_, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Design-Builder or its architect, consultants, contractors, subcontractors and suppliers at all tiers during the period commencing on and including _____, 201_ and ending on and including _____, 201_, including/excluding retainage (identify which).

This document may be relied upon by Owner, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Design-Builder of the full amount set out above.

Date: _____

DESIGN-BUILDER

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

EXHIBIT G | FORMS OF PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

(Bond No. _____)

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, _____ as Principal and _____ as Surety, a corporation organized and existing under the laws of the state of _____, are held and bound unto Home Forward and its heirs, executors, administrators, and assigns as Obligee, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS Principal has entered into a Design-Build Contract ("Contract") dated _____, 201_ with Obligee for _____ ("Project"), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall faithfully, punctually and completely perform and abide with the covenants, terms, conditions and provisions of said Contract and any extensions thereof in all respects and within the time prescribed therein, including, but not limited to, the terms of any warranty and guarantee required under the said Contract; shall pay all laborers, mechanics, contractors, subcontractors, material and equipment suppliers and all persons supplying to Principal or its contractors, subcontractors and suppliers at any tier labor, materials, supplies or equipment for the prosecution of the work or any part thereof; shall fully defend, indemnify and hold Obligee harmless from all cost and damage that Obligee may suffer by reason of Principal's failure to do so; and shall in all respects perform said Contract according to applicable law, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal's payments to Architect, consultants, Contractors, and Subcontractors or Design-Builder's use of Project funds.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee's favor, Surety shall pay all of Obligee's costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees.

In the event there is an arbitration clause in said Contract, Surety agrees to participate in and to be bound by any such arbitration to the same extent Principal is bound.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Obligee or its heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 201_.

PRINCIPAL

Title

Address

SURETY

Title

Address

COUNTERSIGNED:

Resident Agent

Address

PAYMENT BOND

(Bond No.)

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, _____
_____ as Principal and _____ as Surety, a corporation
organized and existing under the laws of the state of _____, are held and bound unto Home Forward and
its heirs, executors, administrators, and assigns as Obligee, for the use and benefit of all persons or entities that
provide labor, materials, equipment or supplies for use under the Contract described below, in the penal sum
of _____ Dollars (\$ _____), lawful money of the United States of America, for the payment of
which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly
and severally.

WHEREAS the Principal has entered into a Design-Build Contract ("Contract") dated _____, 201_
with Obligee for the _____ project ("Project"), which Contract is made a part hereof as if
fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall
promptly make payment to all persons or entities that provide labor, material, equipment or supplies for use under
said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or
repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety
on any matters relating to the Principal or the Project, including, but not limited to, Principal's payments to
Architect, Contractors, Subcontractors or Principal's use of Project funds.

Principal and Surety hereby jointly and severally agree that any person or entity that provides labor,
material, equipment or supplies for use under said Contract and has not been paid in full within the applicable time
period set forth in ORS 279C.605 may sue on this bond for the use of such person or entity, prosecute the suit to
final judgment for such sums as may be justly due and owing claimant and have execution thereon. Obligee shall
not be liable for the payment of any damages, costs or expenses (including attorney fees) awarded in any such suit.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any
provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on
this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further
notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and
judgment or award is entered in Obligee's favor, Surety shall pay all of Obligee's costs incurred in such arbitration,
litigation or other proceeding, including any attorney and expert witness fees.

Except as expressly provided above, no right of action shall accrue on this bond to or for the use of any person or corporation other than Oblige or its heirs, executors, administrators, successors or assigns.

Executed this ____ day of _____, 201_.

PRINCIPAL

Title

Address

SURETY

Title

Address

COUNTERSIGNED:

Resident Agent

Address

**EXHIBIT H | PROVISIONS FROM THE PUBLIC CONTRACTING CODE AND THE HOME FORWARD
PUBLIC CONTRACTING RULES AND PROCEDURES MANUAL**

1. GENERAL

1.1 INCORPORATION OF ALL CONTRACT PROVISIONS. The Contract hereby incorporates all contract provisions that are required to be incorporated into contracts with public entities pursuant to (a) the Public Contracting Code (ORS Chapters 279A, 279B and 279C), (b) the Home Forward Public Contracting Rules and Procedures Manual (which are referred to in this Exhibit as the "Home Forward Rules") or (c) other applicable law. The provisions incorporated into the Contract under the preceding sentence include, without limitation, any provisions or amendments to provisions that become required after the Contract is executed.

