ADDENDUM # 3
ITB – Rock Creek Campus – Entry Improvements
Addendum Dated 07/10/2019

PURPOSE: The purpose of this Addendum # 3 is to provide the sample Contract Form (AIA Document A105 – 2017) to be used for the project, as cited in Section VI, Item D, on Page 6 of the ITB.

Bidders should familiarize themselves with the terms and conditions contained in the Contract Form.

The goal is to facilitate expediency in contract negotiations. Bidders may, as an option, include within the sealed Bid Response, a letter addressing any Contract terms or conditions that are not acceptable, and may propose reelines for negotiation, should the bid be selected with an Intent to Award the Contract. Such a letter, whether submitted or not, will have no effect or consideration on the Intent to Award the Contract.

No bidder should assume that by providing this sample Contract, or if a bidder includes a document specifically addressing any terms or conditions needing to be discussed in the sealed bid package, that PCC is implying there is an intent to award the contract to any bidder, or that such a document represents formal or conclusive contract negotiations.

The AIA Document A105 follows this Cover Sheet, pages 1 through 23.

End of Cover Sheet for Addendum # 3
AGREEMENT made as of the ([[TBD]]) day of ([[TBD]]) in the year (2019)
(In words, indicate day, month and year.)

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

«Portland Community College »
«9700 SW Capital Highway, Suite 260 »
«Portland, Oregon 97219 »

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

[[TBD]]

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

«Rock Creek Campus Entry Improvements»
«[[INSERT SPECIFIC DESCRIPTION]] »

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

«Marianne Zarkin Landscape Architect LLC »
«1326 NE 63rd Avenue »
«Portland, Oregon 97213 »

The Owner and Contractor agree as follows.
TABLE OF ARTICLES

1  THE CONTRACT DOCUMENTS
2  DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
3  CONTRACT SUM
4  PAYMENTS
5  INSURANCE
6  GENERAL PROVISIONS
7  OWNER
8  CONTRACTOR
9  ARCHITECT
10  CHANGES IN THE WORK
11  TIME
12  PAYMENTS AND COMPLETION
13  PROTECTION OF PERSONS AND PROPERTY
14  CORRECTION OF WORK
15  MISCELLANEOUS PROVISIONS
16  TERMINATION OF THE CONTRACT
17  OTHER TERMS AND CONDITIONS

ARTICLE 1  THE CONTRACT DOCUMENTS

The Contractor shall complete the Work described in the Contract Documents for the Project. This Agreement, together with the Contract Documents, constitute the "Contract." The Contract Documents consist of

1  this Agreement signed by the Owner and Contractor;

2  the drawings and specifications prepared by the Architect, dated «[TBD]», and enumerated as follows:

<table>
<thead>
<tr>
<th>Drawings:</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[TBD]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Specifications:</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[TBD]</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3  addenda prepared by the Architect as follows:

<table>
<thead>
<tr>
<th>Addenda:</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number</td>
<td></td>
<td></td>
</tr>
<tr>
<td>[TBD]</td>
<td></td>
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</tr>
</tbody>
</table>
.4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and

.5 other documents, if any, identified as follows:

«[TBD]»

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

§ 2.2 Date of Commencement:
Unless otherwise set forth below, the date of commencement shall be the date of this Agreement.
(Inset the date of commencement if other than the date of this Agreement.)

«[TBD]»

§ 2.3 Substantial Completion: [TBD]
Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:
(Insert the appropriate hours and complete the necessary information.)

[ ] Not later than [ ] ( ) calendar days from the date of commencement.
[ ] By the following date: [ ]

ARTICLE 3 CONTRACT SUM
§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

«[TBD] » ($ « »)

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:
(Itemize the Contract Sum among the major portions of the Work.)

<table>
<thead>
<tr>
<th>Portion of the Work</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td>TBD</td>
</tr>
</tbody>
</table>

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner:
(Identify the accepted alternate. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

«[TBD]»

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:
(Identify each allowance.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td>TBD</td>
</tr>
</tbody>
</table>

§ 3.5 Unit prices, if any, are as follows:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>TBD</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
ARTICLE 4 PAYMENTS
§ 4.1 Based on Contractor’s Applications for Payment certified by the Architect, the Owner shall pay the Contractor, in accordance with Article 12, as follows:
(Insert below timing for payments and provisions for withholding retainage, if any.)

As provided in ORS 279C.570, Payments are due and payable not more than thirty (30) days from receipt of Contractor’s complete Application for Payment or fifteen (15) days after the payment is approved by the Owner, whichever is earlier.

Retainage will be withheld from each progress payment amount at five percent (5.0%) of the total amount due to the Contractor pursuant to ORS 279C.550 to 279C.553 and ORS 701.410 to 701.420.

