



UMPQUA
Community College

REQUEST FOR PROPOSALS
DESIGN BUILD SERVICES FOR UMPQUA COMMUNITY COLLEGE
NEW CONSTRUCTION OF MEDICAL CAREERS HUB AND WELCOME CENTER

Solicitation No. S-P00590-00010413
RFP_DB_New Construction MCHWC_2024

RFP Closing:
Wednesday, June 13, 2024 12 Noon PST

Issued by:
Umpqua Community College
1140 Umpqua College Road
Roseburg, Oregon 97470

Issue Date:
May 15, 2024

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- Attachment D – Cost Proposal Form
- Attachment E – Proposer Responsibility Form
- Attachment F – Proposer Reference Form
- Attachment G – Sample Contract

COVER PAGE

REQUEST FOR PROPOSALS (“RFP”)

**DESIGN BUILD SERVICES FOR UMPQUA COMMUNITY COLLEGE
NEW CONSTRUCTION OF MEDICAL CAREERS HUB AND WELCOME CENTER**

Umpqua Community College is issuing RFP under OregonBuys Solicitation No. S-P00590-00010413
RFP_DB_New Construction MCHWC 2024

ISSUE DATE:
May 15, 2024

DUE DATE:
June 13, 2024 at 12 Noon PM Pacific Time (“PT”)

LATE PROPOSALS WILL NOT BE ACCEPTED

MANDATORY PRE-PROPOSAL CONFERENCE: May 22, 2024 at 9:00 AM via Zoom

QUESTION/CLARIFICATION DEADLINE: June 6, 2024

SINGLE POINT OF CONTACT

Joy Yori, Purchasing Manager
Umpqua Community College
1140 Umpqua College Road
Roseburg, OR 97470
Email: Joy.Yori@umpqua.edu

CONTRACT ADMINISTRATOR:

Natalya Brown, Chief Financial Officer
Umpqua Community College
1140 Umpqua College Road
Roseburg, OR 97470
Email: Natalya.Brown@umpqua.edu

This document must be viewed electronically to access files, forms, provisions or other documents provided via hyperlinks within this RFP.

RFP Submission and Questions: uccbids.contracts@umpqua.edu.

It is the Proposer’s responsibility to continue to monitor the [UCC Solicitation Documents](#) website for Addenda.

UCC policies and procedures govern this solicitation ([UCC Board Policies](#)) unless otherwise reference or stated.

Electronic Bids Only
Electronic bids must be received prior to the Closing Date/Time

The State of Oregon promotes equal opportunity for all individuals without regard to age, color, disability, marital status, national origin, race, religion or creed, sex or gender, sexual orientation, or veteran status.

SECTION I. INVITATION, OVERVIEW, PURPOSE, BUDGET & SCHEDULE

A. REQUEST FOR PROPOSALS INVITATION

Umpqua Community College (“UCC”) is conducting a competitive Request for Proposals (RFP) process to retain a Design-Build team to complete a Medical Careers Hub and Welcome Center (“MCHWC”) on the College campus at 1140 Umpqua College Road, Roseburg, Oregon.

The terms “Design-Build Contractor” (DBC) and “Design-Build” (DB) team may be used interchangeably and are generally defined as the proposing firm (Proposer) with whom UCC may contract to provide professional design, management and construction services.

The College has a basic idea of the services and learning spaces needed, and will rely heavily on the Design-build team to help determine, location, size, layout and usage of the space. This is an exciting opportunity to work with college personnel and community stakeholders to deliver the best outcome for the college within the stated budget.

B. COLLEGE OVERVIEW

Umpqua Community College is a comprehensive two-year public college, supported by tuition, local property taxes, and state revenue, founded in 1964 to provide training and college level educational opportunities. The College is directed by a seven-member Board of Education elected by the citizens of the district. The district is in Douglas County in southwestern Oregon.

The College serves more than 8,625 students each year of which approximately 2,105 are credit students. The main campus is located six miles north of Roseburg on 100 acres of donated land overlooking the North Umpqua River. The main campus is comprised of 24 buildings located on park-like grounds with 3 additional campus locations and 4 housing properties.

C. PROJECT PURPOSE AND SCOPE OF WORK

The project involves the construction of a new building, the Medical Careers Hub and Welcome Center, on the campus at 1140 Umpqua College Road, Roseburg, OR. The new facility will serve as both a front door to the campus and as a training center for allied health career programs with instructional and laboratory spaces.

The building’s Welcome Center will reflect our student-centric approach, increasing the accessibility of student services by bringing them to the forefront of campus. The building will also house the Medical Careers Hub with new medical training laboratory space and equipment. The College is actively expanding medical career programming to meet local workforce needs and requires additional space on campus for these training programs.

The College seeks innovative design solutions for a multifunctional building. The design and construction must conform to the funding available for this project. Umpqua Community College plans to enter into a contract with a DBC for the design and construction of the Medical Careers Hub and Welcome Center as soon as possible.

D. PROJECT BUDGET

The budget for the MCHWC is \$19 million. The budget of the project is inclusive of, but not limited to, all design, construction, landscaping, mechanical, engineering needs, fixtures, furniture and equipment. The College has funding to complete the programming and schematic design portion of

the Project. Completion of the Project design and construction is contingent upon UCC obtaining funds to match the State of Oregon’s XI-G state bonds currently allocated to UCC for the Project.

E. PROJECT SCHEDULE

The table below represents a tentative schedule of events for the Project using a multi-phased approach. The intent is that the completion of Phase 1 Pre-Design and Schematics will provide the design plans for fundraising activities to ensure the continuation and completion of the remaining two project phases.

The completion of Phase 1 Pre-Design and Schematics is critical to the success of completing this project.

EVENT	START DATE
Phase 1: Pre-Design and Schematics	July 10, 2024
Phase 2: Complete Architectural Designs	As soon as funding is in place
Phase 3: Construction	June, 2025

F. DESIGN REQUIREMENTS

UCC is seeking a design build firm with creative concepts, open to exploring alternative construction methods, and potentially collaborating with local suppliers. The desired team will maximize space functionality within the budget given.

The planned services and work under the resulting DB contract will consist of but not limited to, inspection and evaluation services, design services, construction services/work, programming value engineering (“VE”) services, permitting, internal systems commissioning services and all other support services needed to complete the Project (collectively, the “Work”).

The design of the Project is required to comply with the state standards relevant to building performance for construction and technical specifications requirements. The DBC shall employ cost saving, space saving, energy saving, and other sustainable design and construction features to public improvements. In support of the Owner’s design goals and objectives, the Owner requires Proposer to provide productive, safe, and healthy facilities and installations that enhance the comfort and working environment for all the occupants of the facilities.

SECTION II. INSTRUCTIONS TO PROPOSERS

A. RFP DOCUMENTS

The documents for this RFP (“RFP Documents”) consist of this RFP plus all attachments and all documents incorporated by reference into this RFP or into the attachments, plus any addenda to this RFP. Copies of the RFP Documents are available on the OregonBuys System located at <https://oregonbuys.gov/>, and/or www.umpqua.edu/purchasing.

The College reserves the right to modify any RFP requirements, adjust the Solicitation Schedule or terminate the entire RFP process at any time, subject to the requirements of the Oregon Revised Statutes and Oregon Administrative Rules. The College will not mail notices of Addenda but will publish notice of any modifications to the solicitation through written Addenda, which may be downloaded at OregonBuys, <https://oregonbuys.gov/>, and/or www.umpqua.edu/purchasing. Proposers are advised to frequently check OregonBuys eProcurement system, and/or www.umpqua.edu/purchasing until closing date and time indicated on page 1 of this RFP (the

“Closing”), i.e., at least once weekly until the week of the Closing and at least once daily during the week of the Closing.

B. DEFINITION OF TERMS

Throughout this document, the following definitions apply:

- “College”, “Owner”, “UCC” means Umpqua Community College.
- “BOE” means Board of Education and may be used interchangeably with Local Contracting Review Board.
- “Closing” means the date and time specified in the Solicitation as the deadline for submitting Proposals.
- “DB” means Design-Build or Design-Build Progressive method.
- “DBC” means Design-Build Contractor or Design-Build Team.
- “Proposal” means a written response to provide the Services in response to the Solicitation.
- “Proposer” means the person or firm that submits a Proposal in response to this Solicitation.
- “MCHWC” means the building referenced in throughout the RFP. Medical Careers Hub and Welcome Center.

C. SINGLE POINT OF CONTACT (“SPC”)

The SPC for this RFP is identified on the Cover Page, along with the SPC’s contact information. Proposer shall direct all communications related to any provision of the RFP only to the SPC, whether about the technical requirements of the RFP, contractual requirements, the RFP process, or any other provision.

Proposals are to be submitted to uccbids.contracts@umpqua.edu by the Due Date/Time.

Questions and requests for clarifications regarding this RFP must be submitted via email and directed to Joy Yori at uccbids.contracts@umpqua.edu.

D. MANDATORY PRE-PROPOSAL CONFERENCE

A mandatory pre-proposal conference will be held, Wednesday, May 22, 2024 at 9:00 am, local time via Zoom. Zoom link information will be posted via addenda.

No statement made by any officer, agent, or employee of UCC in relation to the physical conditions pertaining to the work site will be binding on UCC, unless included in writing in the documents included as attachments to this RFP or an Addendum.

Statements made at the pre-proposal conference are not binding upon the College. Proposers may be asked to submit questions in writing.

E. SOLICITATION SCHEDULE

The dates for this procurement process are set forth below. The College reserves the right to modify the solicitation schedule at any time, with appropriate notice to prospective Proposers. Required dates for other submittals and activities are specified elsewhere in this RFP.

The table below represents a tentative schedule of events for the RFP process. All times are listed in Pacific Time. All dates listed are subject to change.

Event	Date	Time
Post of Solicitation	Wednesday, May 15, 2024	9:00 AM PST
Mandatory Pre-Proposal Conference - ZOOM	Wednesday, May 22, 2024	9:00 AM PST
Questions / Requests for Clarification Due	Friday, May 31, 2024	12 Noon PST
Answers to Questions/Requests for Clarification Issued	Thursday, June 6, 2024	12 Noon PST
RFP Protest Period Ends	7 calendar days prior to RFP Opening	
Proposal Due	Thursday, June 13, 2024	12 Noon PST
Opening of Proposal	Friday, June 14, 2024	8:00 AM PST
Evaluation (approx.)	Week of June 16, 20024	
Interviews (approx.)	Monday, July 8, 2024	
Issuance of Notice of Intent to Award (approx.)	Tuesday, July 9, 2024	9:00 AM PST
Award Protest Period Ends	7 calendar days after Notice of Intent to Award	
Recommendation to UCC Board of Educators	Tuesday, July 16, 2024	

F. FORM OF AGREEMENT

The College will utilize a Design-Build process under a modified AIA Document A141-2014 Standard Form of Agreement between Owner and Design-Builder, along with its associated Exhibits. A sample of the document is attached via Attachment G. The selected Design-Builder will work with UCC to finalize the terms and conditions of the modified AIA Document A141-2014 with regard to the Owner's Criteria, Project Team, Compensation (work performed prior to and after the Design-Build Amendment), and Schedules (work, submittals).