1.2 DISCLAIMER REGARDING ANY UNLISTED CONTRACT PROVISIONS. The provisions listed in this Exhibit are not necessarily an exhaustive list of provisions that are required under the Public Contracting Code, the Home Forward Rules or other applicable law, and the fact that this Exhibit does not list a provision that is required by the Public Contracting Code, the Home Forward Rules or other applicable law will not (i) prevent or otherwise diminish the incorporation of that unlisted provision into the Contract or (ii) negate or otherwise diminish Design-Builder's obligation to comply with applicable laws.

2. PAYMENT.

2.1 PROMPT PAYMENT. Design-Builder shall promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, payments (1) to all persons, as due, supplying to Design-Builder labor, equipment, services or material for the performance of the Work, (2) of all contributions or amounts due the Industrial Accident Fund from Design-Builder or the Subcontractors incurred in the performance of the Work, and (3) to the Department of Revenue of all sums withheld from employees under ORS 316.167.

2.2 DESIGN-BUILDER'S OBLIGATIONS TO CONTRACTORS. Design-Builder shall pay each Contractor for satisfactory performance under its subcontract within 10 days out of amounts that Owner pays Design-Builder under the Contract. Design-Builder shall provide a Contractor with a standard form that the Contractor may use as an application for payment or as another method by which the Contractor may claim a payment due from the Design-Builder. Design-Builder shall use this the same form and regular administrative procedures for processing payments during the entire term of the Subcontract. Design-Builder may change the form or the regular administrative procedures the Design-Builder uses for processing payments if the Design-Builder notifies the Contractor in writing at least 45 days before the date on which the Design-Builder makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure. Design-Builder shall also include in each subcontract entered into by the Design-Builder a provision requiring each Contractor to include a payment clause and an interest penalty clause conforming to the standards of this Section 2.2 in each of its subcontracts and to require each of the Contractor's lower-tier Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor.

2.3 PROMPT PAYMENT POLICY. It is the policy of the State of Oregon that all payments due on a public improvement contract and owed by a contracting agency shall be paid promptly. No public contracting agency is exempt from the provisions of ORS 279C.570.

2.4 DESIGN-BUILDER'S FAILURE TO MAKE PROMPT PAYMENT. If the Design-Builder has failed, neglected or refused to pay promptly a person's claim for labor, equipment, services or materials that the person provides to the Design-Builder or a Contractor by any person in connection with the Project as such claim becomes due, the Owner may pay such claim to the person that provides the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the Design-Builder under the Contract. Owner reserves the right to make payments directly or by multiple-payee check and Design-Builder hereby consents to such direct and multiple-payee check payments. Upon

Owner's request, Design-Builder shall furnish to Owner the information required to facilitate such payments with each application for payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons.

2.5 DESIGN-BUILDER'S AND CONTRACTORS' FAILURE TO MAKE PAYMENT AFTER PAYMENT FROM OWNER; INTEREST PENALTY. If the Design-Builder or a Contractor fails, neglects or refuses to pay a person that provides labor, equipment, services or materials in connection the Contract within thirty (30) days after receiving payment from the Owner or the Design-Builder, the Design-Builder or Contractor owes the person the amount due plus interest charges that begin at the end of the 10-day period that 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.

2.6 CONSTRUCTION CONTRACTORS BOARD COMPLAINT. If the Design-Builder or a Contractor or Subcontractor fails, neglects or refuses to make payment to a person that provides labor, equipment, services or materials in connection with the 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.

2.7 CONTINUING LIABILITY OF DESIGN-BUILDER AND SURETY. Payment by the Owner of a claim in the manner authorized in this Section 2 does not relieve the Design-Builder or the Design-Builder's surety from obligation with respect to any unpaid claims.