§ 4.2 Payments due and unpaid under the Contract Documents shall accrue interest as provided in ORS 279C.570(2).

ARTICLE 5 INSURANCE
§ 5.1 Contractor Providing Insurance. Without waiver of any other requirement of this Article 5.1, the Contractor will pay for and maintain the following insurance at all times during the performance of the Work without interruption until final acceptance of the Work or for such further duration as required below. All of the Contractor’s insurance carriers shall be rated A VII or better by A.M. Best’s rating service and must be admitted to do business in Oregon, unless otherwise approved by the Owner.

§ 5.1.1 Commercial General Liability. The Contractor shall purchase and maintain commercial general liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 00 01 (12/04 or later) or an equivalent form approved in advance by the Owner. CGL coverage shall include all major coverage categories including bodily injury, property damage, and products/completed operations coverage maintained for at least six years following final payment. The CGL insurance will also include the following: (1) separation of insureds and (2) per-project aggregate. The CGL insurance shall be written for at least the limits of liability specified below or required by law, whichever is greater:

<table>
<thead>
<tr>
<th>Each Occurrence:</th>
<th>$1,000,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Aggregate (per project aggregate):</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Personal &amp; Advertising Injury (per occurrence):</td>
<td>$1,000,000</td>
</tr>
</tbody>
</table>

§ 5.1.2 Automobile Liability. The Contractor shall purchase and maintain automobile liability insurance with coverage for owned, hired, and non-owned vehicles on ISO form CA 00 01 or an equivalent form approved in advance by the Owner. The automobile liability insurance shall include pollution liability coverage with vehicle overturn and collision. The automobile liability insurance shall be written for at least the limits of liability specified below or required by law, whichever is greater:

Combining Single Limit (per occurrence): $1,000,000

§ 5.1.3 Commercial Umbrella/Excess. The Contractor shall purchase or maintain commercial umbrella or excess liability insurance to meet the minimum limits as described below. Commercial umbrella/excess liability coverage must include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. Excess/umbrella coverage will be scheduled to the CGL, employee’s liability, and automobile liability policies and shall include coverage for damage to the insured’s completed work equivalent to that provided under ISO form CG 00 01. The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as those required under Section 5.1.1 and 5.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers. The commercial umbrella or excess liability insurance shall be written for at least the limits of liability specified below or required by law, whichever is greater.

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User Notes:
§ 5.1.4 Worker’s Compensation. Workers’ Compensation at statutory limits.

§ 5.1.5 Employer’s Liability. The Contractor shall purchase and maintain employer’s liability insurance in addition to its workers’ compensation coverage with at least the minimum limits of liability specified below or required by law, whichever is greater.

- Each Accident: $1,000,000
- Each Bodily Injury Disease: $1,000,000
- Aggregate Bodily Injury Disease: $1,000,000

§ 5.1.6 Additional Insureds. The Contractor’s third-party liability insurance policies, except for workers’ compensation, employer’s liability, and professional liability insurance, shall include the Owner and its officers, employees, agents, volunteers, partners, successors, and assigns as additional insureds. The insurance must extend premise operations and products/completed operations coverage to the additional insureds. The additional insured endorsement for CGL insurance must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

§ 5.1.7 Primary Coverage. The Contractor’s insurance identified in this Section 5.1 shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the Owner or the Architect including any property damage coverage carried by the Owner. Contractor’s insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Contractor’s insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party. The Contractor waives all rights of subrogation against the Owner and coverage that the Owner maintains.

§ 5.1.8 Contractor’s Failure to Maintain Insurance. If the Contractor for any reason fails to maintain required insurance coverage, such failure shall be deemed a material breach of the Contract and the Owner, at its sole discretion, may suspend or terminate the Contract pursuant to Section 16.2. The Owner may, but has no obligation to, purchase such required insurance and without further notice under the Contract, and may deduct from the Contract Sum any premium costs advanced by the Owner for such insurance. Failure to maintain the insurance coverage required by this Section 5.1 does not waive the Contractor’s obligations to the Owner.

§ 5.1.9 Certificates of Insurance. The Contractor shall supply to the Owner certificates of insurance for the insurance policies described in this Section 5.1 prior to the commencement of the Work and before bringing any equipment or construction personnel onto the Project site.

§ 5.1.10 Subcontractor Insurance. The Contractor shall cause each Subcontractor to purchase and maintain in full force and effect policies of insurance with the coverage requirements and limits specified in this Section 5.1. But the Subcontractors may be subject to alternative insurance coverage limits if those coverage limits are agreed upon between the Owner and the Contractor in writing. The Contractor will be responsible for the Subcontractors’ coverage if the Subcontractors fail to purchase and maintain the required insurance. When requested by the Owner, the Contractor will furnish copies of certificates of insurance establishing coverage for each Subcontractor.