G. DESIGN BUILD METHODOLOGY

The College intends for the initial contract to include design-phase services only with construction services being added via a Design-Build amendment and/or a Guaranteed Maximum Price ("GMP") Amendment. Project to be completed in phases, all phases are included within the total cost of the project.

H. METHOD OF PROCUREMENT

The College is issuing this RFP pursuant to its authority under ORS 279A.050 and OAR 125-246-0170(2)

The College is using the Competitive Sealed Proposal method, pursuant to ORS 279B and OAR 125-247-0260.

The College may use a combination of the methods for Competitive Sealed Proposals, including optional procedures: a) Competitive Range; b) Discussions and Revised Proposals; c) Revised Rounds of Negotiations; d) Negotiations; e) Best and Final Offers; and f) Multistep Sealed Proposals.

SECTION III. PROPOSAL REQUIREMENTS, SUBMISSION AND GUIDELINES

A. PROPOSAL REQUIREMENTS

Proposer's submission must include the following information in the order listed:

- | | |
|---|-----------------------|
| 1. Attachment A – Proposer Certification | (Mandatory Component) |
| 2. Evaluation Criteria – Proposer's Experience | (Scored Component) |
| 3. Evaluation Criteria – Overall Project Approach and Schedule | (Scored Component) |
| 4. Evaluation Criteria – Subcontracting Plan | (Scored Component) |
| 5. Evaluation Criteria – Design Phase Fee Proposal | (Scored Component) |
| 6. Evaluation Criteria – Design Builder Fee Proposal | (Scored Component) |
| 7. Attachment B – Affidavit of Non-Collusion/Compliance with Tax Laws | (Mandatory Component) |
| 8. Attachment C – Non-Conflict of Interest Certification | (Mandatory Component) |
| 9. Attachment D – Cost Proposal Form | (Mandatory Component) |
| 10. Attachment E – Proposer Responsibility Form | (Mandatory Component) |
| 11. Attachment F – Proposer Reference Form | (Mandatory Component) |

Any information Proposer submits that is not required to be included on forms prescribed by this RFP must be formatted in the manner called for in this RFP and submitted on Proposer's letterhead. If forms are specified, Proposer shall provide required information on those forms. Concise and direct responses are encouraged.

All Proposers must be registered and licensed with the Oregon Construction Contractors Board and have on file with the Construction Contractors Board the required public works bond prior to submitting Proposals. Failure to be licensed and have the bond in place will be sufficient cause to reject Proposals as non-responsive.

B. PROPOSAL SUBMISSION

Submit **one (1) electronic version** via email to be received by the Due Date/Time listed in this document to uccbids.contracts@umpqua.edu as stated in this RFP. **Electronic versions must be sized appropriately for transfer (under 10mb).** Proposals submitted electronically to any other email address may be rejected. It is highly recommended that the Proposer confirms receipt of the email. The email may be opened to confirm receipt but will NOT verify the integrity of the attachment(s), answer questions related to the content of the Proposal, or address the overall responsiveness of the Proposal.

All Proposals must be received by UCC before the Due Date/Time. Time stated on email receipt will be the official time received and shall prevail in any time conflict. Any Proposal received after the Due Date/Time will be rejected and will be retained and made part of UCC's archive records in accordance with UCC Standards.

If Proposer believes any of its Proposal is exempt from disclosure under Oregon Public Records Law (ORS 192.311 through 192.478), Proposer shall submit a fully redacted version of its Proposal, clearly identified as the redacted version.

C. PROPOSAL GUIDELINES

Proposal should follow the format and reference the sections listed in the Proposal Requirements section. Responses to each section and subsection should be labeled to indicate the item being addressed.

Proposal must be contained in a document not to exceed fifteen (15) single sided pages including any visuals and text relevant to UCC's review. Resumes of key individuals proposed to be involved in this Project are exempted from the page limit and must be appended to the end of your Proposal. Additional materials beyond this page limit won't be accepted.

Proposal must be signed by an authorized representative of the firm. Failure of Proposer's authorized representative to sign the Proposal may result in rejection of the Proposal by College.

Any/all exceptions to the Terms and Conditions included in the Sample Contract shall be clearly identified and appended to the Proposal in order to be considered by UCC during the negotiation period.

The electronic Proposal should be sized appropriately for transfer (under 10 MB) and formatted with page size of 8 ½ x 11 inches. The basic text information of the Proposal should be presented in standard business font size, and reasonable margins.

Proposal should not include extensive artwork, unusual photographs, or other materials not essential to the utility and clarity of the Proposal. Do not include marketing or advertising material in the Proposal, unless requested.

Proposals may be rejected for failure to comply with the law applicable to submission, failure to comply with the rules adopted by the Board of Education concerning the submission of Proposals or failure to comply with the requirements of the RFP.

D. WITHDRAW OF PROPOSAL

If a Proposer wishes to withdraw a submitted Proposal, a written notice is to be submitted via email, signed by an authorized representative of its intent to withdraw to uccbids.contracts@umpqua.edu. This will not preclude the submission of another Proposal by such Proposer prior to the due date/time.

No Proposer may withdraw its Proposal within sixty (60) days after the hour set for the RFP Closing.

SECTION IV. PROPOSAL EVALUATION PROCESS

A. EVALUATION OVERVIEW

The Proposal evaluation for selection of a DBC for this Project will occur in two steps. The Proposals received in response to this RFP (Step 1) will be evaluated by a selection committee with the top scoring firms being invited to further advance to a presentation/interview (Step 2) with the selection committee.

Step 1 – RFP Evaluation. Proposals that appear to materially satisfy all mandatory requirements will be submitted to the selection committee for scoring based upon the Scored Criteria identified in this RFP. The evaluation process will be based on the information submitted, obtained, received, presented, found, and heard in response to this RFP. The College will be the sole judge of the merits of each Proposer's submission.

Step 2 –Presentations/Interviews. A formal Presentation/Interview with the selection committee will occur at a time to be determined by the Owner. The Presentation/Interview will be held in-person at UCC or via Zoom.

After all the Presentations/Interviews are completed, the members of the selection committee will discuss the strengths and weaknesses of the finalists. The members of the selection committee will then score the finalists based on all information received, presented, and heard during the Presentations/Interviews. Upon completion of final scoring, negotiations may commence with the top-ranking Proposer.

B. RESPONSIVENESS AND RESPONSIBILITY DETERMINATION

The College will utilize the following objective factors to determine if Proposals are Responsive and Proposers are Responsible.

Responsiveness Determination. A Proposal received prior to Opening will be reviewed to determine if it is Responsive to all RFP requirements including submission of RFP attachments. If the Proposal is unclear, the SPC may request clarification from Proposer. However, clarifications may not be used to rehabilitate a non-responsive Proposal. If the SPC finds the Proposal non-responsive, the Proposal may be rejected; however, the College may waive mistakes in accordance with OAR 125-247-0470.

Responsibility Determination. The College will determine if an apparent successful Proposer is Responsible prior to award and execution of the Contract. Proposers shall submit a signed Responsibility Inquiry form (Attachment E) with Proposal.

At any time prior to award, the College may reject a Proposer found to be not Responsible.

C. SELECTION COMMITTEE

Each Proposal meeting all Responsiveness and Responsibility requirements will be independently evaluated by members of a selection committee. Selection committee members may change and the College may have additional or fewer evaluators for optional rounds of competition. Evaluators will assign a score for each evaluation criteria within this RFP with up to the maximum points available as specified below in E – Point and Score Calculations.

SPC may request further clarification to assist the selection committee in gaining additional understanding of a Proposal. A response to a clarification request may only clarify or explain portions of the already submitted Proposal and may not contain new information not included in the original Proposal.

D. EVALUATION CRITERIA

The following items constituent the evaluation criteria for the selection committee to score Proposals.

Proposer's Experience (Maximum Points 55)

Firm Capacity (15 points)

Provide a brief description of firm's history, type of work performed and capabilities. Include annual volume for the past seven years, financial/bond capacity for this Project, and speak to the firm's stability in the marketplace. If a joint venture, provide information for each of the firms involved. Firm's legal structure, area of expertise, length of time in business, number of employees, and other information that would be helpful in characterizing the firm. Provide the address of the firm's home office and the address of the office that will manage the Project, if applicable. If a joint venture, describe the DBC firms' history of working together on similar projects.

Project Experience (25 points)

Describe overall experience, and provide a listing, in chronological order, in chart format, of the firm's last completed DB (or similar Project delivery type) Projects performed within the last seven (7) years. Include completion date, owner's names, contract name/phone number, location and description of the job, final construction amount and total amount of change order. Also provide listing and description experience in the following types of facilities:

- **Public Agencies and/or Educational Institutions**
Describe your experience on Projects for public agencies/higher education under public contracting statutes and requirements.
- **Healthcare Projects**
Describe your experience on Projects for any healthcare projects, if any.

Key Personnel Experience (15 points)

Identify key personnel, including Design Build Manager (or Design Manager), Project Manager, Superintendent, and Architect, along with those subconsultants proposed to be assigned to this Project. Demonstrate their specific experience on projects of similar type, size and scope. Provide specific job experience as it relates to their experience with the Design Build process and working under UCC or similar public contracting agencies' contracting rules. Identify their length of employment with your firm and, if less than three years, recent prior firm(s), their responsibility on this Project, and their primary office locations.

Provide key personnel resumes in an APPENDIX, which will not be included in the page count.

Overall Project Approach and Schedule (Maximum Points 30)

Project Approach

Describe the overall plan for completing the Project. Discuss the approach to developing the design, services to be provided during the planning and design and managing the construction. How would you organize and monitor the work to ensure design quality, function, timely completion, and cost within or under budget? What will you do to guarantee the GMP will be achieved within UCC's budget as required?

Describe how your firm will approach the program validation phase, and overall Project and construction management aspect for this Project. How will you ensure UCC's needs are met?