3. PUBLIC WORKS PROJECT.

3.1 PREVAILING RATE OF WAGE. The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Design-Builder, Contractors and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract.

3.2 PUBLIC WORKS BOND. Before starting the Work, Design-Builder and every Contractor and Subcontractor shall file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Design-Builder, Contractor or Subcontractor has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Before permitting a Contractor or Subcontractor to start the Work, Design-Builder shall verify that the Contractor or Subcontractor has filed a public works bond as required by ORS 279C.836, has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Contractor shall also ensure that each subcontract entered into by a Contractor or Subcontractor for the Project shall include a clause obligating each Contractor or Subcontractor to comply with the requirements of this Section 3.2, such that all subcontracts at all tiers include a requirement to comply with this Section 3.2.

4. COMPLIANCE WITH LAWS/TAX LAWS. Design-Builder shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, rules, orders and rulings as well as all applicable construction industry standards, including without limitation those governing labor, materials, equipment, construction procedures, safety, health, sanitation and the environment. Design-Builder agrees to indemnify, hold harmless, reimburse, and defend Owner from and against any penalties or liabilities arising out of violations of such obligations by Design-Builder or its Contractors or its Subcontractors at any tier. Design-Builder must also comply with all Oregon tax laws and shall submit a certification of such compliance in accordance with ORS 305.385(6).

5. DESIGN-BUILDER'S EMPLOYEES AND CONTRACTORS.

5.1 EMPLOYEE DRUG TESTING PROGRAM. Design-Builder shall certify to Owner that Design-Builder has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.2 WORK DAY/WORK WEEK. No person shall be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay for (1) 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 (2) 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 (3) all work performed on Saturday and on any legal holiday specified in ORS 279C.540. Design-Builder shall comply with the prohibition set forth in ORS 652.220, and compliance with ORS 652.220 is a material element of this Contract. If Design-Builder fails to comply with ORS 652.220, such failure is a breach that entitles Owner to terminate the Contract for cause. Design-Builder may not prohibit any of the Design-Builder's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

5.3 NOTICE OF REQUIRED WORK HOURS. The Design-Builder and each Contractor and Subcontractor must give notice to its employees in writing, either at the time of hire or before commencement of Work, or by posting a notice in a location frequented by its employees, of the number of hours per day and days per week that the employees may be required to work.

5.4 CLAIMS FOR OVERTIME. Any worker employed by the Design-Builder shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Design-Builder within 90 days from the completion of the Contract, provided the Design-Builder has: (1) caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section 5.4 to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to any or all workers employed on the Work; and (2) maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

5.5 WORKERS' COMPENSATION. All employers, including Design-Builder, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Design-Builder shall ensure that each of its Contractors and Subcontractors complies with these requirements.

5.6 PROMPT PAYMENT FOR MEDICAL SERVICES. The Design-Builder shall promptly, as due, make payment to any person, co-partnership, 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 Design-Builder, of all sums that the Design-Builder agrees to pay for the services and all moneys and sums that the Design-Builder collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.7 PROMPT PAYMENT BY DESIGN-BUILDER, CONTRACTORS AND SUBCONTRACTORS; INTEREST PENALTY. Design-Builder shall include in each subcontract entered into by the Design-Builder a clause obligating the Design-Builder (1) to make payment to the Contractor for satisfactory performance within ten (10) days out of such amounts as are paid to the Design-Builder by the Owner under the Contract, and (2) if payment is not made within 30 days after receipt of payment from the Owner, to pay the Contractor an interest penalty on amounts due in the case of each payment not made in accordance with the payment clause included in the subcontract as required by the preceding clause, (1) above. The interest penalty shall be for the period beginning on the day after the required payment date and ending on the date on which payment of the amount due is made, and computed at the rate specified in ORS 279C.515(2). Design-Builder shall also include in each subcontract entered into by the Design-Builder a provision requiring each Contractor to include a payment clause and an interest penalty clause conforming to the standards of this Section 5.7 in each of its subcontracts and to require each of the

Contractors lower-tier Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor.