§ 5.1.11 Limitations on Coverage.

.1 No insurance provided by the Contractor under this Section 5.1 will be required to indemnify the Owner, the Architect, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Contractor or its agents, representatives, or Subcontractors.

.2 The obligations of the Contractor under this Section 5.1 shall not extend to the liability of the Architect or its consultants for (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications, or (2) the giving or failure to give directions or instructions, to the extent that the directions, or failure to provide directions, are the cause of the injury or damage.
3 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Contractor. Insurance in effect or procured by the Contractor will not reduce or limit the Contractor's contractual obligations to indemnify and defend the Owner for claims or suits that result from or are connected with the performance of the Contract.

§ 5.1.7 [Deleted.]

§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance and shall provide property insurance to cover the value of the Owner's property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner's property insurance.

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor's obligations under Section 8.12.

§ 5.4 [Deleted.]

§ 5.5 Unless specifically precluded by the Owner's property insurance policy, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the Architect, Architect's consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

ARTICLE 6  GENERAL PROVISIONS

§ 6.1 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 written modification in accordance with Article 10.

§ 6.2 The Work
The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

§ 6.3 Intent
The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

§ 6.4 Ownership and Use of Architect's Drawings, Specifications and Other Documents
Documents prepared by the Architect are instruments of the Architect's service for use solely with respect to this Project. The Architect shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the Architect.

§ 6.5 Architect
All references to "Architect" under this Agreement shall be interpreted as referring to the Project's Landscape Architect who is identified on page 1.

§ 6.6 Electronic Notice
Written notice under this Agreement may be given by one party to the other by email as set forth below.

(Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)
ARTICLE 7  OWNER
§ 7.1 Information and Services Required of the Owner
§ 7.1.1 If requested by the Contractor, the Owner shall furnish all necessary surveys and a legal description of the Project site.

§ 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the Owner shall obtain and pay for other necessary approvals, easements, assessments, and charges.

§ 7.1.3 Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. Any request made after the commencement of the Work shall not serve as a basis for the Contractor to stop the Work.

§ 7.1.4 Notwithstanding anything to the contrary in any Contract Document, no officer, director, trustee, manager, partner, parent, affiliate, Owner representative, agent, employee, volunteer, student, agent, or other representative of the Owner shall have any personal liability to the Contractor or any other person or entity other than the Owner for any acts or omissions arising out of or relating to the Contract, whether based on tort, contract, statute, administrative laws, or otherwise.

§ 7.2 Owner's Right to Stop the Work
If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.

§ 7.3 Owner's Right to Carry Out the Work
§ 7.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies, commence and continue to carry out the Work, including without limitation the correction of any deficiencies. The Owner may deduct from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 7.3.2 If the Contractor'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.

§ 7.3.3 The Owner's right to commence and carry out the Work in this Section 7.3 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 7.4 Owner's Right to Perform Construction and to Award Separate Contracts
§ 7.4.1 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.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's own forces and separate contractors employed by the Owner.

§ 7.5 EXCLUSION AND REPLACEMENT OF PERSONNEL
If any of the Contractor's representatives, employees, agents, or Subcontractors (collectively, "Personnel") cause or threaten physical harm to any persons or property related to the Project, then the Owner may require the Contractor to remove those Personnel immediately. The Contractor must provide to the Owner identification of replacement Personnel no later than 48 hours after removing Personnel from the Project. Each replacement must have
§ 7.6 RIGHTS and REMEDIES
The rights described in Sections 7.2 through 7.5 shall be in addition to, and not in restriction of, the Owner’s other rights or remedies.

ARTICLE 8 CONTRACTOR
§ 8.1 Review of Contract Documents and Field Conditions by Contractor
§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. In addition:

1. The Contractor and each Subcontractor, as a condition precedent to commencement of the Work, 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 available to the Contractor concerning the conditions of the Project site, including all studies necessary to confirm the boundaries of the Owner’s property;
   
   (c) inspect the location of the Project site and satisfy themselves as to its condition, including all structural, surface, and subsurface conditions;
   
   (d) evaluate the availability and cost of labor and trade Subcontractors 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, including all foreseen and foreseeable construction risks, hazards, and difficulties for which the Contractor is responsible under the Contract Documents, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the means and methods of performing the Work will not result in any lateral or vertical movement of any adjacent structure.

   The Contractor or Subcontractor must notify the Owner in writing before commencing the Work 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 Contractor or any Subcontractor to have complied with the requirements of this Section 8.1.1.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect.