Describe your approach to problem solving for this Project. Include challenges your firm faced with the last seven (7) years in working on similar Project(s) and how your firm resolved the challenge(s).

Project Schedule

Describe how your firm will develop the master schedule, phasing, and bid packaging for the Project. What recommendations does your firm have for delivery of the Project to ensure the Project is delivered on schedule and on budget?

Subcontracting Plan (Maximum Points 5)

Describe your concept for trade partner engagement as part of the Work, bidding work to subcontractors and purchasing major materials and equipment items. Describe the portions of the Project that your firm intends to self-perform.

Design Phase Fee Proposal (Maximum Points 20)

Provide DESIGN PHASE PROPOSAL for design phase services on a lump sum amount. Clearly identify the amount for Basic Services and a Reimbursable Expenses allowance. Include a breakdown of the costs including a listing of the types of personnel participating in the work, an estimate of their hours and rates charged for their services based on the proposed scope listed in Section I.C. Pricing shall include all design elements from initial design through Construction Administration.

Scoring will be based solely on the total maximum not-to-exceed amount.

NOTE: Formula for scoring Fee Points will be as follows: Lowest Fee for each of the price related items will receive full points with higher cost price related items receiving proportionally lower points according to this formula: $(\text{Low Fee or Fee\%} / \text{Fee or Fee\%}) \times \text{Points Available}$

Design Builder Fee Proposal (Maximum Points 20)

Provide your team's **Design Builder Fee as a percentage of the Estimated Cost of Work**. This fee shall cover, at a minimum, the Construction Management elements, and Costs Excluded from Cost of the Work, as specified in the DB Agreement.

Include breakdown of architectural fees, development fees, construction fees, general contractor fees, project management fees, general condition fees and any other fees.

E. POINT AND SCORE CALCULATIONS

The College will score each Proposal by reviewing and evaluating the Proposal content requirements outlined above. The following table indicates how the total points in the scoring will be assigned by required Proposal item. Failure to meet minimum requirements for any individual item may disqualify the Proposal regardless of the total points scored for the other items. The SPC will determine the rank of each Proposal with the highest score receiving the highest rank, and successive rank order determined by the next highest score.

Interviews may take place either in person at a location chosen by the College or via Zoom. Further details will be communicated to selected Proposers via email and/or telephone. Failure to respond to email or voice message within 24 hours may be considered non-responsive.

Each item will be evaluated as follows:

EVALUATION CRITERIA MATRIX	Maximum Points Possible
Proposer's Experience	55
Overall Project Approach and Schedule	30
Subcontracting Plan	5
Design Phase Fee Proposal	20
Design Builder Fee Proposal	20
Proposal Score Total	130
Interview Score	100
50% of the Proposal score + interview score = Total Final Score	165

NOTE: Fifty percent (50%) of Proposer's Content Sub-Total will be combined with the interview score (if interviews are held) to obtain the Proposer's final score.

F. QUESTIONS

All questions shall be submitted in writing via e-mail to the SPC, uccbids.contracts@umpqua.edu no later than deadlines specified in this RFP. If a Proposer is unclear about *any* information contained in this document or its Attachments, they are urged to submit those questions for formal clarification. The email subject line should contain the Solicitation Number/Name and Firm Name.

G. CONTINGENT PROPOSALS

The Proposer must not make its Proposal contingent upon the College's acceptance of any terms or conditions (including Specifications) other than those contained in this Solicitation.

H. CLARIFICATION OF PROPOSALS

After Opening, the College may conduct discussions with apparent Responsive Proposer(s) for the purpose of clarification and to assure full understanding of the Proposal.

I. OBJECTIVE CRITERIA

The College may allow, at its discretion, certain other objective evaluation criteria. Examples of such criteria include but are not limited to conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or lifecycle cost formulas.

SECTION V. MODIFICATIONS, CHANGES, PROTEST

A. MODIFICATIONS

Any change or modification provided by the Owner for this RFP or the documents included as attachments to this RFP shall be made by a duly issued Addendum made available to all firms on the UCC Purchasing website and OregonBuys. The Proposer is solely responsible for checking UCC Purchasing website and OregonBuys to determine whether or not any Addendum(s) are incorporated into the RFP by this reference.

UCC will not be responsible for any other explanation or interpretation of this RFP or the documents included as attachments to this RFP.

B. CANCELLATION

The College reserves the right to cancel all or any portion of the procurement. In addition, the College reserves the right to reject any or all Proposals and to cancel all or any portion of the procurement.

The College may cancel, delay or suspend a solicitation, or reject all Proposals, if the College believes it is in the public interest to do so. In the event of any such cancellation, delay, suspension, or rejection, the College is not liable to any Proposer for any loss or expense caused by or resulting from any such cancellation, delay, suspension or rejection.

C. FIRM OFFER

Submission of a Proposal constitutes Proposer's affirmation that all terms and conditions of the Proposal constitute a binding offer that shall remain firm for a period of ninety (90) Days from the Closing Date and Time specified on the cover page of this RFP (the "Closing").

D. COSTS OF PROPOSAL

All costs incurred in preparing and submitting a Proposal and participating in interviews in response to this Solicitation, and all costs for protest shall be the responsibility of the Proposer and shall not be reimbursed by UCC. The State and the Owner shall not be liable for the Proposer's costs or damages for filing the protest or to any participant in the protest, on any basis, express or implied.

E. PROPOSALS PROPERTY OF UCC

All information submitted by a Proposer in response to the RFP shall become the property of the UCC and will not be returned to the Proposer. UCC may release an unopened Proposal withdrawn to the withdrawing Proposer or its authorized representative, after voiding any date and time stamp mark.

F. RFP PROTEST

Submission of a protest by the above referenced deadline is the only opportunity for Proposers to protest procurement requirements, technical specifications or any contract terms and conditions attached to this RFP.

To be considered, prospective Proposer's written RFP protest must be marked as follows:

RFP Protest

RFP for Medical Careers Hub and Welcome Center

RFP Protests must be submitted via email to uccbids.contracts@umpqua.edu

The College will consider a RFP Protest filed in compliance with the requirement of this Section if it: 1) identifies this RFP as the solicitation that is the subject of the protest 2) states the grounds that demonstrate how the process is contrary to law, or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name; 3) provides evidence or supporting documentation that supports the grounds on which the protest is based; and 4) states the relief sought by prospective Proposer.

If any Proposer takes exception to the technical specifications, contract terms and conditions, or the procurement requirements of this solicitation in its Proposal, other than those addressed and revised

by the College through written Addenda, the Proposal must be deemed non-responsive and rejected by the College.

The College will respond to each properly submitted written request for clarification or change or protest. Where appropriate, the College will issue revisions or clarifications via Addenda. Specifications, contractual terms, and procurement requirements can only be changed via formal Addenda issued by the College and posted on the OregonBuys system and UCC website. Proposers are required to acknowledge receipt of all Addenda issued on Attachment A of this RFP.

An issue that could have been, but was not, addressed by the Proposer pursuant to a request for clarification or protest will not be considered grounds for a Protest of Award.

The College may extend Closing if it determines an extension is necessary to consider and respond to a properly filed Protest.

SECTION VI. SELECTION, NOTICE OF INTENT, AND NEGOTIATIONS

A. CLOSING AND OPENING OF PROPOSALS

Proposals will not be accepted after the closing date/time stated in this RFP. The RFP may be extended by any subsequently issued Addenda.

The College, in its sole discretion and in lieu of in-person public bid openings, will provide an electronic public bid opening alternative as a Zoom meeting. The College will publish notice of the alternative public bid opening approach as an Addendum to the RFP on OregonBuys and the UCC Purchasing website. It is optional for Proposers to attend the Opening.

B. SELECTION

If the College does not cancel the Solicitation after it receives the results of the scoring and ranking for each Proposer, the College will begin negotiating a Contract with the highest ranked Proposer following the evaluation and interview (if conducted) process.

C. NOTICE OF INTENT

The College shall provide a written Notice of Intent to Award (NOI) to all Proposers at least seven (7) calendar days before the Award of a Contract, unless the College determines that circumstances require prompt execution of the Contract. The College's Award must not be final until the latter of the following:

1. Seven (7) calendar days after the date of the NOI, or
2. The College provides written response(s) to all timely filed protest(s) denying the protest(s) and affirming the Award.

D. AWARD PROTEST

An adversely affected Proposer may protest the Notice of the Intent to Award.

In order to be an adversely affected Proposer with a right to submit written protest, a Proposer must itself claim to be eligible for Award of the Contract in the event the Protest were successful and must be next in line for the Award. In addition, the adversely affected Proposer must demonstrate that the reason for the Protest is that : (a) all higher-ranked Proposers are ineligible for Award of the Contract because their Proposals were non-responsive; or (b) the College has failed to conduct the evaluation

of Proposals in accordance with the criteria or processes described in this RFP; (c) the College has abused its discretion in rejecting the Protesting Proposer's proposal as nonresponsive; or (d) the College's evaluation of the Proposals or its subsequent determination of award is otherwise in violation of ORS Chapter 279A or 279C. In addition, the written protest shall specify the grounds upon which the protest is based and suggested changes that may remedy the defects.

To be considered, Proposer's written Award Protest must be submitted to the Issuing office in an envelope marked as follows:

RFP Award Protest
RFP Title
Notice of Intent to Award Date

All Award Protests must be in writing. Award Protests may be submitted via email to the Singe Point of Contact identified on the Cover Page.

To be considered by the College, a written protest must be received by the College within seven (7) days after issuance of the Notice of Intent to Award Contract.

The President of the College, or such person's designee, shall have the authority to settle or resolve a written protest submitted in accordance with the requirements of this Section D.

If the protest is not settled or resolved by mutual agreement, the President of the College, or such person's designee, shall issue a written decision on the protest in a timely manner. The decision of the President or designee shall be the final decision of the College.

E. NEGOTIATIONS

Upon the Board of Education approval of the selection committee's recommendation, the College will proceed to negotiate a contract with the approved firm. If negotiations are not successful within 14 business days, UCC may break off negotiations and begin negotiations with the number two ranked firm, and so forth until a contract is negotiated. The Board of Education must approve and make final award of Contract.

Pursuant to OAR 137-049-0420, UCC may conduct discussions or negotiations with Proposers only in accordance with the requirements of OAR 137-049-0650.