5.8 LICENSING WITH CONSTRUCTION CONTRACTORS BOARD AND LANDSCAPE CONTRACTORS BOARD. Before commencing the Work, Design-Builder shall ensure that the Contractors and Subcontractors are duly registered with the Oregon State Construction Contractors Board (and the State Landscape Contractors Board, if applicable), and that no Contractor or Subcontractor has been declared ineligible to work on a public contract.

6. MATERIAL SALVAGE. To the extent the scope of the Work for the Contract requires demolition, Design-Builder must salvage or recycle construction and demolition debris, if feasible and cost-effective.

7. COMPOSTING. To the extent the scope of the Work for the Contract requires lawn and landscape maintenance, the Design-Builder must compost or mulch yard waste material at an approved site, if feasible and cost-effective.

8. RECYCLED MATERIALS. The Design-Builder, in performance of the Work, shall give preference to the procurement of goods manufactured from recycled materials.

9. ENVIRONMENTAL AND NATURAL RESOURCES LAWS. Pursuant to ORS 279C.525, the following is a list of Federal, State, and Local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract. The following list may not include all such agencies that have enacted ordinances, rules or regulations relating to the environmental pollution and preservation of natural resources.

Federal Agencies:

Agriculture, Dept. of
Forest Service
Natural Resource Conservation Service
Defense, Dept. of
Army Corps of Engineers
Coast Guard
Environmental Protection Agency
Interior, Dept. of
U.S. Fish and Wildlife Service
Bureau of Land Management
Bureau of Indian Affairs
Bureau of Reclamation
Labor, Dept. of
Occupational Safety and Health Administration
Transportation, Dept. of
Federal Highway Administration

State Agencies:

Agriculture, Dept. of
Consumer and Business Services Dept.
Oregon Occupational Safety and Health Division
Environmental Quality, Dept. of
Fish and Wildlife, Dept. of
Forestry, Dept. of
Geology and Mineral Industries, Dept. of
Human Services, Dept. of
Land Conservation and Development, Dept. of
Natural Resources, Dept. of

State Fire Marshall
State Lands, Dept. of
Water Resources Department

Local Agencies:

City Councils
Circuit Courts
County Commissioners, Boards of
Fire Districts
Planning Commissions

10. RETAINAGE. The withholding of retainage by the Design-Builder, Contractor or Subcontractor shall be in accordance with ORS 279C.550 to ORS 279C.570.

11. LIENS. The Design-Builder shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

12. MWESB CERTIFICATION STATUS. If Design-Builder is certified as a disadvantaged, minority, women or emerging small business enterprise under ORS 200.055 and Owner awarded the Contract to Design-Builder in whole or in part on the basis of Design-Builder's certification, Design-Builder shall remain certified for the entire term of the Contract. Similarly, if one or more of Design-Builder's Contractors are certified as a disadvantaged, minority, women or emerging small business enterprise under ORS 200.055 and Owner awarded the Contract to Design-Builder in whole or in part on the basis of the Contractors' certifications, Design-Builder shall require that those Contractors remain certified for the entire term of the Contract. This requirement is a material condition of the Contract and, if Design-Builder or a Contractor is no longer certified, Owner may, without prejudice to any other right or remedy, (a) terminate the Contract, (b) require the Design-Builder to terminate the subcontract, or (b) exercise any or all other remedies for breach of this Contract. Design-Builder shall also ensure that each subcontract entered into by a Contractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 12, such that all subcontracts at all tiers include a requirement to comply with this Section 12.

13. NOTICE OF CLAIM ON BOND. The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Design-Builder, Contractor or Subcontractor at any place the Design-Builder, Contractor or Subcontractor maintains an office or conducts business or at the residence of the Design-Builder, Contractor or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in writing substantially as follows:

To (here insert the name of the Design-Builder, Contractor or Subcontractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Design-Builder, Contractor or Subcontractor).

_____ (here to be signed)

SOCIAL EQUITY PROGRAMS

QUICK REFERENCE GUIDE – PORTLAND HOUSING BUREAU PROJECTS

The Portland Housing Bureau (PHB) administers funding from various sources, which PHB uses to make loans to affordable housing developers. The City of Portland has set forth the following policies, which are applicable to developers, contractors, subcontractors, and others engaged in projects funded through PHB.