§ 8.1.3 The Contractor shall confirm the location of each utility before performing any excavation Work, and shall protect operating utilities from damage or impairment. The Contractor has studied, the results of test borings and information that has been made available to the Contractor concerning subsurface conditions and site geology. At the Owner’s request, the Contractor will make available to the Owner the results of any other site investigation, analyses, studies, or other tests conducted by or that are in possession of the Contractor or any of its agents. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

§ 8.2 Contractor’s Construction Schedule
§ 8.2.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner’s and Architect’s approval a Contractor’s construction schedule to achieve Substantial Completion of the Work within the
Contract Time (the "Project Schedule"). The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to Substantial Completion and shall not exceed the Contract Time or other milestones established in the Contract Documents until and unless the construction schedule is amended by a Change Order.

§ 8.2.2 While the Work is being performed, Contractor will submit to the Owner monthly progress schedules for the Work (each a "Progress Schedule"), correlated with the Project Schedule, in digital and hard-copy formats as requested or appropriate. The Project Schedule and any Progress Schedule, and any amendments to either, must incorporate and correspond with agreed-upon milestones and provide for the expeditious and practicable execution of the Work within the Contract Time. A Progress Schedule may not exceed the Contract Time or other milestones established in the Contract Documents until and unless the Project Schedule is amended by a Change Order.

§ 8.2.3 The Contractor shall perform the Work in accordance with the most recent Project Schedules approved by the Owner and Architect.

§ 8.3 Supervision and Construction Procedures
§ 8.3.1 The Contractor shall supervise, coordinate and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over all construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect have made a timely and reasonable objection.

§ 8.4 Labor and Materials
§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

§ 8.4.2 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract Work. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. It is the Contractor's responsibility to hire all personnel for the proper and diligent prosecution of the Work, and the Contractor shall maintain labor peace for the duration of the Project. In the event of a labor dispute, the Contractor shall not be entitled to any increase in the Contract Sum.

§ 8.4.3 The Contractor and all its Subcontractors shall not discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, sexual orientation, or national origin.

§ 8.4.4 The unauthorized use, possession, sale, purchase, distribution, dispensation, or manufacture of unauthorized or illegal drugs or alcohol by the Contractor or its Subcontractors, or the employees or agents of any of them while on the Owner's property is strictly prohibited. The Contractor and its Subcontractors, and the employees and agents of any of them that are employed on any Project site may not work under the influence of or be impaired or affected by any unauthorized or illegal drugs, marijuana, or alcohol.

§ 8.4.5 The possession of firearms or other weapons by any person (including without limitation the Contractor or its Subcontractors, or the employees or agents of any of them) while on property owned or operated by the Owner is strictly prohibited. Weapons do not include tools needed by the person to perform the Work and that the person is authorized to use.

§ 8.4.6 Contractor, its Subcontractors, and vendors shall bear responsibility for compliance with all federal and state laws, regulations, guidelines, and ordinances pertaining to worker safety and applicable to the Work. Contractor further recognizes that the Owner and Architect do not owe the Contractor any duty to supervise or direct Contractor's work so as to protect the Contractor from the consequences of Contractor's own conduct.
§ 8.5 Warranty
§ 8.5.1 The Contractor warrants to the Owner and Architect that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 12.5.

§ 8.5.2 If, after 10 days' notice, the Contractor fails to proceed to cure any breach of this warranty, the Owner may have the defects corrected and the Contractor and its surety, if any, shall be liable for all expense incurred. In case of an emergency where, in the opinion of the Owner or the Architect, delay would cause serious loss or damage, if any, corrective work may be undertaken without advance notice to the Contractor, but the Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this Section 8.5 are not exclusive, but are cumulative of any other remedies the Owner may have.

§ 8.5.3 Third-Party Warranties.
 .1 The Contractor shall obtain from Subcontractors, manufacturers, and suppliers guarantees and warranties according to the Contract Documents with the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain said warranties.

 .2 All guarantees or warranties of materials furnished to the Contractor or Subcontractor by any manufacturer or supplier shall be deemed to run for the benefit of the Owner.

 .3 The Contractor shall deliver to the Owner electronic 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 Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. These warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign and deliver to the Owner all manufacturers' warranties not later than the date of Substantial Completion.

 .4 Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

§ 8.5.4 The Contractor shall and does hereby assign to the Owner the benefits of all warranties and guarantees of all Subcontractors, but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under this Agreement and other Contract Documents.

§ 8.6 Taxes
The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

§ 8.7 Permits, Fees and Notices
§ 8.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

§ 8.8 Submittals
The Contractor shall promptly review, approve in writing, and submit to the Architect shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.
§ 8.9 Use of Project Site
The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner.

§ 8.10 Cutting and Patching
The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 Cleaning Up
The Contractor shall, each work day, keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

§ 8.12 Indemnification
§ 8.12.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner and its consultants, agents, and employees for, from and against claims, damages, losses and expenses, including but not limited to attorneys’ and experts’ fees, arising out of or resulting from performance of the Work by Contractor, a Subcontractor, 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) the material breach of this Agreement; (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 Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable; and

.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 Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 8.12.