- UCC may commence General and/or Best and Final Offer (BAFO) Negotiations in accordance with UCC Policies and Procedures following final scoring under either a one or two-step process.
- Any/all exceptions to the Term and Conditions included in the Sample Agreement shall be clearly identified and appended to the Proposal in order to be considered by UCC during the negotiation period. Sample Agreement is for reference only.
- UCC reserves the right to deny contract term negotiations with the apparent successful Proposer if such contract terms were not received by UCC in the Solicitation response.
- UCC reserves the right to defer decision(s) on requests for contract terms and conditions revisions until after a notice of intent to award is published.
- The College shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the College and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The College may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the College may end the particular formal solicitation.

Nothing in this rule precludes the College from proceeding with a new formal solicitation for the same Services described in this Solicitation that failed to result in a Contract.

SECTION VII. CONDITIONS FOR PROPOSERS

A. LICENSING AND TAX

All design services constituting the practice of architecture must be provided by or under the responsible charge of a duly qualified and Oregon-licensed architect (in accordance with ORS Chapter 671), either employed by the Proposer or hired by the Proposer.

All design services, if any, constituting the practice of engineering shall be provided by or under the responsible charge of a duly qualified and Oregon-licensed engineer (in accordance with ORS Chapter 672), either employed by the Proposer or hired by the Proposer.

The Proposer must meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services requested by this Solicitation.

The Proposer cannot begin work until a Notice to Proceed is issued by the College Representative.

The College considers the Oregon Corporate Activity Tax (OCAT) as a business expense. Therefore, UCC will not accept bids/Proposals or invoices that specifically cite OCAT as a line-item expense.

B. COMPLIANCE WITH APPLICABLE LAW

Proposer agrees to comply with all federal, state, county, and local laws, ordinances, and regulations as well as all applicable UCC policies and procedures while on college-owned properties.

C. PUBLIC RECORD

UCC will retain an electronic copy of this RFP and one electronic copy of each Proposal received, together with electronic copies of all documents pertaining to the award of a contract. These documents will be made a part of a file or record, which shall be open to public inspection after UCC has announced its intent to award a contract.

- If a Proposal contains any information that is considered a trade secret under ORS 192.345(2), you must mark each trade secret with the following legend: **“This data constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”**
- Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance.”
- Therefore, non-disclosure of documents or any portion of a document submitted as part of a Proposal may depend upon official or judicial determination made pursuant to the Public Records Law.

In order to facilitate public inspection of the non-confidential portion of the Proposal, material designated as confidential shall accompany the Proposal, but shall be readily separable from it. Prices, makes, model or catalog numbers of items offered, scheduled delivery dates, and terms of payment

shall be publicly available regardless of any designation to the contrary. Any Proposal marked as a trade secret in its entirety may be considered non-responsive and be rejected.

D. PREVAILING WAGE AND BOND REQUIREMENTS

The successful DBC and all subcontractors shall comply with the provisions of ORS 279C.800 through 279C.870, relative to Prevailing Wage Rates and the required Public Works bond(s).

Before starting work the successful DBC shall file with the Construction Contractors Board (“CCB”), and maintain in full force and effect, the separate public works bond required by ORS 279C.836 and OAR 839-025-0015, unless otherwise exempt under those provisions. The DBC shall also include in every subcontract a provision requiring the Subcontractor to have a Public Works bond filed with the CCB before starting Work, unless otherwise exempt, and DBC shall verify the Subcontractor has filed a Public Works bond before permitting the Subcontractor to start Work.

This RFP and the resulting contracts are subject to following Bureau of Labor and Industries (“BOLI”) wage rate requirements and the prevailing wage rates in effect at the time the contract enters the construction phase through the execution of the first Pricing Amendment for Early Work, Lump Sum or Guaranteed Maximum Price (GMP). Those rates will then apply throughout the Project.

E. FINANCIAL RESPONSIBILITY

UCC may postpone the selection of finalists or execution of a contract in order to complete its investigation and evaluation. Failure of a firm to demonstrate financial responsibility may render it non-responsible and constitute grounds for Proposal rejection.

F. PROJECT TERMINATION

UCC reserves the right to terminate the Project or contract during any phase in the Project.

Should the Agreement be terminated prior to the first GMP Amendment, UCC reserves the right to obtain services from any other source available to it under the relevant contracting laws and UCC policies and procedures, including negotiating with the next highest scoring Proposer(s).

G. INSURANCE

During the term of the resulting contract, the awardee will be required to maintain in full force, at its own expense, from insurance companies authorized to transact the business of insurance in the state of Oregon, each insurance coverage/policy as set forth in the contract.

The College requires the selected Proposer to obtain the below minimum insurances for the project:

Professional Liability - Professional Liability/Errors and Omissions Insurance minimum of \$1 million per occurrence, and no less than \$2 million combined aggregate.

Commercial Auto Liability - Minimum of \$1 million combined single limit.

Commercial General Liability - Minimum of \$1 million per occurrence, and no less than \$2 million combined aggregate.

Worker’s Compensation - Per statute which includes a minimum of \$500,000 Employer’s Liability.

H. NONDISCRIMINATION

By submission of a Proposal, the Proposer certifies under penalty of perjury that the Proposer will not discriminate against minority, women, emerging small business or service-disabled veteran owned business enterprises in obtaining any required subcontracts.

I. EXECUTION OF AGREEMENT

The Proposer shall be required to execute the Contract as provided, within any time period provided in an award notification. The Contract Documents shall be delivered to UCC in the manner stated in an award notification.

Work/Services shall not commence until execution of a Contract and subsequent issuance of a notice to proceed letter with the selected Proposer.

J. RESERVATION OF UCC'S RIGHTS

In connection with this procurement process, including the receipt and evaluation of Proposals and award of the Agreement, UCC reserves to itself (at its sole discretion) all rights available to it under applicable law, including without limitation, with or without cause and with or without notice, the right to:

- Cancel, withdraw, postpone, or extend this RFP, in whole or in part, at any time prior to the execution of the Agreement, without incurring any obligations or liabilities.
- Modify the procurement schedule.
- Waive deficiencies, informalities, and irregularities in a Proposal and accept and review a non-conforming Proposal.
- Suspend and terminate the procurement process or terminate evaluations of Proposals received.
- Permit corrections to data submitted with any Proposal.
- Hold meetings and interviews, and conduct discussions and correspondence, with one or more of the Proposers to seek an improved understanding of any information contained in a Proposal.
- Seek or obtain, from any source, data that has the potential to improve the understanding and evaluation of the Proposals.
- Seek clarification from any Proposer to fully understand information provided in the Proposal and to help evaluate and rank the Proposers.
- Reject a Proposal containing exceptions, additions, qualifications, or conditions not called for in the RFP or otherwise not acceptable to UCC.
- Conduct an independent investigation of any information, including prior experience, included in a Proposal by contacting project references, accessing public information, contacting independent parties, or any other means.
- Request additional information from a Proposer during the evaluation of its Proposal.
- Negotiate with one or more Proposers regarding any particular or all aspects of the Agreement as determined by UCC in its sole discretion. However, UCC does not have to negotiate with any Proposer. The successful Proposer may be required to sign the Agreement with UCC without negotiation of any terms or conditions.

PROPOSAL SUBMISSION CHECKLIST
ALL CERTIFICATIONS, FORMS, AFFIDAVITS AND
DETAILED PROPOSAL CONTENT REQUIREMENTS

☐ **REQUIRED AFFIDAVIT, CERTIFICATIONS AND FORMS**

The following certifications and forms must be completed and signed by the person authorized to represent the Proposer regarding all matters related to the Proposal and authorized to bind the Proposer to the agreement. Failure to submit any of the required, completed and signed certifications/forms shall result in disqualification of the proposing firm.

- ☐ PROPOSER CERTIFICATION. (Attachment A) This serves as the cover sheet for your Proposal.
- ☐ CERTIFICATION STATEMENT FOR CORPORATION OR INDEPENDENT CONTRACTOR. (Attachment B)
- ☐ AFFADAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS. (Attachment C)
- ☐ NON-CONFLICT OF INTEREST CERTIFICATION. (Attachment D)
- ☐ PROPOSER RESPONSIBILITY FORM – All Pages. (Attachment E)
- ☐ PROPOSER REFERENCE FORM – Include the # specified on the form. (Attachment F)

☐ **DETAILED PROPOSAL CONTENTS**

Detailed Proposal Contents as specified within this Request for Proposal.

This checklist is provided for the Proposer's convenience in assembling your Proposal and is NOT required to be returned with the Proposal.

ATTACHMENT A - PROPOSER CERTIFICATION

Respectfully submitted this _____ day of _____, 20_____.



Signature: _____

Name: _____
(Please type or print)

Title: _____

Email: _____

Phone: _____

Firm/Company Name: _____

Physical Address: _____

City, State, Zip: _____

The Proposer certifies and agrees:

1. The Proposer has read and understands all terms and conditions of this solicitation.
2. The Proposer agrees to provide insurance as required in the sample Contract Terms and Conditions (see Attachments).
3. The Proposer agrees to execute the formal Contract within ten (10) days from date of Notice of Intent to Award.
4. The Proposer acknowledges that the person that signs this Certification is fully authorized to sign on behalf of the Proposer listed and to fully bind the Proposer to all conditions and provisions thereof. The Proposer certifies that Proposer has complied or will comply with all requirements of local, state, and national laws, and that no legal requirement has been or will be violated in making or accepting this Proposal.
5. The Proposer holds a certificate from the Oregon State Board of Architect Examiners, the Oregon State Landscape Architect Board, or the Oregon State Board of Examiners for Engineering and Land Surveying as applicable:

Registration #: _____.

6. The Proposer, pursuant to ORS 279A.120 (1), (check one) is _____/is not _____ a resident Bidder.
If not, indicate State of residency _____.
7. The Proposer certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, against any disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055 in obtaining any required subcontract.
8. The Proposer agrees to comply with Oregon tax laws in accordance with ORS 305.385.

9. Please indicate whether your business is certified under ORS 200.055 as any of the following:

- ☐ Minority-Owned Business
- ☐ Woman-Owned Business
- ☐ Emerging Small Business
- ☐ Service-Disabled Veteran Owned Business
- ☐ Disadvantaged Business Enterprise

OR Certification ID # _____

10. Please indicate whether your business is certified by the Oregon State Office of Minority & Women’s Business Enterprises:

State Certification(s):

- ☐ Minority Business Enterprise (MBE)
- ☐ Woman Business Enterprise (WBE)
- ☐ Minority Women Business Enterprise (MWBE)
- ☐ Combination Business Enterprise (CBE)
- ☐ Socially & Economically Disadvantaged Business Enterprise (SEDBE)

Federal Certification(s):

- ☐ Disadvantaged Business Enterprise (DBE)
- ☐ Small Business Enterprise (SBE)

Certification Number _____

11. The Proposer acknowledges receipt of the following addenda: (list by number and date appearing on addenda.)

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

ATTACHMENT B - AFFIDAVIT OF NON-COLLUSION / COMPLIANCE WITH TAX LAWS

(Proposer)

I state that:

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

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



(Affiant's Signature)

STATE OF OREGON

County of _____

Signed and sworn to before me on _____ by

(date)

(Affiant's name)

Notary: _____

My Commission Expires: _____

ATTACHMENT C - NON-CONFLICT OF INTEREST CERTIFICATION

Issuing Agency: Umpqua Community College

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

"NO OFFICER, EMPLOYEE, OR AGENT OF THE BIDDER/PROPOSER HAS ANY PERSONAL FINANCIAL INTEREST, DIRECT OR INDIRECT, IN THE OPERATION OF UMPQUA COMMUNITY COLLEGE."



Signature: _____

Name: _____
(Please type or print)

Title: _____

Firm/Company Name: _____
(Please type or print)

Date: _____

ATTACHMENT D
COST PROPOSAL FORM

Complete the following tables utilizing Owner's initial budget. Proposer shall use the terms, provisions, and definitions in, Article 2 (Compensation of the Design-Build Contractor) of the Sample Design-Build Contract in formulating this Cost Proposal.

DESIGN SERVICES

Site Planning:	\$
Design and Engineering:	\$
Project Development Fees:	\$
Total Design Services:	\$

CONSTRUCTION SERVICES

Insurance:	\$
Bonds:	\$
Direct Costs of Construction Services:	\$
Fixed Cost of General Conditions Work: (%):	\$
Fixed DBC Fee (%):	\$
Total Construction Services:	\$

ATTACHMENT E - PROPOSER RESPONSIBILITY FORM

(PROPOSER'S QUALIFICATIONS AND FINANCIAL INFORMATION)

DECLARATION AND SIGNATURES

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

Date: _____



Signature: _____

Name: _____
(Please type or print)

Title: _____
(Please type or print)

Firm/Company: _____
(Please type or print)

Instructions

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

ATTACHMENT E - *continued*
RELIABILITY

Has your company ever been declared in breach of any contract for unperformed or defective work?

☐ Yes ☐ No

If “yes”, explain.

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

If “yes,” explain.

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

If “yes,” explain.

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

If “yes,” explain.

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

If “yes,” explain.

ATTACHMENT E - *continued*
FINANCIAL RESOURCES

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

If “yes,” explain.

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

If “yes,” explain.

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

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

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

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

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

If “yes,” explain.

ATTACHMENT E - *continued*
KEY PERSONNEL

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

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

Person who will be in direct charge of work if your company is awarded this Contract:

ITEM	PERSON IN DIRECT CHARGE
A. Name	
B. Position	
C. Years in Position	
D. Largest Project Supervised - \$	
E. Largest number of employees ever supervised	

ATTACHMENT F - PROPOSER REFERENCE FORM

PROPOSER REFERENCE FORM FOR _____

(Insert Name of Proposer)

Proposer must provide three (3) references and must use a separate copy of this form for each reference.

Date(s) Work Performed: _____

Name(s) of Project(s): _____

Value of Project(s): \$ _____

Name of Company: _____

Address: _____

Contact Name: _____

Telephone: _____

Email: _____

Method: Subjective Evaluation

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

DRAFT AIA® Document A141® – 2014**Standard Form of Agreement Between Owner and Design-Builder**

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

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

«Umpqua Community College»
 « 1140 Umpqua College Road »
 « Roseburg, Oregon 97470 »
 « »

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

« To Be Determined »
 « »
 « »

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

« Medical Careers Hub and Welcome Center
 1140 Umpqua College Road
 Roseburg, OR 97470

The project involves the construction of a new building, the Medical Careers Hub and Welcome Center, on the campus at 1140 Umpqua College Road, Roseburg, OR. The new facility will serve as both a front door to campus and as a training center for allied health career programs with instructional and laboratory spaces.»

The Owner and Design-Builder agree as follows.

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

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

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

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

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- C PROJECT ALLOWANCES
- D PROJECT SCHEDULE
- E LABOR RATES



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.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

« RFP_DB_New Construction MCHWC_2024 »

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

« Pursuant to RFP_DB_New Construction MCHWC_2024 and to be determined.

The building's Welcome Center will reflect our student-centric approach, increasing the accessibility of student services by bringing them to the forefront of campus. The building will also house the Medical Careers Hub with new medical training laboratory space and equipment. The College is actively expanding medical career programming to meet local workforce needs and requires additional space on campus for these training programs.

»

§ 1.1.3 The Project's physical characteristics:

« Medical Careers Hub and Welcome Center »

« The new facility will serve as both a front door to campus and as a training center for allied health career programs with instructional and laboratory spaces. The College has a basic idea of the services and learning spaces needed and will rely heavily on the Design-build team to help determine, location, size, layout and usage of the space. »

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

« NA »

§ 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:

« NA »

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

« \$19,000,000. The budget of the project is inclusive of, but not limited to, all design, construction, landscaping, mechanical, engineering needs, fixtures, furniture and equipment. »

§ 1.1.7 The Owner's design and construction milestone dates:

.1 Design phase milestone dates:

« Concept Design - August 31, 2024 »

.2 Submission of Design-Builder Proposal:

« TBD post funding approval »

.3 Phased completion dates:

« TBD post funding approval »

.4 Substantial Completion date:

<>

.5 Other milestone dates:

<< >>

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

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

.1 Architect

<< >>

.2 Consultants

<< >>

.3 Contractors

<< >>

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

(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

« To Be Determined »

§ 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 and propose such changes as may be necessary to bring the owner's Criteria into compliance.

§ 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 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.)

« Rachel Pokrandt, President
Umpqua Community College
1140 Umpqua College Road
Roseburg, Oregon 97470

«Natalya Brown, Chief Financial Officer
Umpqua Community College
1140 Umpqua College Road
Roseburg, Oregon 97470»

§ 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.)

« Joe Flora, Director of Facilities and Security
Umpqua Community College
1140 Umpqua College Road
Roseburg, OR 97470
»

§ 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.)

« To Be Determined»

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

« To Be Determined»

« »
«
« »

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 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.)

[☒] Arbitration 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, including the Design-Build Amendment, (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 negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 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 physical representations, in any medium of expression now known or later developed (including those in electronic form), 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 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.

§ 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 construction, required in connection with the Work, 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 Design-Build 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 after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 Hazardous Materials. Any substances regulated, classified, or otherwise characterized as radioactive, infectious, hazardous, dangerous, or toxic, or by word of similar meaning or effect, by any federal, state, or local statute, regulation, or ordinance currently in effect or subsequently enacted.

§ 1.4.17 Key Personnel. Key personnel are Design-Builder’s project manager, site superintendent, necessary assistants, the Design Professional and Design-Builder’s Representative.

§ 1.4.18 Project Site. The Project Site is the real property where each individual Project is located.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

«To Be Determined »

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

« To Be Determined»

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .2 Printing, reproductions, plots, standard form documents;
- .3 Postage, handling and delivery;
- .4 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .5 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .6 All taxes levied on professional services and on reimbursable expenses; and
- .7 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred.

§ 2.1.3.3 The Design-Builder shall provide and the Owner must approve a detailed estimate of anticipated Reimbursable Expenses for this Agreement. Costs may not be incurred for Reimbursable Expenses in excess of this amount without prior written approval of the Owner. If services are required during the course of the Project that were not previously identified and anticipated, the Design-Builder shall prepare a detailed estimate of the cost of Reimbursable Expenses arising from such services and submit it to the Owner for approval before the services are rendered. Thereafter, Reimbursable Expenses may not be incurred in excess of the approved written estimate without prior written approval of the Owner. Compliance with this Section 2.1.3.3 is a condition precedent to payment for Reimbursable Expenses.

§ 2.1.4 Payments to the Design-Builder Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid « 30 » (thirty) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

«The rate required under ORS 279C.570. » % « »

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following Substantial Completion of the Project or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

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

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with all 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, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall supervise, coordinate, and perform the Work in a professional, safe, and workmanlike manner, and 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 and propose such changes as may be required for conformance. Additional costs incurred by the Design-Builder in proposing a change to Owner's Criteria for compliance may be the subject of a change order in accordance with Article 6. 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 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.

§ 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.

§ 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;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 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 preliminary schedule for the Work. The preliminary schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project to keep the Owner accurately apprised of the progress of the Work, 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. A Progress Schedule may not exceed the Contract Time or other milestones established in the Design-Build Documents until and unless the Project Schedule is amended by a Change Order.

§ 3.1.9.2 The Project schedule shall include the following: (a) components of the work; (b) times of commencement and completion required of the Design-Builder and any Subcontractor, Consultant, or Architect; and (c) ordering and delivery of products, including those that must be ordered in advance of construction in order to maintain Project milestones.

§ 3.1.9.3 The Project schedule (an all-updated schedules) must: (a) utilize a calculated "critical path method" logic of construction activities and sequence of operations; (b) identify all distinct parts of the scheduled construction Work; and (c) clearly indicate the calculated critical path for completion of the Work. Float or contingency time within the Project schedule that does not affect critical path or Contract Time is for the use of the Design-Builder. The Design-Builder may apply standard float or contingency time in the Project Schedule without prior notice to the Owner. The Design-Builder will promptly update the Project Schedules whenever a change occurs in the Work that impacts the Project Schedule, consumes total float or contingency time, or would extend Work beyond the dated scheduled for Substantial Completion.

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

§ 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 any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 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. The Owner's approval shall not unreasonably be delayed or withheld and in no event shall it take more than 10 days for review, unless Owner notifies Design-Builder of delay.

§ 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 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.

§ 3.1.12 Warranty:

§ 3.1.12.1 Design-Builder 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 and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by 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, 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.

§ 3.1.12.2 Third-Party Warranties.

- .1** The Design-Builder shall obtain from the Architect, Contractor, Subcontractors, and Consultants written guarantees and warranties consistent with any requirements of the Design-Build Documents. If the Design-Build Documents do not contain requirements for written guarantees or warranties, then the Design-Builder will provide guarantees and warranties with the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties.
- .2** All guarantees or warranties of third parties furnished to the Design-Builder, Architect, Contractor, or Consultants, including without limitation from any manufacturer or supplier, shall be deemed to run for the benefit of the Owner.

- .3 The Design-Builder shall deliver to the Owner electronic and/or hard-copy versions of all as-built documents and guarantees and warranties on materials, systems, and equipment furnished by all manufacturers and suppliers to the Design-Builder and all its Contractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner.
- .4 Until Substantial Completion, the Design-Builder shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

§ 3.1.12.3 Assignment of Warranties. The Design-Builder hereby assigns to the Owner all warranties and guarantees of all Contractors, the Architect, and Consultants, but the assignment shall not relieve the Design-Builder of its warranty obligations to the Owner under this Agreement and other Design-Build Documents.

§ 3.1.12.4 Remedies. Consistent with Section 15.4.1, the remedies stated in this Section 3.1.12 are not exclusive, but are cumulative of any other Owner remedies.

§ 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 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 is required by the Owner, 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 defend, indemnify and hold harmless the Owner, including the Owner's agents, representatives, and employees, from, for, and against claims, damages, losses and expenses, including but not limited to attorneys' and experts' fees at any level including appeals, arising out of or resulting from performance of the Work by the Design-Builder, Architect, a Consultant, a Contractor, or anyone for whose acts they may be liable:

- .1 For death, personal injury (including without limitation sickness, disease, or bodily injury), or property damage to the extent caused by (a) a material breach of this Agreement or other Design-Build Documents; (b) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (c) any negligent or tortious acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone for whose acts they may be liable;
- .2 For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of the Design-Builder, Architect, a Consultant, a Contractor, or anyone for whose acts they may be liable; and
- .3 For violation or infringement of third-party intellectual property rights by the Design-Builder.

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 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 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.

§ 3.1.14.3 Notwithstanding anything to the contrary in this Section 3.1.14, the Design-Builder is not required to indemnify the Owner or its agents, representatives, or employees for, from, and against liability for (i) damage arising out of death or bodily injury to persons, (ii) damage to property, or (iii) any failure or alleged failure to comply with any provision of law or the Design-Build Documents, to the extent caused in whole or in part by the negligence or willful misconduct of the Owner or its agents, representatives, or employees, but the Design-Builder is required to indemnify the Owner and or its agents, representatives, and employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Design-Builder, or the fault of the Design-Builder's agents, representatives, Architect, Consultants, or Contractors.

§ 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.

§ 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.

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

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 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.

§ 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.

§ 4.1.3 The Design-Builder shall:

- .1 Advise the Owner of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and soil pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; Hazardous Materials testing; or other tests or reports required for the Design-Builder's services, by law, or by the Design-Build Documents;
- .2 Recommend and assist the Owner in arranging for the services of engineers or consultants for those tests and services when they are reasonably necessary or required, but shall not itself contract with those engineers or consultants;

- .3 Assist the Owner in arranging for and coordinating those tests or services that are approved and contracted for by the Owner;
- .4 Review all inspections and reports, advise the Owner of their results and recommendations, provide the Owner with copies of those reports or results, if necessary, and report to the Owner and the provider of the inspections or reports any errors or inconsistencies discovered;
- .5 Obtain from the Owner's consultants or engineers the soil bearing, percolation, elevation, and other values necessary to prepare the Design-Builder's designs and Construction Documents; and
- .6 Request verification of this information as necessary to perform its services.

To the extent that the Owner agrees with the Design-Builder's recommendations, the Owner shall contract with consultants and engineers as identified in this Section 4.1.3, and pay for their services.

§ 4.1.4 The Owner and Design-Builder may enter into an Early Work Amendment that authorizes the Design-Builder to perform certain Early Work before the Design-Build GMP Amendment is executed. Each Early Work Amendment is effective only if it includes (a) a description of the Early Work to be performed, (b) commencement and completion dates for the Early Work, and (c) a not-to-exceed price for the Early Work to be performed. "Early Work" shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development, or site preparation tasks and related activities that are important components of the Project for which performance before establishment of the Guaranteed Maximum Price will materially and positively affect the development or completion of the Project.

§ 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.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

« To Be Determined »

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;

- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, 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 Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, and a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .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.

§ 4.4.2 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 under which the Work is to be completed.

- .1 The Design-Builder, as a condition precedent to submitting the Design-Builder's Proposal, shall:
 - (a) become familiar with the location, condition, layout, and nature of the Project site and surrounding areas and generally prevailing climate conditions;
 - (b) review all analyses, studies, and test data provided by the Owner concerning the conditions of the Project site;
 - (c) inspect the location of the Project site and satisfy itself as to its condition, including all observable structural and surface and subsurface conditions;
 - (d) evaluate the availability and cost of labor and trade Contractors and the availability and cost of materials, tools, and equipment; and
 - (e) determine (i) that the Contract Sum is just and reasonable compensation for all the Work, and (ii) that the Contract Time is adequate for the performance of the Work.

The Design-Builder must notify the Owner in writing before submitting the Design-Builder Proposal if it determines that it cannot satisfy one or more of these conditions.

- .2 The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Design-Builder to have complied with the requirements of this Section 4.4.2.

§ 4.4.3 If the Owner and Design-Builder agree on the Design-Builder's proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement. If, however, Owner rejects

Design-Builder's Proposal, then Owner will inform Design-Builder of the reasons for its rejection. Design-Builder may modify the Design-Builder's Proposal and resubmit it for Owner's review, but this Section 4.4.3 does not obligate Owner to review multiple Design-Builder Proposals.

§ 4.4.4 If the Owner and Design-Builder fail to agree on a Design-Builder Proposal: (i) Owner may terminate this Agreement in accordance with Section 13.1.5; (ii) the Design-Builder shall be compensated for its services pursuant to Section 2.1; and (iii) the Owner's license to the Instruments of Service granted in Section 12.3 shall remain.

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ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents. The Design-Builder shall not be entitled to additional compensation, an adjustment to the GMP, or additional time in the event there are errors, omissions, or inconsistencies in the Construction Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute 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.

§ 5.1.3 Consistent with Section 4.1.3, the Design-Builder shall advise the Owner promptly and in writing of the necessity or advisability for tests, studies, analyses, reports, or consultant's services on which proper development of design and Construction Documents is dependent.

§ 5.1.4 Following the approval of the Owner which shall not be delayed or unreasonably withheld, the Design-Builder shall seek and secure review of Construction Documents by all governmental, regulatory, and certification agencies as may be necessary or appropriate, and obtain ultimate approval by those agencies. The Design-Builder shall participate in public hearings or presentations, if required, in order to receive approval of those agencies.

§ 5.2 Construction

§ 5.2.1 Commencement. Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 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, 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 review and observation of pre-existing conditions of the Project to determine that such pre-existing conditions are in proper condition to receive the Work. Owner acknowledges that this inspection cannot be comprehensive to account for all existing conditions, however, the inspection is intended to uncover observable pre-existing conditions. 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.

§ 5.2.5 If the Design-Builder reasonably believes that suspension of the Work is warranted by reason of circumstances that could adversely affect the quality of the Work if the Work were continued, the Design-Builder will immediately notify the Owner and describe with particularity the reasons for its belief. Except as stated elsewhere in the Design-Build Documents or in an emergency, the Design-Builder shall not suspend the Work until it receives approval from the Owner, which will not be delayed or unreasonably withheld.

§ 5.2.6 Unless otherwise noted or directed, the Design-Builder shall perform all Work in accordance with product manufacturers' recommendations or directions. No preparatory step or installation procedure may be omitted unless specifically authorized by the Design-Build Documents or at the direction of the Owner's Representative.

§ 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.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 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.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use, gross receipts, corporate activity, and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect. Design-Builder represents and warrants that the Contract Price for the Work includes all sales, consumer, use, gross receipts, corporate activity, and similar taxes.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 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 and not disturb the site. 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 Contract Sum 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 Contract Sum 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 Contract Sum 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 Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. 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. Savings realized on unused allowance shall be returned to the Owner as a reduction in the Contract Sum.

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

§ 5.6.4 Allowances shall be accounted for to the Owner in each Application for Payment and at final payment.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors, design professionals, consultants, or 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 personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner in accordance with Section 5.7.4 and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier 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 Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build 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. Failure of the Owner to object to a person or entity does not imply approval of specific products or materials.

§ 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 Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.7.3.2 **Subcontractual Relations.** By appropriate written agreement, the Design-Builder shall require each Subcontractor (a) to the extent of the Work to be performed by the Subcontractor, to be bound to the Design-Builder by the scope of Work and requirements of the Design-Build Documents; (b) to assume toward the Design-Builder all duties, obligations, and conditions imposed by the terms and conditions of the Design-Build Documents that the Design-Builder assumes toward the Owner; and (c) to affirm the same representations to the Design-Builder that the Design-Builder makes to the Owner. The Design-Builder shall require each Subcontractor to enter into similar agreements with Sub-sub-contractors of every tier. The Design-Builder shall make available to each proposed Subcontractor, prior to the execution of their subcontract agreement, copies of the Design-Build Documents to which the Contractor will be bound.

§ 5.7.4 The Design-Builder personnel (and any persons nominated to replace them) must be reasonably satisfactory to the Owner, and the Owner may require the removal and replacement of any or all of them upon 10 days' notice to the Design-Builder. So long as they remain employed by the Design-Builder, the Design-Builder may not otherwise remove or replace the key personnel, Consultants, Contractors, or suppliers identified in the Design-Build GMP

Amendment, or cause them to leave the Project for any reason, including without limitation to work on other projects or take extended vacations, without 45 days' advance written notice to, and the prior consent of, the Owner. The Design-Builder must consult the Owner in advance with respect to replacement personnel in accordance with Section 5.7.2.

§ 5.7.5 New or replacement key personnel must be qualified and must have adequate experience with similar projects.

§ 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. These as-built documents within reasonable efforts to incorporate changes and substitutions to the Work, including changes or substitutions arising from Change Orders, Change Directives, and details clarified by requests for information, supplemental instructions, or approved Shop Drawings, shall be available to the Owner during the course of the Project. 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.

§ 5.8.2 The Design-Builder shall maintain all approved permit Drawings in a manner that will make them accessible at the Project Site to governmental inspectors and other authorized agencies. All approved Drawings shall be marked and delivered to the Owner within sixty (60) days of Substantial Completion.

§ 5.8.3 The Design-Builder must continuously maintain and make readily available at the Project Site all safety datasheets, safety records, daily logs, and other Design-Build Documents necessary to immediately ascertain the safety of the Work and to establish compliance with the Design-Build Documents.

§ 5.8.4 The Design-Builder, with its Contractors, will prepare draft Record Design-Build Documents, showing all as-built conditions as required under Section 5.8.1, and submit them to the Owner for review. Based on the Owner's review and comments, if any, the Design-Builder will prepare and deliver to the Owner within sixty (60) days of Substantial Completion final, accurate, and complete Record Design-Build Documents, including without limitation record drawings and specifications, showing the exact "as-built" conditions of the Work.

§ 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.

§ 5.9.2 Before the Work commences, the Design-Builder shall review the real property where the Project will be constructed with the Owner in detail and identify within that area all (1) spaces where the Work is to be performed, (2) staging areas, (3) connections or interfacing with existing structures and operations, and (4) restrictions on the real property (the "Project Site"). The Design-Builder shall ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the Project Site.

§ 5.9.3 When all or a portion of the Work is suspended for any reason, the Design-Builder shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.

§ 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 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 materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's 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 related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. 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 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

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

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 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 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. If a Separate Contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Design-Builder, the Owner shall notify the Design-Builder, who shall indemnify the Owner and defend it for, from, and against any claim, judgment, or award, including costs, attorney fees, and expert fees. This Section 5.14.4 does not require the Design-Builder to indemnify the Owner against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the liability was caused by

the negligence or intentional misconduct of the Owner, a Separate Contractor, or a third party for whom the Design-Builder is not responsible.

§ 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 Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.2.2 The Contract Sum established in Section A.1.1 of the Design-Build Amendment includes all elements necessary to complete the Work in accordance with the Design-Build Documents as of the date of execution of this Agreement and, consequently, Change Orders adjusting the Contract Sum will not be permitted except in the limited circumstances set forth below:

- .1 Scope Changes. Owner approved revisions on Project scope items.
- .2 Concealed or Unknown Condition. Concealed or Unknown Conditions as described in Section 5.5.3 of this Agreement.
- .3 Regulatory Agency Changes. Cost incurred as a result of changes in regulatory requirements but only where such requirements change after the Effective Date of the Design-Build Amendment.
- .4 Allowances. Adjustments to Allowances included in the Contract Sum.

§ 6.2.3 Events for which the Contract Sum shall not be adjusted and no Change Order will be issued include the following:

- .1 Design Errors or Omissions. Errors or omissions in the Drawings or Specifications.
- .2 Subcontractor Gaps. Gaps in scope coverage between Subcontractors, including self-performed Work.
- .3 Scope Gaps. An item indicated in the Drawings or Specifications that was not picked up in the Contract Sum.
- .4 Document Ambiguities. Ambiguities in the Construction Documents.
- .5 Subcontractor Failure. A Subcontractor of any tier goes bankrupt or otherwise fails to perform.
- .6 Coordination Claims. Costs related to Subcontractor claims or charges that result from mistakes or omissions during Project buyout, or coordination issues between Subcontractors, or interference between Subcontractors and the Design-Builder or among Subcontractors, unless caused by an act or the negligence of the Owner.

Use of contractor's contingency in the GMP will be permitted for the above items (§6.2.2 and §6.2.3) to the extent that there is available funds and such use shall be approved by Owner. Contractor's contingency shall not be in excess of 5% of GMP. Any unused contractor contingency in the GMP belongs to the Owner.

§ 6.2.4 Before approval of a Change Order and upon request of the Owner, the Design-Builder will produce copies of all bids or other proposals, including those from Subcontractors, and Consultants related to the Work proposed to be performed under the Change Order. No Change Order shall become effective until signed by the Owner and Design-Builder.

§ 6.2.5 Agreement on any Change Order constitutes a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including without limitation all direct and indirect costs and all adjustments to the Contract Sum according to the terms and any conditions stated in the Change Order. This Section 6.2.4 does not affect the Owner's audit rights.

§ 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 Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, 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 Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, 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 Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, 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 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 Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, 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 Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, 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 Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 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 Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, 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 Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation 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.

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, as expeditiously as possible, to the Design-Builder, 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. Notwithstanding anything to the contrary in any Design-Build Document, no officer, director, shareholder, authorized representative, employee, agent, or other representative of the Owner shall have any personal liability to the Design-Builder or any other person or entity other than the Owner for any acts or omissions arising out of or relating to this Agreement, whether based on tort, contract, statute, administrative laws, or otherwise.

§ 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 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 variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project. The Design-Builder acknowledges that this may involve third parties, and hereby releases the Owner from any and all claims for adjustments which may arise if attributable to the action or inaction of any third party or government entity up until time of execution of the GMP Amendment.

§ 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 Agreement 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 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.

§ 7.2.6 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. This Section 7.2.6 does not, however, give rise to a duty, obligation, or responsibility on the part of the Owner to seek or discover any faults or defects in the Work or non-conformities in the Design-Build Documents.

§ 7.2.7 Prior to the execution of the Design-Build 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 and the Design-Builder's Proposal. 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 Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. Any request made after commencement of the Work shall not serve as a basis for the Design-Builder to stop the Work.

§ 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 Reserved

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. 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 as required by the Design-Build Documents. 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 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 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 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

§ 7.8.1 If the Design-Builder defaults or neglects to carry out 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. If payments then or thereafter due the Design-Builder are insufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

§ 7.8.2 If the Design-Builder's default or neglect results in a hazard to the safety of persons or property, the Owner may commence and continue to carry out any Work necessary to mitigate the hazard immediately, regardless of the notice period. The Owner's right to commence and carry out the Work in Section 7.9 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.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out 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. 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.

§ 7.10 EXCLUSION AND REPLACEMENT OF PERSONNEL

If any of the Design-Builder's Architect, Contractor, Consultants, or any of their respective representatives, employees, or agents cause or threaten physical harm to any persons or property related to the Project, then the Owner may require the Design-Builder to remove those personnel immediately. The Design-Builder must provide to the Owner identification of replacement personnel no later than 48 hours after removing personnel from the Project. Each replacement must have qualifications and experience comparable to or better than the individual or entity being replaced and be reasonably acceptable to the Owner.

§ 7.11 RIGHTS and REMEDIES

Consistent with Section 15.4.1, the rights described in Sections 7.8 through 7.10 shall be in addition to, and not in restriction of, the Owner's other rights or remedies.

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 Design-Build 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.

§ 8.1.4 Owner and Design-Builder may mutually agree to daily liquidated damages as part of the terms of the GMP Amendment.

§ 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:

- .1 an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or
- .2 by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or
- .3 occurrences that arise beyond the control and without the fault of negligence of the Design-Builder or its Subcontractors or Consultants and that by the exercise of reasonable diligence the Design-Builder is unable to prevent or provide against, including without limitation industrywide labor disputes, fire, unusual delay in deliverables, unavoidable casualties or other causes beyond the Design-Builder's control; or
- .4 by delay authorized by the Owner pending mediation and binding dispute resolution; or
- .5 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 may determine.

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

§ 8.2.4 Pandemic/Epidemic Rider

§ 8.2.4.1 Notwithstanding any other provision(s) of this Agreement, if, as a direct or indirect result of any virus, disease, contagion, or any other widespread communicable disease that causes disruption, including but not limited to COVID-19 (individually or together "Epidemic"), Design-Builder's work is delayed, disrupted, suspended, or otherwise impacted by, including, but not limited to, (1) disruptions to material and/or equipment supply; (2) illness of available workforce and/or unavailability of labor; (3) government quarantines, shelter-in-place orders, closures, or other mandates, restrictions, and/or directives; (4) Owner restrictions and/or directives; and/or (5) fulfillment of Design-Builder's contractual or legal health and safety obligations associated with an Epidemic; then Design-Builder shall be entitled to an equitable adjustment to the Contract schedule duration to account for such disruptions, suspensions, and impacts.

§ 8.2.4.2 Further, to the extent there is an increase in the price of labor, materials, or equipment used in the performance of this Contract or other increases in the costs of performance of the Contract as a direct or indirect result of such Epidemic (including, but not limited to, any delay), Design-Builder shall be entitled to an equitable adjustment to the Contract price for such increases, provided that Design-Builder provides Owner with reasonable notice in writing of such expected increases and presents documentation to support such increased costs.

§ 8.2.4.3 Further, if a specified products or materials are or become unavailable (or not reasonably available in sufficient time or quantity to allow completion of the Project in a reasonable time), Design-Builder shall provide Owner with written notice of such unavailability and a recommended substitute for such product or materials. Unless Owner gives timely notice of an objection to such substitution, Design-Builder shall be entitled to substitute such products or materials, and shall be entitled to an equitable adjustment in the price and/or the schedule to account for such substitution. If Owner objects to such substitution, the Project Schedule shall be extended to allow for availability of such products or materials.

§ 8.2.5 Design-Build GMP Amendment Price Escalation. The Owner and Design-Builder agree that the pricing of building materials in the marketplace is volatile and Owner and Design-Builder agree to include a provision in the Design-Build GMP Amendment (Exhibit A) addressing the risk of material price changes.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the 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 ten 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 The Design-Builder shall submit its monthly Application for Payment to the Owner on AIA Document G702, supported by AIA Document G703, or an equivalent form approved by the Owner, no later than the fifth (5th) day of each month. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 The Project name, site of the Work (e.g., address).
- .2 Description of the Work.
- .3 Substantiated cost and subcontractor backup and updated schedule of values showing percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.
- .4 Separate documentation and accounting for Work performed pursuant to Change Orders or Change Directives; allowances; application of contingency; and payment for materials stored other than at the Project Site.
- .5 The Design-Builder's and relevant subcontractors' executed lien, bond, and claim releases ("Lien Releases") on forms acceptable to the Owner. Lien Releases shall provide a conditional release of liens, bonds, and claims for the Work that is subject to the current Application for Payment and an unconditional release for all Work performed and paid through the date of all prior payment periods.
- .6 All other information and materials required to comply with the requirements of the Design-Build Documents.

The Owner may, at its option, request documentation from the Design-Builder evidencing that (1) Contractors, (2) subcontractors, and (3) suppliers with contracts exceeding \$50,000 in the aggregate, have provided the requisite conditional and unconditional releases and waivers of lien and bond rights to the Design-Builder for each Application of 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 Project 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 Project site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project 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 Project site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than 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, shall 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 labor, materials and equipment relating to the Work.

§ 9.3.3.1 If a Contractor of any tier or supplier of any tier perfects a lien against all or any portion of the Project for which the Design-Builder received payment from the Owner, the Design-Builder will indemnify Owner and its consultants, agents, and employees, and defend them against the lien and will reimburse the Owner and its consultants, agents, and employees for all costs, expenses, and attorney fees incurred by them in connection with or arising from the lien. At the Owner's option, the Contractor will furnish, at the Contractor's sole expense, a bond to release the lien from the Project.

§ 9.3.3.2 The Design-Builder's duties to indemnify and defend the Owner and its consultants, agents, and employees and hold them harmless from any lien created and perfected against the Project shall be enforceable regardless of whether the Owner has delivered copies of pre-lien notices to the Design-Builder.

§ 9.4 Approvals of Payment

On or before the 15th day of each month, the Owner will meet with Design-Builder to review a preliminary draft of the Design-Builder's Application for Payment for Work performed during the preceding month. The Design-Builder shall revise the draft Application for Payment in accordance with any recommendation submitted by the Owner that is consistent with the requirements of the Design-Build Documents. After incorporating all recommendations from the Owner, the Design-Builder will submit a final Application for Payment to the Owner for approval and signature.

§ 9.5 Decisions to Withhold Approval

§ 9.5.1 The Owner may withhold a 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 approve payment in the amount of the Application, the Owner will notify the Design-Builder. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Application for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Application 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 Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the 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 Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents,
- .8 unsatisfactory Work progress;

- .9 disputed Work, materials, or products, not to exceed one hundred percent (100%) of the amount in dispute; or
- .10 failure to comply with other material provisions of the Design-Build documents; or
- .11 repeated failure to maintain current as-built and safety documents as required by Section 5.

§ 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, Contractor, 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. The Owner will notify the Design-Builder of a joint payment, and the Owner will receive credit against the Contract Sum for the joint payment.

§ 9.5.4 If the Design-Builder disputes any determination by the Owner with regard to any approval of payment, the Design-Builder nevertheless shall expeditiously continue the Work.

§ 9.6 Progress Payments

§ 9.6.1 The Owner will make progress payments to the Design-Builder no more than once each month based on a verified Application for Payment submitted by the Design-Builder and signed by the Owner. Each progress payment will be calculated based on: (1) the percentage completion of the Work and (2) that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the Project site at a location agreed upon in writing, subject to the following:

- .1 Retainage will be withheld from the total progress payment amount at five percent (5.0%) of the total amount due to the Design-Builder. If the contract price exceeds \$500,000, the owner, contractor or subcontractor shall place amounts withheld as retainage into an interest-bearing account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the contractor or subcontractor to which it is due. (ORS 701.420(2)(b).) If the Owner, Design-Builder, and Subcontractors agree then either of the following may be implemented in lieu of placing the retainage in an interest-bearing escrow account.
 - .1.1 Under ORS 279C.560 a contracting agency may accept a retainage surety bond in lieu of withholding moneys from payment from the Design-Builder. The bond and any proceeds of the bond must be subject to all claims and liens and in the same manner and priority as set forth under ORS 279C.550. If the contractor provides a retainage bond then the contractor shall accept like bonds from a subcontractor or supplier in lieu of withholding moneys. If agreed upon by the Parties, the Design-Builder shall purchase and maintain a retainage surety bond as set forth in Exhibit B.
- .2 The release of retainage is contingent on Design-Builder satisfactorily completing the Work and its payment obligations under this Agreement. Any release of retainage shall not be construed as acceptance or approval by Owner and shall not relieve Design-Builder of responsibility for defective workmanship or materials or for latent defects and warranty obligations or any other obligations in this Agreement.
- .3 The amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable.
- .4 The amount of the progress payment will be reduced by amounts not approved by the Owner.
- .5 The amount of the progress payment will be reduced by amounts previously paid by Owner.

§ 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 subconsultants and subcontractors in a similar manner.

§ 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 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 Contract Sum, 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 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.

§ 9.7 Failure of Payment

§ 9.7.1 If the Owner does not issue payment to Design-Builder, through no fault of the Design-Builder, 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 Contract Sum 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.

§ 9.7.2 Failure of payment does not exist under Section 9.7.1 if the Owner exercises authority granted by the Design-Build Documents to withhold payment.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the 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.

§ 9.8.2 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 list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's 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 inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, 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 date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; 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 for written acceptance of responsibilities assigned to it in the Certificate.

§ 9.8.7 Upon Design-Builder reaching Substantial Completion, Owner shall release all retainage held on the Project to the Design-Builder, minus the following: Owner may withhold from the release of the retainage, up to one-hundred and fifty percent (150%) of the value of the outstanding work remaining and punch-list items. Owner shall release said retention to Design-Builder within thirty (30) days of Design-Builder reaching Substantial Completion and shall release any withheld retention within thirty (30) days of Design-Builder completing any outstanding work and punch list items.

§ 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 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 inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly make final payment to the Design-Builder.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder has fully performed the Contract, except for the Design-Builder's other duties that extend beyond the date of final payment as provided in the Design-Build Documents. Full performance of the Contract includes submitting a final accounting for the Cost of the Work and a final Application for Payment to the Owner, providing one set of all operation, maintenance, and warranty manuals and information of manufacturers whose equipment or materials are installed in the Work, or its substantial equivalent, by the permitting agency, and submitting 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 in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner,
- .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, and
- .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. 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 or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remain 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.

§ 9.10.3 Delay After Substantial Completion

§ 9.10.3.1 If final completion is not accomplished within 45 days after Substantial Completion of the Work because of any fault of the Design-Builder, the Owner may withhold from any subsequent progress payments and from the final payment 125 percent of the reasonable cost of the unfinished Work necessary to attain final completion. If the Design-Builder fails to complete the Work necessary to attain final completion, the Owner may, without waiving any other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld. The Owner shall not withhold any amount under this Section 9.10.3 relating to Work arising from Change Orders or Change Directives issued following the date of Substantial Completion.

§ 9.10.3.2 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, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the 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.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of warranties, maintenance bonds, or guaranties extending beyond final completion, required by the Design-Build Documents, or
- .4 the correction remedy allowed by Section 11.2.

§ 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. The Design-Builder acknowledges the unique safety risks associated with construction of education facilities and being in the presence of faculty, students, staff, and visitors.

§ 10.1.2 The Design-Builder shall review with its Architect, Contractors, and Consultants the methods, means, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Design-Builder shall be responsible to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall take all necessary and reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the 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.

§ 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 posting danger signs and other warnings against hazards, promulgating safety 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. The Design-Builder must obtain advance approval before proceeding with the storage or use of explosives, Hazardous Materials, or unusual equipment for prosecution of the Work.

§ 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 damage or loss attributable to 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, and not attributable to the fault or negligence of the Design-Builder. 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 Injury or Damage to Person or Property. If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Without limiting any other requirement of this Section 10.2, the Design-Builder shall protect adjoining property, including property at the Project Site not subject to the Work, and shall provide barricades and temporary fences, as required by prudent construction practices, laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, or the Design-Build Documents. The Design-Builder shall be responsible for measures necessary to protect any property adjacent to the Project and improvements thereon.

§ 10.2.10 Without limiting any other requirement of this Section 10.2, the Design-Builder shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs, adjoining property, and the property of third parties (including utility companies and governments) resulting from the performance of the Work, whether caused by the Design-Builder or by any persons or entities for whom Design-Builder is responsible. Such costs shall be considered as cost of work to such extent that they do not cause increase in the GMP.

§ 10.2.11 The Design-Builder will ensure that storage practices on the Project Site will keep combustible load levels to a minimum and in approved containers that are clearly labeled. The Design-Builder will keep safety data sheets on-site for all chemicals used on the Project Site.

§ 10.2.12 Without limiting any other requirement of this Section 10.2, the Design-Builder shall maintain Work, materials, and apparatus free from damage from rain, wind, storms, frost, and heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Design-Builder shall cease Work and notify the Owner of the cessation.

§ 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 of a Hazardous Material or substance not addressed in the Design-Build documents, 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 Contract Sum 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.

§ 10.4 Emergencies

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner, or any governmental entity, 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 Contract Sum, 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, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, 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, 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 not to be in accordance 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 and to make a claim for breach of warranty. If the Design-Builder fails to correct 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 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 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. 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 within which the obligation to comply with the Design-Build Documents 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 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 Contract Sum 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 other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain 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 reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 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 solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate. If the Owner rightfully terminates this Agreement as provided in Section 13.1.4 or 13.1.5 the license granted in this Section 12.3 shall remain.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect,

Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor 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.

§ 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 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 under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

§ 12.3.3 Notwithstanding any other provision of Section 12.3, Instruments of Service may be continuously used for construction of the Project during the pendency of any dispute between the Owner and the Design-Builder, including without limitation any dispute for payment. If and upon the date the Design-Builder is in default of this Agreement, the foregoing license shall be supplemented by a second, nonexclusive license permitting the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build 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, 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 Design-Builder's compensation 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 Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative 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 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 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's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build 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 30 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 an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not made a payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, 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, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract 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 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .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 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

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

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable 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 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.2.5 In the event Owner is found to have wrongfully terminated the Design-Builder, Owner's wrongful termination for cause automatically converts to a termination for convenience under Section 13.2.4.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, 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 Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the 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 for the Owner's convenience and without cause.

§ 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, 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 for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. The Design-Builder hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

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 requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner or the Design-Builder must identify known bases for each Claim and the nature and amount of relief sought.

§ 14.1.3.2 Claims Arising After Final Payment. After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party.

§ 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 intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. 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 increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 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 scheduled construction.

§ 14.1.7 Waiver of Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 To facilitate the resolution of Claims between the Design-Builder and the Owner, the parties shall attempt in good faith first to resolve Claims that are made before final payment by the following dispute-resolution process. The parties agree not to proceed to arbitration until the following process has been attempted. Neither party's rights, defenses, Claims, or remedies shall be considered waived, released, or adversely affected by its participation in this process, and this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

- .1 All reasonable efforts will be made by the Owner and the Design-Builder to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Design-Builder's senior executive responsible for the Project.
- .2 The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in the Agreement.

- .3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation under Section 14.3 or to arbitration under Section 14.4.

§ 14.2.2 Procedure

§ 14.2.2.1 Claims Initiated by the Owner. If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien perfection, foreclosure, or lien notice or filing deadlines. The parties agree to stay any foreclosure action pending resolution of Claims.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending

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 an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim, subject to, but not resolved by, mediation, shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 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 Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, including without limitation the following requirements of the Oregon Public Contract Code. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 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. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. 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 Agreement, 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 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 Owner 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 or public authorities having jurisdiction determine 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.

ARTICLE 16 SCOPE OF THE AGREEMENT

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

- .1 AIA Document A141™–2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™–2014, Exhibit B, Insurance and Bonds
- .4 Other:
« RFP and Supporting Attachments »

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

OWNER (Signature)

« »« » »

(Printed name and title)

DESIGN-BUILDER (Signature)

« »« » »

(Printed name and title)