****Important Reminders****

- Developer must submit a signed acknowledgement that they have received information regarding the Social Equity Programs

SUBCONTRACTOR EQUITY PROGRAM

The City of Portland has a compelling government interest to ensure its contracts provide opportunities for Oregon State certified Disadvantaged, Minority, Women and Emerging Small Businesses (DMWESBs) in order to address historical underutilization. The Subcontractor Equity Program applies to projects estimated at \$150,000 and above. The Program contains a 20% goal for DMWESB participation; within the goal, a further goal of 14% DMWBE utilization is desired. No more than 5% of the aspirational goal may be achieved through DMWESB suppliers.

****Important Reminders****

Post Award

- Form 1 is due within 14 days of bid opening
- Form 2 is due upon request, if aspirational goals are not met. Contractor must have obtained a minimum of 3 written bids from DMWESB contractors for each division of work to be subcontracted.
- Monthly Subcontractor Payment Report (MUR) is due by the 15th of each month
- Subcontractor Change Request must be submitted if there are any additions, deletions, or replacements of subcontractors after submission of Form 1.

WORKFORCE TRAINING & HIRING PROGRAM

The City is committed to and has a strong policy of maximizing apprenticeship and employment opportunities for women, minorities, and economically disadvantaged workers in the construction trades. The Workforce Program applies to the general contractor and subcontractors with contracts of \$100,000 or more. The Program requires that no less than 20% of project labor hours, per trade, are worked by state-registered apprentices. Aspirational goals for minority and female participation are also included as part of the Program. The general contractor is responsible for ensuring its subcontractors comply with Workforce requirements. Damages may be assessed for failure to meet the Program requirements.

****Important Reminders****

Pre-Bid/Pre-Proposal

- Include copies of the Workforce Training & Hiring Program in bid documents
- In order to train state-registered apprentices, contractors must be registered as training agents
- All costs associated with meeting the Program requirements should be included in bids

Post Award

- Submit Workforce Plan along with confirmation of training agent status– due from Prime Contractor prior to contract award, due from subcontractors within 5 days of signing a subcontract or before work starts, whichever occurs first
- If new hiring opportunities, document efforts to hire women and minorities
- Monthly Employment Report is due by the 5th of each month
- Think you may be exempt? Submit a request in writing at least 14 days prior to starting work

SECTION 3

HUD Section 3 Program Requirements apply to projects receiving PHB [HUD Sourced] assistance in excess of \$200,000. Section 3 requires that when employment or contracting opportunities are generated by HUD-funded projects, preference is given to low-income persons and businesses residing in the community where the project is located (i.e. to "Section 3 residents" and "Section 3 businesses"). Developers and all contractor/subcontractor situations where the contract or subcontract exceeds \$100,000 are responsible for ensuring compliance with Section 3 in the hiring and contracting decisions made on the project.

HUD has established a goal that no less than 10% of construction dollars and 3% of non-construction dollars must be awarded to Section 3 Businesses on Section 3 covered projects. In addition, they have established a goal that no less than 30% of new hires shall be Section 3 Residents.

NOTE: Projects that are covered by Section 3 do not contain Subcontractor Equity Program requirements.

****Important Reminders****

Pre-Bid/Pre-Proposal

- For Section 3 covered projects, the recipient must incorporate Section 3 considerations in their procurement of a General Contractor. The recipient's selected General Contractor is required to submit a Section 3 Action Plan, prior to contract award.
- A Section 3 Contract Clause must be included in all solicitations and contracts over \$100,000, including professional service contracts, but not contracts for the purchase of supply of material.
- If the recipient received Section 3 covered funding and invests these funds into covered projects, but no individual contract exceeds \$100,000, responsibility for complying with Section 3 only applies to the recipient.

Post Award

- Form 1 is due within 15 days of bid opening
- Form 2 is due upon request, if aspirational goals are not met.