§ 8.12.2 In claims against any person or entity indemnified under this Section 8.12 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 8.12.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers’ compensation acts, disability benefit acts or other employee benefit acts.

§ 8.12.3 Notwithstanding anything to the contrary in this Section 8.12, the Contractor is not required to indemnify the Owner or its consultants, agents, or employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of the Owner or its consultants, agents, or employees, but the Contractor is required to indemnify the Owner and its consultants, agents, 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 Contractor, or the fault of the Contractor’s agents, representatives, or Subcontractors.

ARTICLE 9 ARCHITECT
§ 9.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 9.2 The Architect will visit the Project site at intervals appropriate to the stage of construction to (1) become generally familiar with the progress and quality of the Work, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents.
§ 9.3 The Architect will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor within seven (7) working days after the Architect's receipt of the Application for Payment.

§ 9.5 The Architect has authority to reject Work that does not conform to the Contract Documents. The Architect shall inform the Owner contemporaneously with any rejection of Work or documentation.

§ 9.6 The Architect will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the Owner or Contractor, the Architect will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 9.8 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 9.9 The Architect's duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

ARTICLE 10 CHANGES IN THE WORK
§ 10.1 The Owner, without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the Owner and Contractor cannot agree to a change in the Contract Sum, the Owner shall pay the Contractor its actual cost plus reasonable overhead and profit.

§ 10.2 The Architect may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing and shall be binding on the Owner and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the Project site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

§ 10.4 Before Owner's approval of any change in the Work, and upon request of the Architect or the Owner, the Contractor will produce copies of all bids or other proposals, including those from Subcontractors and Sub-subcontractors, related to the Work proposed to be performed.

§ 10.5 A written agreement on any changed Work shall constitute a final settlement of all matters relating to the changes in the Work that is the subject of the agreement, including without limitation all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Project Schedule.

ARTICLE 11 TIME
§ 11.1 Time is of the essence of this Agreement and the Contract Documents. Time limits stated in the Contract Documents are of the essence of the Contract.
§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by industry-wide labor disputes, fire, unusual and extended delay in deliveries, unavoidable casualties, or other causes beyond the Contractor’s control and without the fault or negligence of the Contractor or its Subcontractors and that by exercise of reasonable diligence the Contractor is unable to prevent or provide against, the Contract Time shall be subject to equitable adjustment.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

§ 11.4 The Contractor shall not in any event be entitled to damages arising out of actual or alleged loss of efficiency; morale, fatigue, attitude, or labor rhythm; constructive acceleration; home office overhead; expectant under-run; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar damages.

ARTICLE 12 PAYMENTS AND COMPLETION

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

§ 12.2 Applications for Payment
§ 12.2.1 At least thirty (30) days before the date established for each progress payment, the Contractor shall submit to the Architect and the Owner an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor’s right to payment as set forth in Section 12.2.3 and as the Owner or Architect may reasonably require. Payments shall be made on account of 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 stored, and protected from damage, off the Project site at a location agreed upon in writing.

§ 12.2.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests, or other encumbrances adverse to the Owner’s interests.

§ 12.2.3 The Contractor shall submit its monthly Application for Payment to the Owner and the Architect on AIA Document G702, supported by AIA Document G703, or an equivalent form approved by the Owner, no later than the fifth 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 and suite).

.2 Description of the Work.

.3 Detailed cost report and updated schedule of values.

.4 Separate documentation and accounting for Work performed pursuant to Change Orders, Construction Change Directives, or minor changes in the Work; allowances; application of contingency; and payment for materials stored other than at the Project site.

.5 The Contractor’s 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 through the date of all prior payment periods.

.6 All other information and materials required to comply with the requirements of the Contract Documents.
The Owner may, at its option, request documentation from the Contractor evidencing that Subcontractors, Sub-
subcontractors, and suppliers of every tier have provided the requisite conditional and unconditional releases and
waivers of lien and bond rights to the Contractor for each Application of Payment.

§ 12.3 Certificates for Payment
Within ten days after the Contractor submits its Application for Payment in accordance with Section 12.2, the
Owner or the Architect will meet to review the Contractor's Application for Payment (a "Pencil Draw") for Work
performed during the preceding month. The Contractor shall revise the Pencil Draw in accordance with any
recommendation submitted by either the Owner or the Architect that is consistent with the requirements of the
Contract Documents. After incorporating all recommendations from the Pencil Draw, the Contractor will submit a
formal Application for Payment to the Owner and the Architect (if designated by the Owner) for approval and
signature.