- Monthly Subcontractor Payment Report (MUR) is due by the 15th of each month
- Subcontractor Change Request must be submitted if there are any additions, deletions, or replacements of subcontractors after submission of Form 1.
- Submit Workforce Plan that demonstrates how company will fulfill all Workforce and Section 3 requirements
- If new hiring opportunities, first seek Section 3 eligible persons and document efforts
- Monthly Employment Report is due by the 5th of each month
- Think you may be exempt? Submit a request in writing at least 14 days prior to starting work

RESOURCES

For information of State-certified DMWESB contractors visit the State of Oregon's Certification Office for Business Inclusion and Diversity at: <http://www4.cbs.state.or.us/ex/dir/omwesh/>

For information on State-Approved Apprenticeship Programs visit the Bureau of Labor & Industries, Apprenticeship and Training Division's website: <http://www.oregon.gov/BOLI/ATD/pages/index.aspx>

For procedures related to granting exemptions to the training requirements of the Workforce Program, please visit: <http://www.portlandonline.com/auditor/?c=26882&a=408189>

For questions and answers related to the Workforce Training & Hiring Program requirements visit:
<http://www.portlandoregon.gov/brfs/42255>

For a list of community resources to help with the recruitment of Section 3 Residents and women and minorities, please visit:

<http://www.portlandoregon.gov/brfs/article/170914>

For information about Section 3, please visit:

<http://www.portlandoregon.gov/brfs/58369>

**CITY OF PORTLAND - SECTION 3 PROGRAM
SUBCONTRACTOR COMMITMENT CERTIFICATION FORM**

Contractor Name:

Total Contract Amt:

Bid Number:

Project Name:

FORM 1- PART 1

Part 1 of this Form applies solely to meeting the GOAL for Section 3 Business participation. This certification shall be deemed a part of the resulting contract.

Additional sheets may be used by copying this form, however, each must be signed to certify its content and completion of the form.

SECTION 3 CERTIFIED FIRMS				
These columns to be completed by Contractor				
Name of Section 3 Certified Firm	Federal ID #	Type of Work	Function	Dollar Value (Subcontract or Expenditure Amount)
			Subcontractor	
			Subcontractor	
			Subcontractor	
			Subcontractor	
			Subcontractor	
			Subcontractor	
			Subcontractor	
TOTAL SECTION 3 BUSINESS PARTICIPATION				\$0.00
% OF SECTION 3 BUSINESS PARTICIPATION				#DIV/0!
GOAL MET? YES NO				

FORM 1- PART 2

Part 2 of this Form applies to DMW & DMWESB participation.

CERTIFIED FIRMS								City Use Only
These columns to be completed by Bidder								
**(In Certification Type Column, list only one in this order: 1-DBE, 2-MBE, 3-WBE, and 4-ESB)								
DMWESB CERTIFICATION #	Certification Type ** (list only one, see above)	Name of DMWESB Firm	Federal ID #	Type of Work	Function (see below, list: Subcontractor, Supplier, or Manufacturer)	Dollar Value (Subcontract or Expenditure Amount)	Goal Participation %	DMWESB Amount (Dollar Value x Goal Participation %)
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00
							100%	\$0.00

City Use Only		
	Dollar Value Commitment	% Commitment (Dollar Value/Total Bid Amount)
DBE/MBE/WBE Participation	\$0.00	#DIV/0!
DBE/MBE/WBE/ESB Participation	\$0.00	#DIV/0!
TOTAL CONTRACT AMOUNT	\$0.00	

Executive Director Signature Request Form

Date: 08/24/2016 Project: NE GRAND

➔ Subject / Explanation: DESIGN/BUILD CONTRACT W/
WALSH CONSTRUCTION CO.
\$2,028,707 - THROUGH CONSTRUCTION DOCS.
TWO ORIGINALS

➔ Board Resolution? Consistent with Budget? Consistent with Contract? Other? (explain)

➔ Routing Instructions: (All must be signed before going to Executive Director)

- 1. Staff / Project Manager LIVINGSTON Date 08/24/2016
- 2. Department Director [Signature] Date 8/24/16
- 3. Chief Officer [Signature] Date 8/29/16

➔ Executive Director: Please sign the attached where indicated and return to:

Name LIVINGSTON Ext 8424