§ 12.4 Progress Payments
§ 12.4.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner
provided in the Contract Documents. The Owner will make progress payments to the Contractor no more than once
each month based on a verified Application for Payment submitted by the Contractor 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 Contractor pursuant to ORS 279C.550 to .565 and ORS 701.410 to 701.420.

.2 The amount of the progress payment will be adjusted by corrections made to prior Applications for
Payment, when applicable.

.3 The amount of the progress payment will be reduced by amounts not approved by the Owner or by
the Architect.

.4 The amount of the progress payment will be reduced by amounts previously paid by
Owner.

§ 12.4.2 The Contractor shall pay each subcontractor and supplier within ten days of receiving payment from the
Owner. The payment shall be an amount determined in accordance with the terms of the applicable subcontracts
and purchase orders. Payments by the Contractor to Subcontractors shall be subject to retainage of five percent
(5.0%) on the total progress payment.

§ 12.4.3 Neither the Owner nor the Architect shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 Neither approval of an application for Payment or a progress payment, nor partial or entire use or
occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the
requirements of the Contract Documents.

§ 12.5 Substantial Completion
§ 12.5.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion
thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the
Work for its intended use.

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will
notify the Owner and the Architect and the Owner and the Architect will make an inspection to determine whether
the Work is substantially complete. When the Owner and the Architect determines that the Work is substantially
complete, the Owner shall prepare a Certificate of Substantial Completion that shall establish the date of
Substantial Completion, establish the responsibilities of the Owner and Contractor, and fix the time within which the
Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract

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User Notes:
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.

§ 12.6 Final Completion and Final Payment
§ 12.6.1 Upon receipt of a final Application for Payment, the Owner and the Architect will inspect the Work. When the Owner and the Architect find the Work acceptable and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment.

§ 12.6.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor has fully performed the Contract, except for the Contractor's other duties, as provided in the Contract Documents, that extend beyond the date of final payment. Full performance of the Contract includes delivering as-built documents to the Owner, submitting a final Application for Payment to the Owner, providing two sets of all operation, maintenance, and warranty manuals and information of manufacturers whose equipment or materials are installed in the Work, taking all action necessary on the Contractor's part for issuance of a temporary or final Certificate of Occupancy, or its substantial equivalent, by the permitting agency, and submitting to the Owner and the Architect:

.1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied,

.2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,

.3 a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,

.4 consent of surety, if any, to final payment and

.5 documentation of any special warranties, such as manufacturers’ warranties or specific Subcontractor warranties,

.6 valid unconditional waivers of all construction lien claims, bond claims, and other claims by the Contractor in a form acceptable to the Owner, together with certification that the Contractor has obtained valid unconditional waivers of all construction lien claims, bond claims, and other claims from each Subcontractor and Sub-subcontractor; and

.7 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or Sub-subcontractor refuses to furnish an unconditional release or waiver required by these General Conditions, the Contractor shall indemnify the Owner and defend it against any claim or lien filed by the Subcontractor, Sub-subcontractor, or supplier and will reimburse the Owner for discharging such lien, including all costs and reasonable attorneys' fees.

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

§ 12.7 Decision to Withhold Approval
§ 12.7.1 The Architect’s approval of an Application for Payment will constitute a representation by the Architect to the Owner, based on the Architect’s evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect’s knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount approved. The Architect or Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect’s or Owner’s opinion the representations to the Owner required by this Section 12.7.1 cannot be made. If the Architect is unable to approve payment in the amount of the Application, the Architect will notify the Contractor and Owner. If the Contractor,
Owner, and Architect cannot agree on a revised amount, the Architect will promptly approve payment for the amount for which the Architect is able to make such representations to the Owner. The Owner or Architect may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or a part of an approval of payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
3. failure of the Contractor or a Subcontractor to make payments properly to Subcontractors, Sub-subcontractors, or suppliers for labor, materials or equipment;
4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. damage to the Owner or 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 damages for the anticipated delay;
7. repeated failure to carry out the Work in accordance with the Contract Documents;
8. unsatisfactory Work progress;
9. disputed Work, materials, or products, not to exceed one hundred fifty percent (150%) of the amount in dispute; or
10. failure to comply with other material provisions of the Contract Documents.

§ 12.7.2 If the Contractor disputes the Owner's or Architect's decision to withhold payment under Section 12.7.1, in whole or in part, the Contractor may submit a Claim in accordance with Section 17.1, but shall nevertheless expeditiously continue the Work.

§ 12.7.3 When the reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ 12.7.4 If the Architect or the Owner withholds payment under Section 12.7.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect. The Owner will notify the Contractor of a joint payment, and the Owner will receive credit against the Contract Sum for the joint payment.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY
§ 13.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions 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, and
3. other property at the Project site or adjacent thereto, including all temporary and permanent structures, improvements, and protections at the Springville Road project site.

§ 13.2 The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 14 CORRECTION OF WORK
§ 14.1 The Contractor shall promptly correct Work rejected by the Owner or the Architect as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one year after Substantial Completion, correct work not conforming to the requirements of the Contract Documents.
§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS
§ 15.1 Assignment of Contract
Neither party to the Contract shall assign the Contract as a whole without written consent of the other.

§ 15.2 Tests and Inspections
§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Architect requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 15.3 Governing Law
The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction’s choice of law rules.

ARTICLE 16 TERMINATION OF THE CONTRACT
§ 16.1 Termination by the Contractor
If the Work is stopped under Section 12.3 for a period of 14 days through no fault of the Contractor, the Contractor may, upon fourteen additional days’ written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 Termination by the Owner for Cause
§ 16.2.1 The Owner may terminate the Contract if the Contractor
1. repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
3. repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
4. otherwise substantially breaches of a provision of the Contract Documents; or
5. fails to observe the training, safety, and other precautions required by the Contract Documents, including the Contractor’s own safety policies for the Project.

§ 16.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, seven days’ written notice, terminate the Contract and may
1. exclude the Contractor from the Project site and take possession of the Project site and of all materials thereon owned by the Contractor, and
2. finish the Work by whatever reasonable method the Owner may deem expedient.

§ 16.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner’s and the Architect’s services made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive termination of the Contract.

§ 16.2.5 If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.
§ 16.3 Termination by the Owner for Convenience
The Owner may, at any time, terminate the Contract for the Owner’s convenience and without cause. The Contractor 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 performed. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

ARTICLE 17 OTHER TERMS AND CONDITIONS
(Insert any other terms or conditions below.)

§ 17.1 Claims and Disputes
§ 17.1.1 A claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 17.1.2 The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the 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 Contractor waive all Claims and causes of action not commenced in accordance with this Section 17.1.2.

§ 17.1.3 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in this Agreement, the Contractor shall proceed diligently with performance of this Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 17.1.4 The parties may resolve their Claims by mediation as they may agree.

§ 17.1.5 Unless otherwise resolved under this Article 17, the parties shall resolve Claims through litigation. All litigation shall be held in Multnomah County Circuit Court or the U.S. District Court for the District of Oregon. The rights and obligations of the parties and the interpretation and performance of this Agreement shall be governed by the laws of the State of Oregon without regard to conflicts of law provisions. The prevailing party in any such litigation shall be entitled to recover from the other party all costs and expenses incurred by the prevailing party in such litigation, including reasonable attorneys’ fees and expert fees.

§ 17.2 Public Contracting Code Requirements
The Design-Build must also comply with the following requirements of the Oregon Public Contract Code:

§ 17.2.1 ORS 279A.110 (Non-discrimination certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055 or a business that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

§ 17.2.2 ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Owner in writing pursuant to the Owner’s local public contracting rules, prior to starting services under this Agreement, Contractor shall execute and deliver to Owner a good and sufficient performance bond, in a form acceptable to Owner, with a penal sum equal to 100% of the Contract Sum, and Contractor shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, with a penal sum equal to 100% of the Contract Sum, solely for the protection of claimants under ORS 279C.600.

§ 17.2.3 ORS 279B.220 and 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): Contractor shall make payment promptly, as due, to all persons supplying to Contractor labor or material for the performance of the Work provided for in this Agreement; pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug testing program is in place. If Contractor neglects or refuses to make prompt payment of any claim for labor or services furnished to it...
by any party in connection with this Agreement as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Contractor. Owner’s payment of such a claim shall not relieve Contractor or Contractor’s surety from its obligation to any unpaid claims.

§ 17.2.4 ORS 279C.510 (Recycling/Composting): If this Agreement includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Agreement includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

§ 17.2.5 ORS 279C.515 (Failure to Pay Promptly): If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Agreement as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Agreement. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor’s surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if Contractor or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Agreement within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor’s Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.

§ 17.2.6 ORS 279B.020, 279B.235, 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Contractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

.1 For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and

.2 For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and

.3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or in ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

Contractor shall, and shall require its Subcontractors, to give notice in writing to their employees who perform Work under this Agreement, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 17.2.7 ORS 279C.520(1)(b) and 279C.520(1)(c) (Compliance with Pay Equity Provisions; Employee Pay Discussion):

.1 Discrimination Prohibition. The Contractor shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause.
.2 **Salary Discussion.** The Contractor may not prohibit any of the Contractor’s employees from discussing the employee’s rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee’s rate of wage, salary, benefits or other compensation with another employee or another person.

§ 17.2.8 ORS 279C.525 *(Notice of Environmental Regulations):* State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Agreement. These agencies include, but are not limited to:


.2 **State Agencies:** Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.

.3 **Local Agencies:** City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.

.4 **Tribal Governments.**

§ 17.2.9 ORS 279B.230 and 279C.530 *(Payment for Medical Care and Workers’ Compensation):* Contractor shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

All employers, including the Contractor, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required workers’ compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

§ 17.2.10 ORS 279C.545 *(Time Limitations on Claims for Overtime):* Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Agreement unless a claim for payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, provided the Contractor or Subcontractor has:

.1 Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper’s office or in a similar place which is readily available and freely visible to any or all workers employed on the Work, and
Maintained such circular continuously posted from the inception to the completion of the Contract on which workers are or have been employed.

§ 17.2.11 ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Contractor shall include in each subcontract for property or services with a first-tier subcontractor a clause that obligates the Contractor to pay the first-tier subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Agreement within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Contractors to include a similar clause in each contract with a lower-tiered subcontractor or supplier.

§ 17.2.12 ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

§ 17.2.13 ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):

.1 The hourly rate of wage to be paid by Contractor or any Subcontractor to workers in each trade or occupation required for the public works employed in the performance of this Agreement shall not be less than the specified minimum rate of wage in accordance with ORS 279C.838 and ORS 279C.840.

.2 The prevailing wage rates for this public works contract are contained in the January 1, 2019 and amended on April 1, 2019 publications: Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates since the most current publication of those rates. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml and are hereby incorporated as part of the Contract Documents. The prevailing wage rates for this Agreement are established either when the contract first constitutes a binding and enforceable obligation on the part of the Contractor to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement that is a public works. The prevailing wage rate shall apply and must be included with the construction specifications for the Contract.

.3 Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

.4 The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.

.5 If Contractor or any Contractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

§ 17.2.14 ORS 279C.836 (Public Works Bond Required): The Contractor shall:

.1 file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

.2 Include in every subcontract a provision requiring the subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

§ 17.2.15 ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):
.1 Contractor and every Subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or Subcontractor's surety that Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Contractor or Subcontractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.

.2 The certified statement shall be delivered or mailed by Contractor or Subcontractor to Owner. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Agreement and in addition to any other retention required under this Agreement, the Owner shall retain 25% of any amount earned by the Contractor until the Contractor has filed the certified statements with the Owner as required by this Section. The Owner will pay the retention required under this Section within 14 days after the Contractor files the certified statements required by this Section.

.3 Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

§ 17.2.16 ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Contractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.026. Contractor shall further certify that all Contractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above noted statutes before they commence Work under this Agreement. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify Owner immediately if any license, permit, or certification required for performance of this Agreement shall cease to be in effect for any reason.

§ 17.2.17 When Work Is Performed on Owner's property Contractor Shall Comply With the Following:

.1 Identification. Contractor shall carry photo identification and will present such, to anyone on request while performing Work on Owner's property. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, or another mechanism that the Owner in its sole discretion determines is required to easily identify Contractor personnel.

.2 Sign-in Required. Owner may require Contractor's employees, agents, representatives, Architect, Consultants, and Contractors to sign into the Main Office to receive an in-school identification or visitors tag, which must be displayed on each person at all times while present in Owner's facilities.

.3 No Smoking. Smoking or other use of tobacco is prohibited at the Owner's facilities.

.4 No Weapons or Firearms. Except as provided by Oregon Statutes, weapons and firearms are prohibited at Owner's facilities.

§ 17.2.18 When Work Is Performed in or on School Sites, Contractor Shall Comply With the Following:
.1 No Unsupervised Contact with Students. Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Contractor will ensure that Contractor, and its employees, agents, representatives, and Subcontractors have no direct unsupervised contact with students while at Owner's facilities. Contractor will work with the Owner to ensure compliance with this requirement. If Contractor is unable to ensure through a security plan that its employees, agents, representatives, and Subcontractors will not have direct, unsupervised, contract with students in a particular circumstance or circumstances, Contractor shall so notify the Owner before performing any services that could result in such contact. Contractor authorizes Owner to obtain information about Contractor and Contractor's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Contractor that will have unsupervised contact with students. Contractor also agrees to cause Subcontractors to authorize Owner to conduct such background checks. Contractor shall pay all fees assessed by Oregon Department of Education for processing the background checks. Owner may deduct the cost of such fees from a progress or final payment to the Contractor under this Agreement, unless the Contractor elects to pay such fees directly.

.2 Confidentiality. The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Contractor in the performance of this Agreement may not be re-disclosed to third parties without written consent of the students' parents (guardians), and must be used only for the purposes identified in this Agreement.

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

(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

OWNER (Signature)

(Printed name and title)

CONTRACTOR (Signature)

(Printed name and title)

LICENSE NO.: JURISDICTION: