



TUALATIN CITY COUNCIL MEETING

MONDAY, MARCH 09, 2020

JUANITA POHL CENTER
8513 SW TUALATIN ROAD
TUALATIN, OR 97062

Mayor Frank Bubenik
Council President Nancy Grimes
Councilor Paul Morrison Councilor Robert Kellogg
Councilor Bridget Brooks Councilor Maria Reyes
Councilor Valerie Pratt

7:00 P.M. CITY COUNCIL MEETING

Call to Order

Pledge of Allegiance

Announcements

- [1.](#) Recognition to the Tualatin 2040 Community Advisory Committee Members
- [2.](#) Tualatin Public Library Food For Fines Event

Public Comment

This section of the agenda allows anyone to address the Council regarding any issue not on the agenda, or to request to have an item removed from the consent agenda. The duration for each individual speaking is limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

Consent Agenda

The Consent Agenda will be enacted with one vote. The Mayor will ask Councilors if there is anyone who wishes to remove any item from the Consent Agenda for discussion and consideration. If you wish to request an item to be removed from the consent agenda you should do so during the Citizen Comment section of the agenda.

- [1.](#) Consideration of Approval of the Work Session Minutes of February 10, 2020 and Work Session and Regular Minutes of February 24, 2020
- [2.](#) Consideration of Approval of Late Liquor License Renewals for 2020

Special Reports

- [1.](#) WCCLS and Public Safety Levies Presentation

General Business

If you wish to speak on a general business item please fill out a Speaker Request Form and you will be called forward during the appropriate item. The duration for each individual speaking is

limited to 3 minutes. Matters requiring further investigation or detailed answers will be referred to City staff for follow-up and report at a future meeting.

1. Consideration of **Resolution No. 5485-20** Awarding a Construction Manager/General Contractor Contract to Bremik Construction for the Tualatin City Services Project and Authorizing the City Manager to Execute a Contract

Items Removed from Consent Agenda

Items removed from the Consent Agenda will be discussed individually at this time. The Mayor may impose a time limit on speakers addressing these issues.

Council Communications

Adjournment

Meeting materials, including agendas, packets, public hearing and public comment guidelines, and Mayor and Councilor bios are available at www.tualatinoregon.gov/council.

Tualatin City Council meets are broadcast live, and recorded, by Tualatin Valley Community Television (TVCTV) Government Access Programming. For more information, contact TVCTV at 503.629.8534 or visit www.tvctv.org/tualatin.

In compliance with the Americans with Disabilities Act, this meeting location is accessible to persons with disabilities. To request accommodations, please contact the City Manager's Office at 503.691.3011 36 hours in advance of the meeting.



Tualatin 2040

City Council Meeting

March 9, 2020

Honors

Community Advisory

Committee for Housing and

Economic Policy Input

TUALATIN



Provided Policy Input for Tualatin's Future on both Housing and Economics



Households by Income Level, 2010

Tulane 2010
Findings of HNA prepared and compiled by ECONorthwest May 2, 2010

Listened to Presentations on Housing Needs Analysis and Economic Opportunities Analysis.



Small Group Break-Out Sessions to Develop Proposed Strategies and Actions



Round Robins Often Followed Presentations



CONNECTIONS
- walkable, complete
community
- housing, school
transit
- SW Corridor

Trustin 2045
Housing Policies
May 28, 2019

Joe Lipscomb

Brainstorming in Small Group



Considered Interconnections Between
Housing and Economics

Honors Presented to Community Advisory Committee Members

- Alice Galloway Neely
- Angela Handran
- Bryce Payne
- Daniel Bachhuber
- Derek Reinke
- Joe Lipscomb
- Katherine Galian
- Kellye Aprati
- Ken Johnson
- Lainie Magasarili
- Linda Moholt
- Rachael Duke
- Doug Plambeck
- Susan Noack
- Manny Trujillo
- Cyndy Hillier

Food for Fines

March 21-29 at Tualatin Public Library



Supporting
Tualatin School
House Pantry



City of Tualatin

CITY OF TUALATIN
Staff Report

TO: Honorable Mayor and Members of the City Council
THROUGH: Sherilyn Lombos, City Manager
FROM: Nicole Morris, Deputy City Recorder
DATE: March 9, 2020

SUBJECT:

Consideration of Approval of the Work Session Minutes of February 10, 2020 and Work Session and Regular Minutes of February 24, 2020

RECOMMENDATION:

Staff respectfully recommends the Council adopt the attached minutes.

ATTACHMENTS:

- City Council Work Session Minutes of February 10, 2020
- City Council Work Session Minutes of February 24, 2020
- City Council Regular Meeting Minutes of February 24, 2020



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL WORK SESSION MEETING FOR FEBRUARY 10, 2020

Present: Mayor Frank Bubenik, Council President Nancy Grimes, Councilor Bridget Brooks, Councilor Robert Kellogg, Councilor Paul Morrison, Councilor Maria Reyes, Councilor Valerie Pratt

Mayor Bubenik called the meeting to order at 5:35 p.m.

1. Labor Negotiations | Education Session

Human Resource Director Stacy Ruthrauff presented information on the upcoming AFSME labor negotiations. She stated the AFSCME contract is up for renewal July 1, 2020. Director Ruthrauff explained the collective bargaining process, Tualatin's philosophy on bargaining, bargaining timelines, bargaining in good faith, possible outcomes, the council's role, and unfair labor practices. She stated bargaining will begin on February 20th and staff will come back to Council to seek guidance and financial direction throughout the bargaining process.

Councilor Kellogg asked about the interest based discussion that was held in January with the group. Director Ruthrauff stated an update on those discussions would need to be briefed in an executive session.

Councilor Morrison asked what defines an article. Director Ruthrauff stated articles are typically content based.

Councilor Morrison asked what the minimum and maximum number of years a contract can be signed for is. Director Ruthrauff stated Tualatin typically carries a three year contract.

2. Review of Tualatin's Marijuana Regulations.

Planning Manager Steve Koper and Community Development Director Aquilla Hurd-Ravich presented a review of Tualatin's marijuana regulations. Manager Koper stated this is a continuation from the January 27th Council meeting. He presented boundary options that included state mandated buffers, 3000' buffer, 2000' buffer, 1000' buffer, alternative one (1000' from schools, parks and library, not in residential zones, and excludes downtown core), and alternative two (1000' from schools, parks and library, and residential zones).

Councilor Kellogg proposed allowing facilities in the general manufacturing, light manufacturing, and business parks but for the buffers that are put in place. He believes it is reasonable to allow the industrial portion of the industry into the city as it would provide living wage jobs.

Councilor Morrison stated citizens have expressed concerns with the visibility and access of these facilities in relation to youth.

Councilor Brooks would like to see the 1000' buffer around residential areas. She will have to think about commercial grow operations within city limits.

Councilor Kellogg stated there are rules about how businesses can advertise their locations which helps reduce exposure to youth. He agreed the Council doesn't want facilities in the general commercial district and the Council needs to focus on what happens in the manufacturing districts.

Council President Grimes is in favor of keeping the regulations as they are currently zoned.

Councilor Pratt would like to see the 1000' buffer from residential. She expressed interest in allowing industrial uses in the manufacturing areas.

Council President Grimes encouraged council to drive down the green mile in Portland to get a feel of what a retail establishment can look like in regards to signage.

Councilor Reyes thinks the alternative maps presented are fair.

Mayor Bubenik spoke in favor of alternative one. He asked if new establishments would have to go through the architectural review process. Manager Koper stated if it was a new building they would have to go through the process, but if it is tenant based they would inherit the regulations of the current building.

Councilor Morrison stated his problem with alternate one is the two areas along I-5.

Council President Grimes asked the council to consider the process before moving forward. She would like to hear community input before proceeding.

Mayor Bubenik made a correction that he is in favor of the 1000' buffer not alternative one. He added there will be plenty of time for public input moving forward due to all the public hearings that will come along with making changes.

Councilor Brooks agreed with the 1000' buffer.

Councilor Kellogg stated his only concern with the 1000' buffer is the area in the far north part of the town in the general commercial district that is starving for business.

Council consensus was reached to direct staff to draft a plan text amendment for the 1000' buffer option.

Mayor Bubenik adjourned the meeting at 6:57 p.m.

Sherilyn Lombos, City Manager

_____ / Nicole Morris, Recording Secretary

_____ / Frank Bubenik, Mayor



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL WORK SESSION MEETING FOR FEBRUARY 24, 2020

Present: Mayor Frank Bubenik, Councilor Robert Kellogg, Councilor Paul Morrison, Councilor Maria Reyes, Councilor Valerie Pratt

Absent: Council President Nancy Grimes, Councilor Bridget Brooks

Mayor Bubenik called the meeting to order at 5:27 p.m.

1. Urban Renewal / Feasibility Studies.

Economic Development Manager Jonathan Taylor and Community Development Director Aquilla Hurd-Ravich presented on urban renewal feasibility studies. Manager Taylor recapped the recent history of the discussion. He noted in October the Council directed staff to close the Central Urban Renewal Area and identify projects in the Leveton Tax increment district. Manager Taylor stated in January the Council allocated funds to the Tualatin Development Commission administrative fund for a feasibility study. He presented potential urban renewal areas as outlined in the presented map that could be studied. Manager Taylor explained the feasibility study process.

Councilor Morrison asked about the Greenfield Development. Director Hurd-Ravich explained the geographical location.

Councilor Pratt asked what the typical life of an urban renewal area is. Manager Taylor stated they can go until it reaches its maximum indebtedness, which is typically 20-30 years.

Councilor Kellogg asked if all the land has to be annexed before it becomes urban renewal. Manager Taylor stated it has to be annexed first.

Manager Taylor stated next step are to potentially conduct a feasibility study in the spring and summer. He added project identification will continue in the Leveton District.

Councilor Kellogg asked if the urban renewal area has to be contiguous. Manager Taylor stated it has to be.

Mayor Bubenik asked for clarification on when the consultant will begin work. Manager Taylor stated the consultant would begin in the spring defining proposed areas for council boundary review.

Councilor Morrison asked if it is best to study the entire city and then narrow the scope. Director Hurd-Ravich stated the best places to look at are the places the Council think need help developing.

Council consensus was reached to move forward with a feasibility study.

2. Building Height in Mixed Use Commercial Areas.

Associate Planner Erin Engman and Planning Manager Steve Koper presented information on building heights in the Mixed Use Commercial areas. Associate Engman stated current standards for building heights in the studied Bridgeport area are 45-70 feet. She stated the proposed updates included an increased building height of 70 feet across the mixed-use area and 100 feet for identified areas, reformatting of the Mixed Use Commercial District chapter to function as a zoning district rather than an overly zone, and updating the zoning map with new Mixed Use Commercial district. Associate Engman stated staff had a transportation analysis conducted which found no significant impacts to the traffic system at the proposed increased building height. In addition, staff has conducted outreach to the property owners of the five parcels for the identified 100-foot maximum building height. Associate Engman stated next steps to increase the height include noticing affected agencies and property owners, presenting proposed updates to the Planning Commission, and a public hearing.

Councilor Morrison would like this to be a test for development in other parts of the city. Manager Koper agreed this would be a great opportunity to see what kind of development comes from these changes.

Councilor Reyes asked how many floors is 70 feet. Manager Koper stated it depends on building construction.

Councilor Kellogg asked how changing from an overlay to a district affects the area. Manager Koper stated currently the area is referenced as an overlay but acts more like a district so this will help to clean-up language.

Mayor Bubenik asked why the proposed height increase of 100 feet is not applied to the whole area. Associate Engman stated it comes down to the effects of transportation and traffic on the area.

Mayor Bubenik expressed concern with the proposed Tri-Met parking garage and the impacts that may have on the area.

Councilor Morrison asked if trip reduction is possible for the area. Manager Koper explained some of the pros and cons regarding trip generation in mixed use areas.

3. Development Code Updates.

Planning Manager Steve Koper and Community Development Director Aquilla Hurd Ravich presented development code updates. Manager Koper provided background on the development code improvement project. He stated the goals of the projects is to be responsive to legal requirements, requests from the Council and Community, best practices, and observations from staff. Manager Koper provided examples of proposed amendments for accessory dwelling units, bonding for development project completion, and reduced setbacks for accessory structures. He stated potential next steps would be to send notifications to affected parties, present updates to the Planning Commission, and to hold a public hearing.

Councilor Kellogg asked when a project uses the bonding completion program if there is a timeline for completion associated with it. Manager Koper stated the details on the program would be brought to Council at a later time.

Councilor Kellogg asked if decks are included in accessory structures. Manager Koper stated most codes differentiate the two.

Councilor Morrison asked if the city is currently enforcing setbacks on accessory structures. Director Hurd-Ravich stated enforcement is on a complaint driven basis.

Councilor Morrison expressed concerns with financial hardships with a bond completion program. Manager Koper stated the program would be optional.

Mayor Bubenik asked what portions of completion can be bonded. Manager Koper stated the code lists site improvements that it would be subject to.

Councilor Kellogg recommended staff review building heights in the Central Commercial zone and work towards separating the development code and comprehensive plan.

4. Food Carts.

Community Development Director Aquilla Hurd-Ravich presented possible amendments for mobile food units in the General Commercial (GC) zone along Hwy 99W. She recapped currently allowed locations and shared a map. Director Hurd-Ravich shared a map with the potential addition of the General Commercial (CG) zone along 99W. She stated if Council's direction is to amend the ordinance staff will bring back a revised ordinance at a public hearing for adoption.

Councilor Kellogg stated the proposed amendment accomplishes serving the far west area of Tualatin.

Councilor Morrison asked how the area was originally excluded. Director Hurd-Ravich stated during the originally discussions it wasn't identified as a need.

Council consensus was reached in favor to move forward with the code updates.

5. Council Meeting Agenda Review, Communications & Roundtable.

Council communications was moved to the regular meeting.

Mayor Bubenik adjourned the meeting at 6:48 p.m.

Sherilyn Lombos, City Manager

_____ / Nicole Morris, Recording Secretary

_____ / Frank Bubenik, Mayor



OFFICIAL MINUTES OF THE TUALATIN CITY COUNCIL MEETING FOR FEBRUARY 24, 2020

Present: Mayor Frank Bubenik, Councilor Robert Kellogg, Councilor Paul Morrison, Councilor Maria Reyes, Councilor Valerie Pratt

Absent: Council President Nancy Grimes, Councilor Bridget Brooks

Call to Order

Mayor Bubenik called the meeting to order at 7:00 p.m.

Pledge of Allegiance

Announcements

1. New Employee Introduction- Mary Daily, Account Technician

Assistant Finance Director Matt Warner introduced Account Technician Mary Daily. The Council welcomed her.

Public Comment

Grace Lucini submitted a letter for the record regarding transparency issues and changes within the Basalt Creek Area.

Kelly Kerth requested the city republish information regarding being a Bee City as it is the time of year for pollinators to come through the city.

Consent Agenda

Councilor Morrison requested Item 2-Consideration of Approval of Liquor License Renewals for 2020 be removed from the consent agenda.

Motion to adopt the consent agenda as amended made by Councilor Pratt, Seconded by Councilor Reyes.

Voting Yea: Mayor Bubenik, Councilor Kellogg, Councilor Morrison, Councilor Reyes, Councilor Pratt

1. Consideration of Approval of the Work Session and Regular Meeting Minutes of January 27, 2020 and Regular Minutes of February 10, 2020

Special Reports

1. Quarterly Financial Report

Finance Director Don Hudson and Tanya Moffitt, Partner at Merina+Co, presented the 2018-19 Annual Audit Report for fiscal year ending June 30, 2019. Ms. Moffitt presented the Comprehensive Annual Financial Report (CAFR) stating the report gives a clean and unmodified

opinion. She noted there are no findings and the city has met all the minimum standards provided by the State.

Councilor Pratt asked about the difference between government and business type activities. Ms. Moffitt stated business activities are self-sustaining.

Director Hudson presented the quarterly financial report. He spoke to budget actual trends for expenditures and revenues in the general, building, road utility fee, road operating, water operating, storm drain operating, and sewer operating funds. He presented the Quarter End Investment Report to the Council. He stated the City's investment policy requires quarterly investment reports come to the Council and include earning yields, a holding report, a transactions report, a weighted average maturity, and a compliance report. Accounts to be reported on include the Core Investment Fund, 2018 Bond Proceeds Fund, and the Liquidity Fund. He stated the city is in compliance with all benchmarks. Director Hudson stated the fiscal year 2020-21 budget process has kicked off. He shared the budget calendar.

Councilor Pratt asked about the investment holding options. Director Hudson stated they go out to bid and then the options are considered.

2. Southwest Corridor Project's Conceptual Design Report (CDR) Presented by TriMet

Policy Analyst Garet Prior and Tri-Met staff Leah Robbins and Fiona Cundy presented the Southwest Corridor Project's Conceptual Design Report (CDR). Tri-Met staff stated the line is an eleven mile extension and will tie into the currently operating green line. The line will have thirteen stations and will be a thirty minute trip from Bridgeport Village to Downtown Portland. Tri-Met anticipates the new line to provide 37,500 trips a day. In addition to the new line, new infrastructure such as sidewalks, improved bike facilities, transit-only lanes, and park and ride spaces will be added. It was noted the project is still in the early design and development phase. The Final Environmental Impact Study (FEIS) will be completed this summer. They added the major regional funding strategy will be on the ballot in November 2020 with early construction slated for 2021.

Tri-Met staff stated the CDR is based off of four project principles: move and connect people, maintain and create equitable communities, preserve and restore natural environment, and design for the future. Community outreach on the project has been extensive with a lot of time being spent communicating with citizens on community and park connections. Tri-Met staff spoke to Park and Ride location and design. Upcoming open houses are scheduled for March 2, 6-8 p.m., at Tualatin Elementary School.

Councilor Pratt asked about the line ending at Gibb Road. Tri-Met staff stated the line will have continuous travel onto the green line train. Councilor Pratt asked if bus line 96 would be cut. Tri-Met staff stated it will be looking at redistributing the service.

Councilor Morrison stated the speaker of the house is not in favor of funding the project because of gentrification of housing along the green line. Councilor Morrison expressed concern with communications of the plan with the Village Inn regarding parking. Councilor Morrison asked how the fares will work when you take a feeder bus to the line. Tri-Met staff stated they have moved to the electronic hop pass and a trip will be counted as a trip.

Councilor Kellogg asked about the ability to transfer between the Bonita Road and Upper Boones Road Stations. Tri-Met staff stated the existing Tigard station will act as the transfer

point. Councilor Kellogg expressed concerns with the distance of that being the transfer station for this location.

Mayor Bubenik would like to see the crossing elevated at Upper Boones Ferry Road and improvements at 72nd Street including a pedestrian bridge.

General Business

1. Consideration of Recommendations from the Council Committee on Advisory Appointments

Council approved the recommendations. They thanked members for their service.

Motion to approve the recommendations made by Councilor Pratt, Seconded by Councilor Reyes.

Voting Yea: Mayor Bubenik, Councilor Kellogg, Councilor Morrison, Councilor Reyes, Councilor Pratt

Items Removed from Consent Agenda

1. Consideration of Approval of Liquor License Renewals for 2020

Councilor Morrison asked about the low numbers of renewals. Deputy City Recorder Morris stated there was a shorter turnaround time and the rest of the renewals will be on the next agenda for approval

Motion made to approve 2020 Liquor License Renewals by Councilor Reyes, Seconded by Councilor Kellogg.

Voting Yea: Mayor Bubenik, Councilor Kellogg, Councilor Morrison, Councilor Reyes, Councilor Pratt

Council Communications

Councilor Kellogg presented a draft letter of support for the library levy for Council to review. Councilor Kellogg reminded everyone of the Tri-Met Open House on the SW Corridor on March 2, 6-8 p.m., at Tualatin Elementary School.

Councilor Reyes stated she attended the Council Committee on Advisory Appointments meeting.

Councilor Morrison stated he attended the Clackamas County Business Alliance Breakfast and the C4 subcommittee meeting. He presented information on Oregon Student Health data that was released. He stated there is a new Brownie Troop in Tualatin who hope to attend a Council meeting this summer.

Councilor Pratt stated she attended the Tualatin Police Foundation meeting. She promoted upcoming Library Events including Food for Fines and Vine2Wine.

Mayor Bubenik stated he attended the Metro Mayors Consortium, the Mayors Luncheon, the Metro President's meeting on their Home Initiative, the Greater Portland Inc. Annual Summit, the Home Together discussion, and the Forest Grove and Cornelius State of the City's.

Adjournment

Mayor Bubenik adjourned the meeting at 8:25 p.m.

Sherilyn Lombos, City Manager

_____ / Nicole Morris, Recording Secretary

_____ / Frank Bubenik, Mayor



City of Tualatin

CITY OF TUALATIN
Staff Report

TO: Honorable Mayor and Members of the City Council
THROUGH: Sherilyn Lombos, City Manager
FROM: Nicole Morris, Deputy City Recorder
DATE: March 9, 2020

SUBJECT:

Consideration of Approval of Late Liquor License Renewals for 2020

RECOMMENDATION:

Staff respectfully recommends the Council approve endorsement of the liquor license renewals for 2020 as listed in Attachment A.

EXECUTIVE SUMMARY:

Annually, the Oregon Liquor Control Commission (OLCC) requires that all liquor licenses are renewed. According to the provisions of City Ordinance No. 680-85, establishing procedures for liquor license applicants, applicants are required to fill out a City application form, from which a review by the Police Department is conducted according to standards and criteria established in the Ordinance. The liquor license renewal applications are in accordance with all ordinances and the Police Department has conducted reviews of the applications.

According to the provisions of Section 5 of Ordinance No. 680-85 a member of Council or the Public may request a public hearing on any of the liquor license renewal requests. If such a public hearing request is made, a hearing will be scheduled and held on the license. It is important that any request for such a hearing include reasons for said hearing.

FINANCIAL IMPLICATIONS:

A renewal fee of \$35 has been paid by each applicant.

ATTACHMENTS:

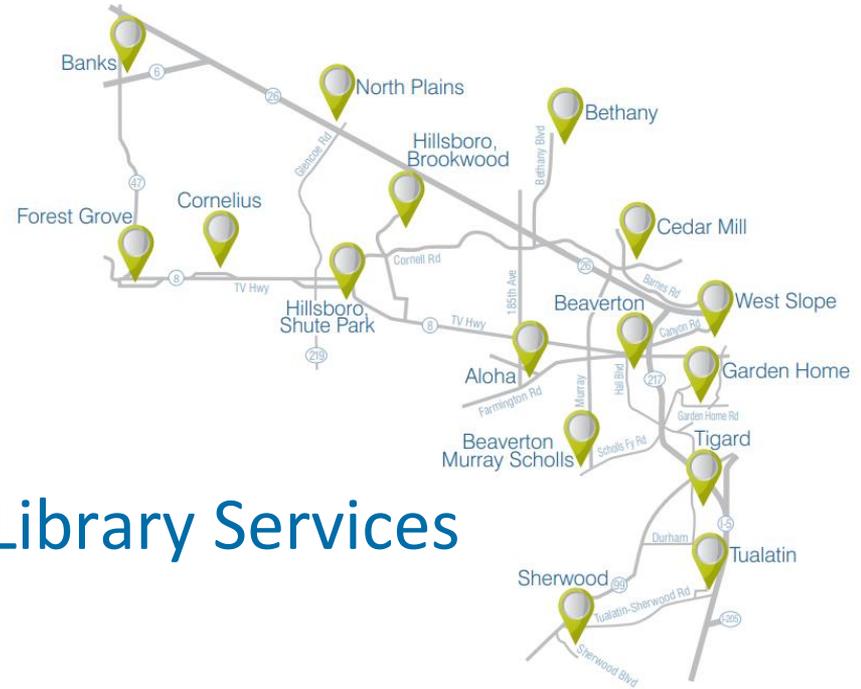
-Attachment A- Liquor License Renewals 2020

76 OF TUALATIN
ANCESTRY BREWING
BASICS MARKET
BOONES FERRY CHEVRON
BUFFALO WILD WINGS #3574
C. I. BAR & GRILL
CHOZA PDX
FRED MEYER
INDUSTRY
MILLERS HOMESTEAD
OUTBACK STEAKHOUSE
PIEOLOGY PIZZERIA
ROSIE'S KITCHEN
STAR'S CABARET BRIDGEPORT
STICKMEN BREWING COMPANY
THREE MERMAIDS PUBLIC HOUSE
VINORAI
WOVEN WINEWORKS

Measure 34-297

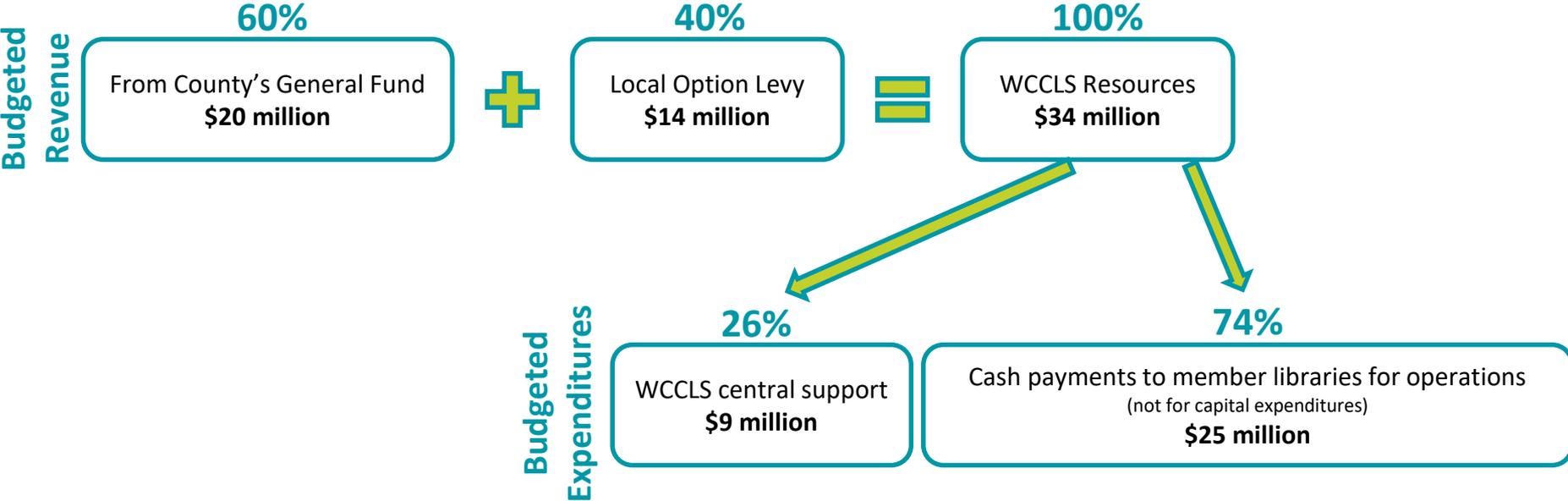
Proposed levy for Countywide Library Services

May 19, 2020 Ballot



This information, except for the website link(s), was reviewed by the Oregon Secretary of State's Office for compliance with ORS 260.432.

Current revenue and expenditures (FY19-20)

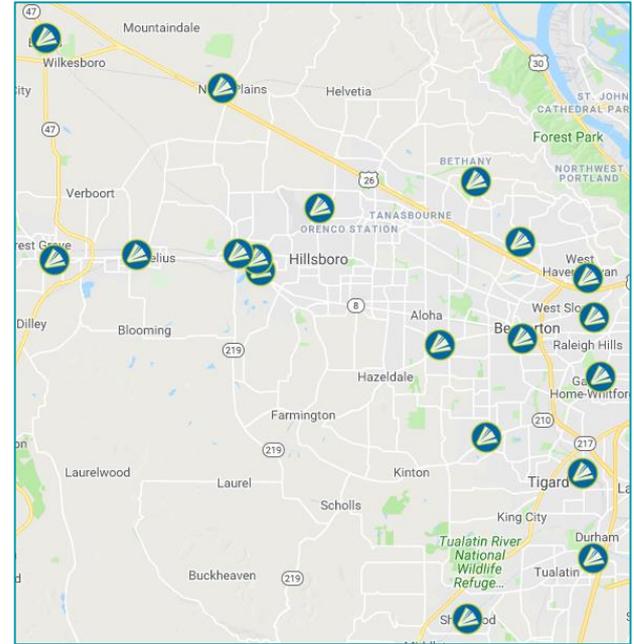


If passed, how would levy funds be used?

Funding for public library operations

Measure 34-297 would provide funding to maintain open hours for libraries that serve all county residents, including libraries in Aloha, Banks, Beaverton, Cedar Mill, Cornelius, Forest Grove, Garden Home, Hillsboro, North Plains, Sherwood, Tigard, Tualatin and West Slope.

Libraries saw 3.8 million visits in fiscal year 2018-19.



If passed, how would levy funds be used?

Reading programs for children

Measure 34-297 would support children's reading events that average about 285,000 participants each year.

This would include annual summer reading programs for youth and literacy programs for preschoolers.

In addition, libraries would provide reading and learning programs for students, including online homework and tutoring services for all children in Washington County.



If passed, how would levy funds be used?

Book purchases

The measure would provide funds for the purchase of books, e-books and other materials that are available to all library users.

It would fund the purchase of additional copies of in-demand books in order to reduce wait times.

Levy funding would also provide online access that allows users to reserve books that can be picked up at any library.

In fiscal year 2018-19, WCCLS library users checked out over 11.2 million library materials.



If passed, how would levy funds be used?

Resources for jobseekers

Measure 34-297 would allow libraries to continue to provide information and instruction to assist those looking for jobs or career development.

Jobseekers could continue to use library computers and internet access to apply for jobs, and access learning tools for career development.

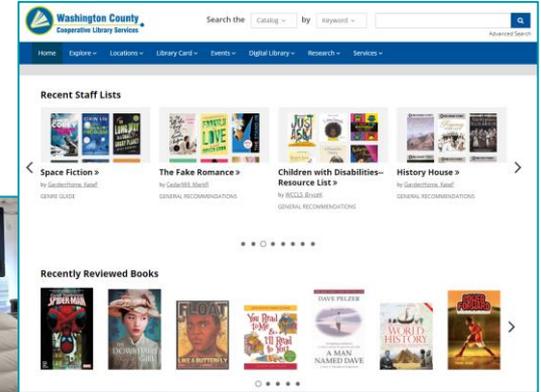
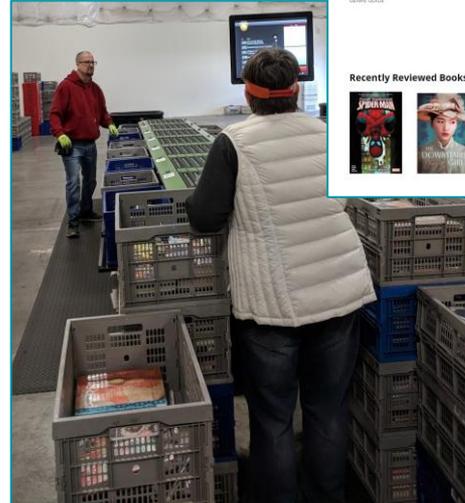


If passed, how would levy funds be used?

Central support and services that link libraries together

Measure 34-297 would maintain central support and services, which include the following:

- Central sorting and book delivery between 16 libraries seven days a week, allowing all county residents to access the shared collection of 1.6 million books and other materials;
- Shared library inventory management and online request system;
- wcls.org website and shared library events calendar;
- Book deliveries to county residents who are homebound or living in care facilities.



How would Measure 34-297 Affect a Homeowner's Taxes?

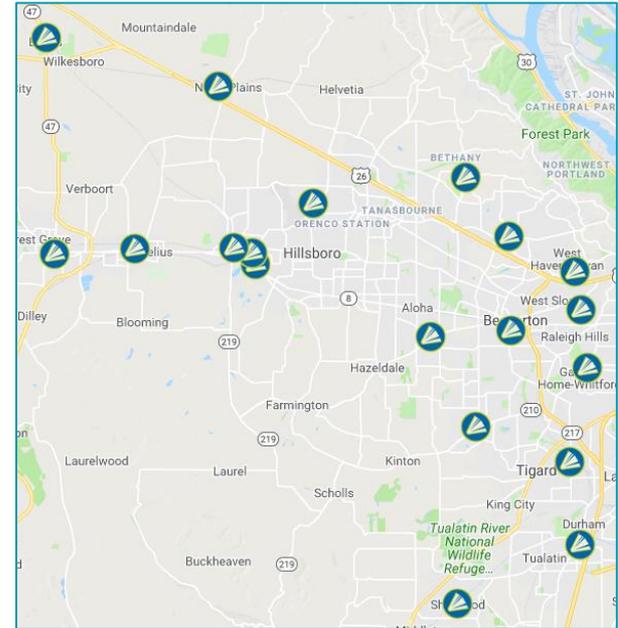
- If passed, Measure 34-297 would renew a five-year levy that is expiring in June 2021.
- The proposed levy would maintain a fixed rate of \$0.22 per \$1,000 of assessed value, running from July 2021 through June 2026.
- In 2021, typical homeowners with an assessed value of \$300,000 (not market value) would pay \$66 per year if passed.



What would happen if the levy does not pass?

If the measure does not pass, reductions in service levels would likely occur, including reductions in hours, book purchases and events, as well as reductions in countywide services such as the countywide online catalog and book delivery.

Homeowners would not be assessed the tax of \$0.22 per \$1,000 of assessed value.



For more information

visit the WCCLS website at wccls.org/levy





Measure 34-296: Public Safety Levy



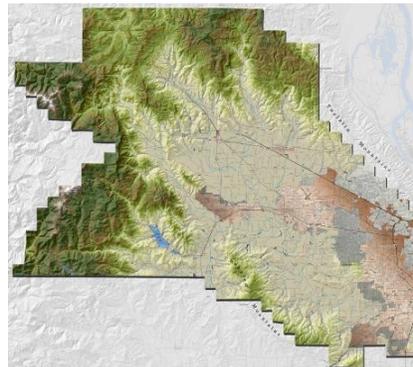
3/3/2020



Public Safety Levy

Who receives services from the levy?

- City neighborhoods
- Urban unincorporated communities
- Rural areas



Public Safety Levy

If passed, what would the proposed levy do?

- Replace a five-year levy expiring in June 2021
- Continue countywide public safety services at the current level of service (\$187.7m, 168.5 positions)
- Add services to address increased domestic violence & emergency shelter caseloads (\$9.8m, 11 positions)

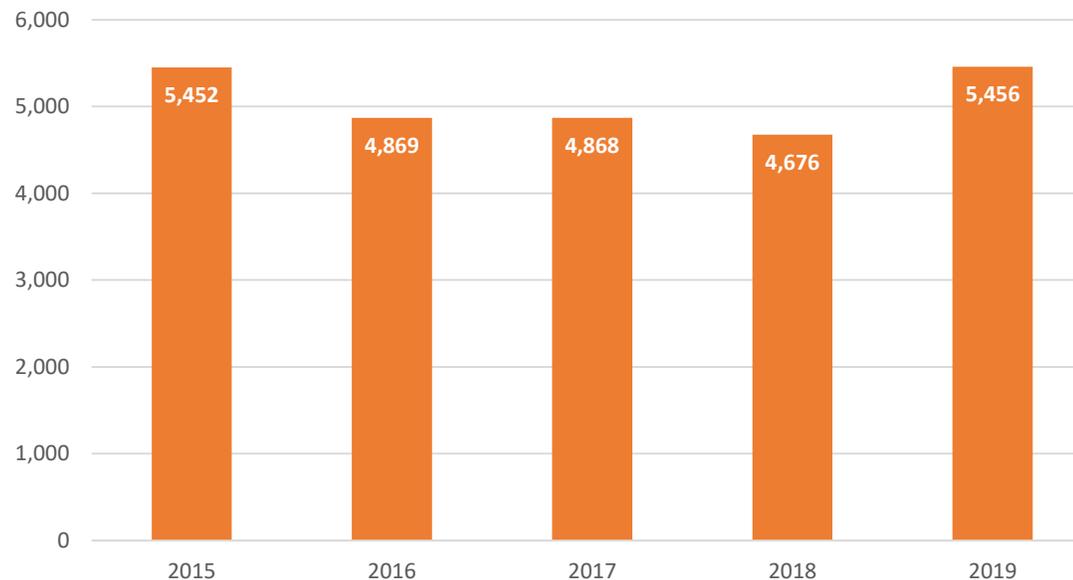
Current Service Level If the Proposed Levy Passes

What current service level funding would be provided if the proposed levy passes?

- Prosecution services addressing crimes throughout the county (25.3 District Attorney's Office positions)
- Treatment and supervision of those who may be released to the community, including compliance monitoring for registered sex offenders and others with court-ordered supervision requirements. (31 Community Corrections positions)
- Supervision and treatment of juvenile offenders. (11 Juvenile Department positions)

What current service level funding would be provided if the proposed levy passes?

- Law enforcement personnel providing countywide services in investigations, forensics and special teams. (101.25 Sheriff's Office positions)
- Example: trained mental health responders including deputies and mental health professionals helping people in crisis get medical assistance instead of going to jail.



Mental Health Response Team Calls for Service

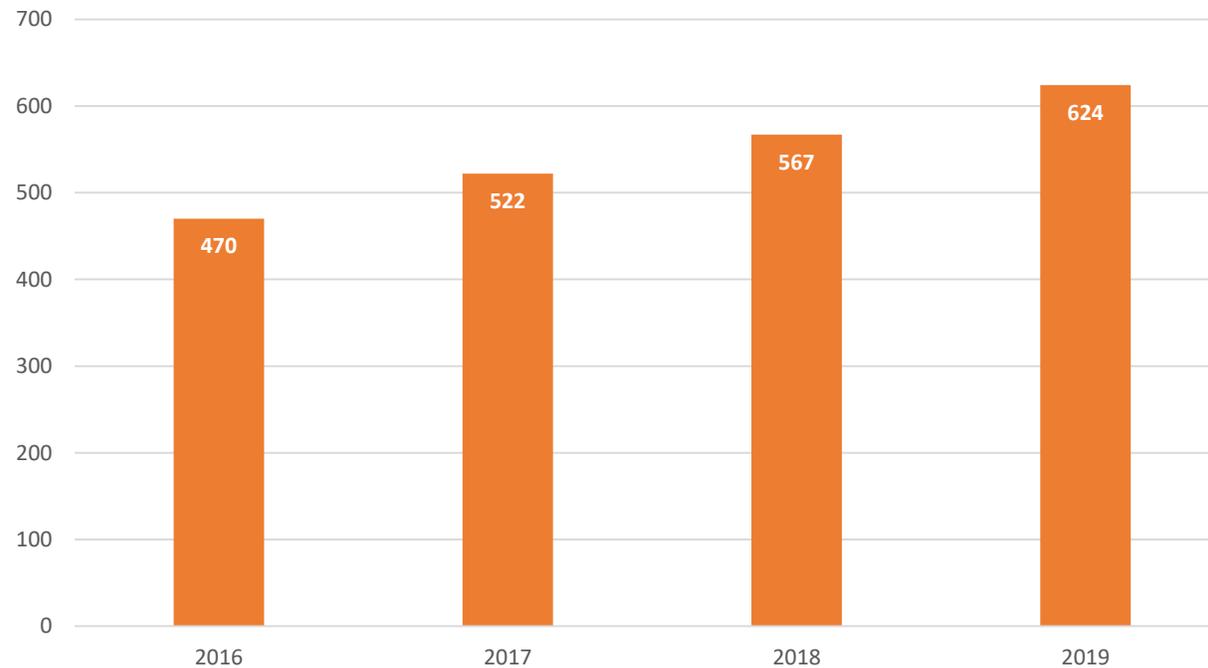
What current service level funding would be provided if the proposed levy passes?

- Victims' assistance and emergency shelter for women and children who are victims of domestic violence.
(Approximately \$7 million over five years)
- Levy funds would continue to support emergency shelter and other services provided by:
 - Domestic Violence Resource Center
 - Community Action
 - Family Promise of Washington County
 - Good Neighbor Center
 - Safe Place Youth Shelter
 - Family Justice Center

Additional Services If the Proposed Levy Passes

What services would be added if the proposed levy passes?

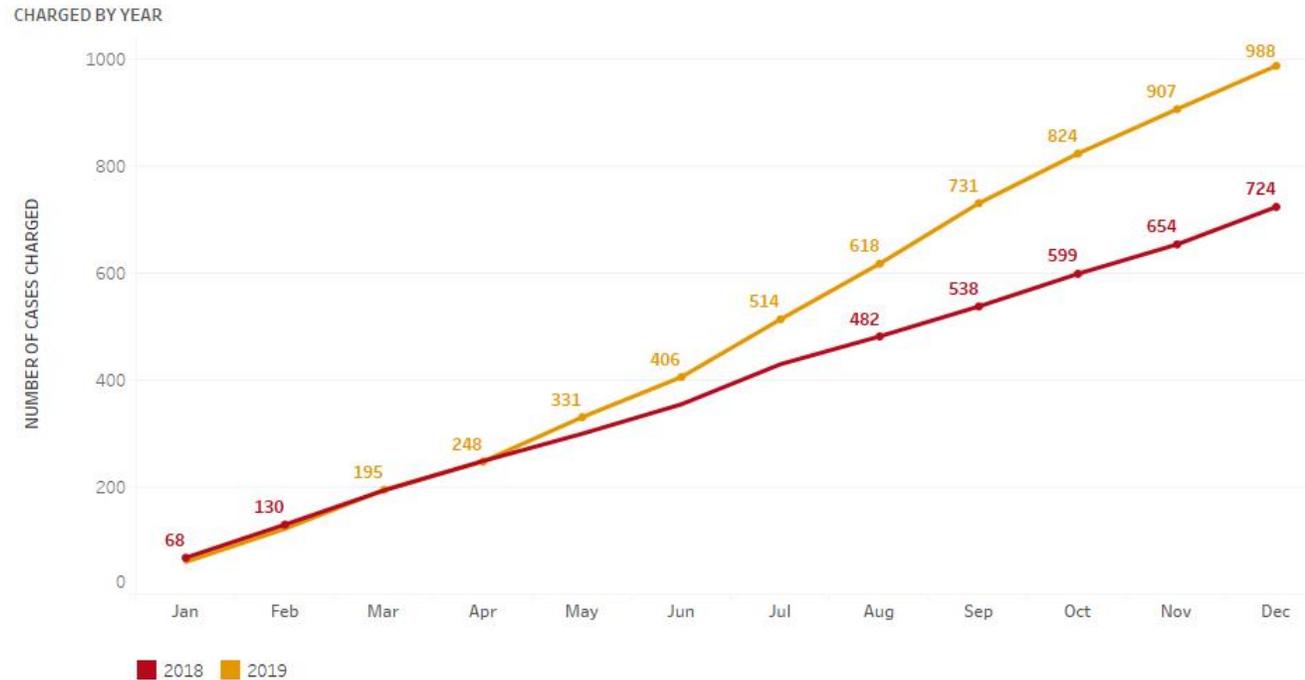
- Increased funding for prosecution of child abuse and child pornography cases. (1 District Attorney's Office position)



Child Abuse Cases Referred

What services would be added if the proposed levy passes?

- In 2019, 985 domestic violence cases were filed, a 36% increase in caseload when compared to the previous year.
- If passed, the levy would provide funding for four additional parole and probation officers responsible for addressing the increased domestic violence-related caseloads at a five-year cost of \$2.4 million. (4 Community Corrections Department positions)



What services would be added if the proposed levy passes?

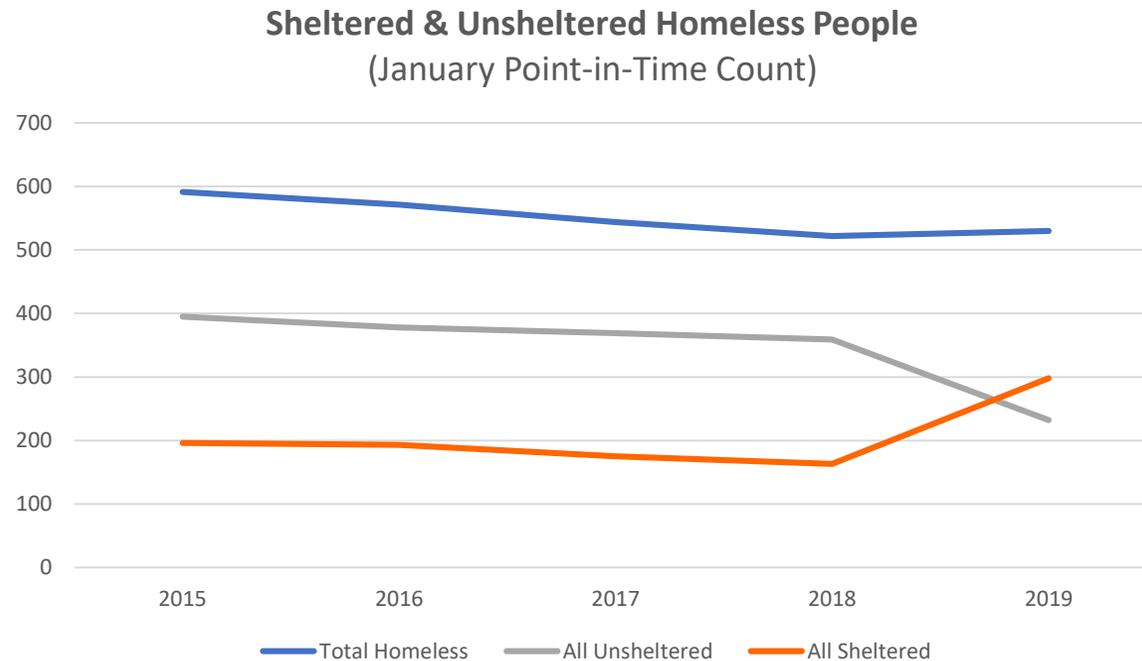
- Of the 572 beds in the Washington County Jail, one 56-bed pod (10% of total jail-bed space) would be maintained through this portion of levy funding.
- If passed, the replacement levy would provide funding for four additional jail deputies at a five-year cost of \$2.8 million, allowing the jail to operate at full capacity and reduce early release of offenders. (4 Sheriff's Office positions)

What services would be added if the proposed levy passes?

- If passed, the proposed levy would provide \$1.5 million of funding over five years for contracted services with community-based organizations to divert juvenile offenders out of the criminal justice system, as appropriate on a case-by-case basis. provide additional diversion services at a five-year cost of \$1.5 million.
- An estimated 1,000 youth projected to be eligible for this diversion program each year would be assessed, placed on a case plan and would participate in programming, outside of the criminal justice setting, as provided by a nonprofit organization.
(Additional contracted services)

What services would be added if the proposed levy passes?

- Funding to reduce the transition time from emergency shelter to housing for individuals and families, including survivors of domestic violence. Temporary shelters have seen a 70% increase in use over the last three years. (2 positions within the nonprofit network of emergency shelter providers)





Taxpayer Impact

Proposed rate and tax impact, if the levy passes:

- The proposed levy would have a five-year, fixed rate of \$0.47 per \$1,000 of assessed value. This would be an increase of \$0.05 per \$1,000 of assessed value over the current levy.
- If approved, this would be the first increase in the rate since the original levy in the year 2000.
- In 2021, typical homeowners, based on an average assessed value of \$300,000, would pay \$141 per year, or about \$20 more than they paid in 2020.
- This assumes an average assessed value (not market value) of \$300,000.
- The tax due in future years would depend on changes in assessed value.

Proposed rate and tax impact, if the levy does not pass:

- If the levy does not pass, the additional local option property taxes would not be levied.
- In 2021, typical homeowners, based on an average assessed value of \$300,000, would see a \$126 per year reduction in their property taxes.
- If the levy does not pass, there would be a reduction in services in Washington County affecting prosecution, law enforcement, supervision, corrections and emergency shelters likely to begin in 2021.

Summary

If passed, what would the proposed levy do?

- Replace a five-year levy expiring in June 2021
- Continue countywide public safety services at the current level of service (\$187.7m, 168.5 positions)
- Add services to address increased domestic violence & emergency shelter caseloads (\$9.8m, 11 positions)

For more information, please visit:



www.co.washington.or.us/levies

Election • May 19th



Thank you



City of Tualatin

CITY OF TUALATIN Staff Report

TO: Honorable Mayor and Members of the City Council
THROUGH: Sherilyn Lombos, City Manager
FROM: Clay Reynolds, Maintenance Services Manager
DATE: March 9, 2020

SUBJECT:

Consideration of Resolution No. 5485-20 Awarding a Construction Manager/General Contractor Contract to Bremik Construction for the Tualatin City Services Project and Authorizing the City Manager to Execute a Contract.

RECOMMENDATION:

Staff recommends the City Council adopt Resolution No. 5485-20.

EXECUTIVE SUMMARY:

On or about April 22, 2019, the Council adopted Resolution No. 5432-19 to authorize the City Manager to conduct a Construction Manager/General Contractor (CM/GC) procurement process for the Tualatin City Services Project. The City issued a request for proposals and evaluated all proposals received. Bremik Construction was selected as the best proposer. The City issued a notice of intent to award and entered into negotiations with Bremik Construction for a Guaranteed Maximum Price.

The City of Tualatin has reached the final stage of the project prior to construction, which is to present the Guaranteed Maximum Price (GMP) and to request approval to proceed to construction.

Staff and the project team are pleased to announce that with the establishment of the GMP, the project is on budget and with the successful conclusion of the public review and permitting processes; the team is ready to proceed to construction.

After refining plans through the Schematic Design, Design Documents, and Permitting / 50% Construction Documents phases, Bremik Construction requested all competitive bids for construction. The GMP was reached using these bids and adding their oversight costs.

The proposed GMP is \$5,876,120. The overall project budget is \$8,000,000.

FINANCIAL IMPLICATIONS:

In a GMP Contract, the contractor (Bremik) is compensated for actual costs incurred plus a fixed fee subject to a ceiling price. In this case, the ceiling price is \$5,876,120, which is within the overall project budget of \$8 million.

Funding for this building will consist of just over \$4 million in current funds and the remaining from a loan. Payback of the loan will be from those functions that will be in the building (Community Development and Utility Operations). The General Fund share of the debt service will be from the savings derived from no longer leasing office space in the Seneca Building.

ATTACHMENTS:

- A102-2017 Standard Form of Agreement Between Owner and Contractor - Guaranteed Maximum Price (GMP) Contract with Bremik Construction
- A201 – 2017 General Conditions of the Contract for Construction

RESOLUTION NO. 5485-20

A RESOLUTION AWARDDING A CONSTRUCTION MANGER/GENERAL CONTRACTOR CONTRACT TO BREMIK CONSTRUCTION FOR THE TUALATIN CITY SERVICES PROJECT AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT

WHEREAS, on or about April 22, 2019, the Council adopted Resolution No. 5432-19 to authorize the City Manager to conduct a Construction Manager/General Contractor (CM/GC) procurement process for the Tualatin City Services Project;

WHEREAS, the City issued a request for proposals for construction of the Tualatin City Services Project and evaluated all proposals received;

WHEREAS, the City issued a notice to award the CM/GC contract to Bremik Construction and negotiated a Guaranteed Maximum Price in the amount of \$5,876,120.00; and

WHEREAS, awarding the CM/GC contract to Bremik Construction to construct the Tualatin City Services Project is in the best interest of the City.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TUALATIN, OREGON, that:

Section 1. The City awards the Construction Manager/General Contractor (CM/GC) contract for the Tualatin City Services Project to Bremik Construction.

Section 2. The City Manager is authorized to execute a CM/GC contract with a Guaranteed Maximum Price of \$5,876,120.00 with Bremik Construction.

Section 3. This resolution is effective upon adoption.

Adopted by the City Council this ____ day of _____, 2020.

CITY OF TUALATIN, OREGON

BY _____
Mayor

APPROVED AS TO FORM

ATTEST:

BY _____
City Attorney

BY _____
City Recorder

 **AIA[®] Document A102[™] – 2017****Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price**

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

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

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

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

Bremik Construction
1026 SE Stark Street
Portland, OR 97214

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

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

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

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

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
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EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 RELATIONSHIP OF THE PARTIES

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

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

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

(Check one of the following boxes.)

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

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

§ 4.3 Substantial Completion

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

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

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

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

Portion of Work

Substantial Completion Date

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

ARTICLE 5 CONTRACT SUM

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

§ 5.1.1 The Contractor's Fee:

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

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

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

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

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

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

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

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price Per Unit (\$0.00)
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§ 5.1.6 Liquidated damages, if any:

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

(Paragraphs deleted)

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

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

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

§, 5.2 Guaranteed Maximum Price

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

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

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

§ 5.2.2 Alternates

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

(Row deleted)

Refer to Exhibit A - Alternates

(Table deleted)

(Paragraphs deleted)

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

(Identify each allowance.)

(Row deleted)

Refer to Exhibit B - Allowances

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

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

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

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

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

(Identify each assumption.)

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

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

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

ARTICLE 6 CHANGES IN THE WORK

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

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

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

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

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 Cost of the Work

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

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

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

§ 7.2 Labor Costs

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

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

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

Refer to Exhibit C – 2020 Billable Hourly Labor Rates

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

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

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

§ 7.3 Subcontract Costs

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

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

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

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

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

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

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

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

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

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

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

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

§ 7.8 Related Party Transactions

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

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

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

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

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

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

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

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

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

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

ARTICLE 11 ACCOUNTING RECORDS

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

ARTICLE 12 PAYMENTS

§ 12.1 Progress Payments

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

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

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

§ 12.1.4

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

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

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

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

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

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

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

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

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

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

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

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

§ 12.1.8 Retainage

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

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

Five percent (5.00%)

§ 12.1.8.1.1 The following items are not subject to retainage:

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

None

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

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

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

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

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

None

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

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

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

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

§ 12.2 Final Payment

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

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

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

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

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

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

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

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

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

§ 12.3 Interest

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

1.00 % One percent

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

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

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

§ 13.2 Binding Dispute Resolution

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

(Check the appropriate box.)

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

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

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Termination

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

§ 14.1.2 Termination by the Owner for Cause

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

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

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

§ 14.1.3 Termination by the Owner for Convenience

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

Zero (0) termination fee

§ 14.2 Suspension

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

ARTICLE 15 MISCELLANEOUS PROVISIONS

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

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

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

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

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

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

§ 15.5 Insurance and Bonds

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

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

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

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

Init.

§ 15.7 Other provisions:

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

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

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

None

- .5 Drawings

Number

Title

Date

Refer to Exhibit E – List of Documents

- .6 Specifications

Section

Title

Date

Pages

Refer to Exhibit F – Specifications

- .7 Addenda, if any:

Init.

Number	Date	Pages
None		

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

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

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

The Sustainability Plan:

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

Supplementary and other Conditions of the Contract:

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

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

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

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

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)



Init.

/

Additions and Deletions Report for AIA® Document A102™ – 2017

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

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

PAGE 1

AGREEMENT made as of the _____ day of _____ in the year Two Thousand Twenty

...

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

...

Bremik Construction
1026 SE Stark Street
Portland, OR 97214

...

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

...

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

PAGE 3

[] Established as follows:

...

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

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

...

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

the Work.

By the following date:

...

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

...

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

...

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

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

PAGE 4

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

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

§ 5.1.7 Other:

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

§ 5.2 Guaranteed Maximum Price

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

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

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

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

§. 5.2 Guaranteed Maximum Price

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

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

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

Item

Price

Refer to Exhibit A - Alternates

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

Item

Price

Conditions for Acceptance

PAGE 5

Item

Price

Refer to Exhibit B - Allowances

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

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

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

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

...

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

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

PAGE 6

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

...

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

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

PAGE 7

Refer to Exhibit C – 2020 Billable Hourly Labor Rates

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

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

...

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

PAGE 8

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

...

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

...

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

PAGE 9

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

PAGE 10

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

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

...

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

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

PAGE 11

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

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

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

...

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

...

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

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

PAGE 12

Five percent (5.00%)

...

None

...

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

...

None

PAGE 13

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

...

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

...

1.00 % ~~One percent~~

PAGE 14

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

PAGE 15

Zero (0) termination fee

...

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

...

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

PAGE 16

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

...

Refer to Exhibit H – Proof of Bond and Insurance

...

None

...

Refer to Exhibit E – List of Documents

...

Refer to Exhibit F – Specifications

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None

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

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



Certification of Document's Authenticity

AIA® Document D401™ – 2003

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

(Signed)

(Title)

(Dated)

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit A - Alternates

BREMIK

CONSTRUCTION

1026 SE Stark St. | Portland, OR 97214 | P 503.688.1000 | F 503.688.1005 | www.bremik.com

Tualatin Service Center			
EXHIBIT A - Alternates and Options			
Item	Quantity	Unit	Cost
Option: Solar Panel price per 375 watt unit	1	ea	\$2,113.00
Alternate: Generic Plantings	1	ls	-\$5,131.00

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit B - Allowances

BREMIK

CONSTRUCTION

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Tualatin Service Center			
EXHIBIT B - Allowances			
Item	Quantity	Unit	Cost
Exterior Siding and WRB replacement-Existing building walls	1	ls	\$12,000.00
Existing floor preparation	1	ls	\$2,700.00
Painting - Exterior siding	1	ls	\$3,360.00
Tack Board	1	ls	\$10,752.00
Wall Paneling	1	ls	\$5,602.00
Demolish Shed	1	ls	\$16,073.00
Video and Flush System	1	ls	\$2,700.00
Decommision Drywell	1	ls	\$3,500.00
Private Locates	1	ls	\$1,500.00
Driveway Fences & Gates	1	ls	\$4,900.00
Personnel Fences & Gates Panic Hardware	1	ls	\$3,200.00
Benches	1	ls	\$3,000.00

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit C – 2020 Billable Hourly Labor Rates

BREMIK

CONSTRUCTION

1026 SE Stark St. | Portland, OR 97214 | P 503.688.1000 | F 503.688.1005 | www.bremik.com

Tualatin Service Center

EXHIBIT C - 2020 Billable Hourly Labor Rates

Role	Unit	Cost
Principal-in-Charge	Hourly	\$140.00
Project Manager	Hourly	\$93.00
Project Superintendent	Hourly	\$98.00
Project Engineer	Hourly	\$76.00
Project Administrator	Hourly	\$61.00
Foreman	Hourly	\$72.69
Carpenter	Hourly	\$65.73
Laborer	Hourly	\$53.12

*Rates are not inclusive of tax, fee, insurance, and bond

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit D – 2020 Equipment Rental Rate Sheet



2020 NEGOTIATED EQUIPMENT RENTAL RATES

ITEM DESCRIPTION	MANUFACTURE / MODEL	Rental Rate	
		WEEK	MONTH
HOISTING & MANLIFTS			
12,000lbs Universal Lifting Hook	All Models	\$83.00	\$250.00
2,000lbs (4-poistion) Forklift Jib Attachment	All Models	\$75.00	\$225.00
UTV	4-6 Seater	\$350.00	\$850.00
Cable Come-A-Long	1-Ton - 6-Ton Capacity	\$45.00	\$94.00
Chain Hoist	1-Ton - 15'-0" Lifting Height	\$45.00	\$150.00
Come-A-Long	Chain - 20'-0" Lifting Height	\$45.00	\$105.00
Electric Scissor Lift	19'-0" Working Height	\$228.00	\$432.00
Electric Scissor Lift	32'-0" Working Height	\$412.00	\$919.00
Electric Scissor Lift	26'-0" Working Height	\$308.00	\$692.00
Fork Extension	6' Fork Extension	\$15.00	\$75.00
Hydraulic Jack	22.5 Ton Capacity	\$35.00	\$75.00
Hydraulic Spread Cylinder	3/4 Ton Capacity	\$68.00	\$270.00
Hydraulic Spread Cylinder w/attachments	All Models	\$68.00	\$270.00
Hydraulic Steel Hand Pump w/Hose	All Models	\$28.00	\$105.00
Industrial Straight-Mast Forklift	5,000lb Capacity	\$556.00	\$1,530.00
Lift-N-Tow Attachment	5,000 - 10,000 lbs.	\$58.00	\$175.00
Manual Material Lift	18'-0" Lifting Height	\$164.00	\$352.00
OSHA Grade - Wood Scaffold Plank	Size - 9'-0"	\$2.00	\$5.00
Portable Electric Winch	1,100lb - 5,000lb Capacity	\$250.00	\$600.00
Pump Jack 12' Nestable Plank - Master #	All Models	\$65.00	\$175.00
Pump Jack 16' Nestable Plank - Master #	All Models	\$77.00	\$155.00
Pump Jack 20' Nestable Plank - Master #	All Models	\$95.00	\$175.00
Pump Jack 24' Nestable Plank - Master #	All Models	\$95.00	\$315.00
Pump Jack 6' Poles - Master #	All Models	\$35.00	\$115.00
Pump Jack 24' Poles - Master #	All Models	\$55.00	\$175.00
Pump Jack & Work Bench - Master #	All Models	\$35.00	\$115.00
Pump Jack 12' Poles - Master #	All Models	\$45.00	\$125.00
Pump Jack Foldable Support Brace - Master #	All Models	\$20.00	\$45.00
Pump Jack Pole Extension - Master #	All Models	\$25.00	\$55.00
Pump Jack (Pole Feet - Soft Surface) - Master #	All Models	\$5.00	\$12.00
Pump Jack (Pole Feet - Hard Surface) - Master #	All Models	\$5.00	\$12.00
Rough Terrain Scissor Lift	33'-0" Working Height	\$576.00	\$1,320.00
Rough Terrain Scissor Lift	59'-0" Working Height	\$736.00	\$1,812.00
Self Dumping Hopper	2 Yard Capacity	\$180.00	\$340.00
Self-Leveling Tower Crane Pallet Forks	All Models	\$115.00	\$350.00
Skidsteer 68" Bucket Attachment	All Models	\$95.00	\$230.00
Skidsteer 72" Industrial Grapple Bucket	All Models	\$230.00	\$460.00
Skidsteer Fork Attachment	All Models	\$79.00	\$175.00
Skidsteer Loader	8,000lb Capacity	\$675.00	\$1,750.00
Telehandler Reach Forklift	10,000lb Capacity - 42'-0" - 55'-0" Reach	\$1,552.00	\$3,840.00
Telehandler Reach Forklift	12,000lb Capacity - 42'-0" - 54'-0" Reach	\$1,650.00	\$3,915.00
Telehandler Reach Forklift	6,000lb Capacity - 42'-0" - 36'-0" Reach	\$830.00	\$1,980.00
Telescopic Boom Glazing Kit	All Models	\$55.00	\$115.00
Telescopic Boom Lift	60' Working Height	\$925.00	\$2,300.00
Telescopic Boom Lift	45' Working Height	\$708.00	\$1,708.00
PNEUMATIC EQUIPMENT			
1/4 - 3/8" Air Hose	50' - 100' Lengths	\$5.00	\$10.00
3/4" - 1-1/2" Air Hose	50' - 100' Lengths	\$10.00	\$20.00
3-Way Air Water Separator	All Models	\$10.00	\$20.00
Coil Framing Nailer	All Models	\$82.00	\$200.00
Demolition Breaker	10-20lb	\$100.00	\$208.00
Demolition Breaker	90lb	\$136.00	\$296.00
Demolition Breaker	60lb	\$120.00	\$268.00
Diesel Tow Air Compressor	160 CFM - 185 CFM	\$250.00	\$800.00
Finish Nailer	15 gage 2-1/2" Max	\$82.00	\$200.00
Finish Nailer	18V Cordless	\$82.00	\$200.00
Finish Nailer Battery	18V Cordless	\$15.00	\$35.00

Finish Nailer Charger	18V Cordless	\$20.00	\$40.00
Framing Nailer	2" - 3-1/2" Fastener Length	\$95.00	\$215.00
Framing Nailer	3-1/4" Fastener Length	\$95.00	\$215.00
Hand Carried Air Compressor	4.6 CFM (+) Capacity	\$75.00	\$150.00
Palm Nailer	All Models	\$10.00	\$25.00
Pneumatic Compactor	10'-0" Pogo Style	\$100.00	\$208.00
Pneumatic Epoxy Gun	All Models	\$60.00	\$175.00
Pneumatic Impact Wrench	All Models	\$52.00	\$155.00
Portable Air Compressor Storage Tank	10-Gallon	\$25.00	\$85.00
Rivet Gun	All Models	\$25.00	\$75.00
Staple Nailer	1-1/2" Max Fastener Length	\$82.00	\$200.00
Strap-Tite Fastening System Strip Nailer	2-1/2" - Fastener Length	\$95.00	\$215.00
Wheeled Electric Air Compressor	6.5 CFM	\$100.00	\$175.00
Wheeled Electric Air Compressor	12.5 - 18.8 CFM	\$220.00	\$495.00

CONCRETE EQUIPMENT

Backpack Vibrator	1.3 - 2 HP - 7,000 - 9,000 RPM	\$170.00	\$510.00
Box Form Panel	All Models - All Sizes	\$8.00	\$21.00
Bull Float Concrete Finish Trowel	All Models	\$23.00	\$45.00
Column Clamp	12x36 All Models	\$13.00	\$13.00
Column Clamp Squaring Corner w/bolts	All Models	\$0.50	\$2.00
Concrete Blankets	All Models - All Sizes	\$4.00	\$16.00
Concrete Finish Broom	All Models	\$15.00	\$30.00
Concrete Hopper Attachment	All Models	\$45.00	\$175.00
Concrete Knee Slides	All Models	\$10.00	\$25.00
Concrete Mixer	6 - 9 Cubic Feet	\$150.00	\$300.00
Concrete Vibrator Head	All Models - All Sizes	\$15.00	\$35.00
Concrete Vibrator Whip	All Models - All Sizes	\$90.00	\$150.00
Ellis Shore	All Models	\$2.00	\$5.00
External Wall Vibrator w/Mounting Hardware	High-Frequency	\$101	\$303
Finish Trowel 6' Connection Poles	All Models	\$5.00	\$15.00
Form Aligners	All Models	\$2.00	\$5.00
Fresno Concrete Finish Trowel	All Models	\$23.00	\$45.00
Grout Pump	All Models	\$100.00	\$300.00
Hair Pins	All Models	\$0.05	\$0.20
Inflatable Jack	44,960lb (+) Lifting Capacity	\$35.00	\$285.00
Internal Concrete Vibrator	1.5 - 2.5 HP	\$125.00	\$400.00
John A Form Brackets	All Models	\$0.25	\$0.75
Jumping Jack & Plate Compactor	8" - 24"	\$275.00	\$400.00
Muck Rake	All Models	\$15.00	\$25.00
OSHA Compliant Rebar Caps	All Models	\$0.50	\$0.50
Portable Rebar Bender & Cutter	All Models	\$75.00	\$125.00
Scaffold Brackets	All Models	\$5.00	\$10.00
Squaring Corner w/bolts	All Models	\$0.50	\$2.00
Stake Puller	All Models	\$15.00	\$35.00
Steel Stakes	18" Domestic	\$0.25	\$1.00
Steel Stakes	24" Domestic	\$0.50	\$1.25
Steel Stakes	36" Domestic	\$0.75	\$1.50
Steel Stakes	48" Domestic	\$1.00	\$1.75
Water-Stop Iron	All Models	\$10.00	\$20.00
Wheel Barrow	All Models	\$25.00	\$60.00

TEMPORARY DRYOUT EQUIPMENT

12" Flexible Vortex Axial Ducting	All Models	\$15.00	\$40.00
12" Plastic Layflat Ducting	All Models	\$50.00	\$100.00
1-Speed Industrial Fan	16" Direct Drive Drum	\$105.00	\$208.00
20AMP - Temp Heat Electrical Cord Set	10/3 - 20AMP - 50' - 150' Length	\$20.00	\$40.00
240V Extension Cord - Temp Heat - Master #	240V 50' - 100' Extension Cord	\$75.00	\$115.00
240V Extension Cord Pig Tail - Temp Heat - Master #	240V 15' - 30' Pig Tail w/Plug	\$25.00	\$75.00
2-Speed Industrial Fan	36" Direct Drive Drum	\$105.00	\$268.00
3/4" Gas Hose	50'-0" - Natural Gas or Propane	\$25.00	\$50.00
3-Speed Fan	All Models	\$35.00	\$75.00
5gal - 25gal Propane Tank	All Models	\$15.00	\$35.00
7gal - 10gal. Propane Tanks	All Models	\$20.00	\$65.00
Air Mover	1,625 (+) CFM	\$95.00	\$175.00
Dehumidifier	227 CFM - 132PMPD	\$145.00	\$405.00
Dehumidifier	160 CFM - 120PMPD	\$175.00	\$475.00
Direct Fire Forced Air Heater	225K-375K Heater	\$132.00	\$272.00
Electric Heater	12" 3-Phase (240/208)	\$140.00	\$370.00
Electric Space Heater	All Models	\$20.00	\$50.00
Indirect Fire Heater	400,000 BTU Propane or Natural Gas	\$450.00	\$1,250.00

Indirect Fire Heater	300,000 BTU (+) Propane Only	\$140.00	\$375.00
Indirect Fire Heater	500,000 BTU Propane or Natural Gas	\$450.00	\$1,250.00
Indirect Fire Heater	500,000 BTU Diesel	\$248.00	\$496.00
Portable Air Scrubber	2,000 CFM	\$125.00	\$225.00
Portable Air Scrubber	2,000 CFM - 3-speed	\$250.00	\$475.00
Room Pressure Monitor	All Models	\$95.00	\$175.00
Vortex Axial Fan	2,041 CFM Exhaust Fan	\$115.00	\$225.00

SMALL TOOLS

1" Cordless Rotary Hammer	36V - 1" Diameter	\$125.00	\$285.00
1/2" Right Angle Drill	11.5 Amp Stud/Joist	\$35.00	\$85.00
1/2" Drill Motor	All Models	\$35.00	\$85.00
1/2" Electric Impact Wrench	All Models	\$52.00	\$108.00
10" Corded Table Saw	All Models	\$125.00	\$300.00
12' Grade Rod	All Models	\$25.00	\$52.00
12" Compound Miter Saw	All Models	\$125.00	\$300.00
13" Corded Planer	All Models	\$100.00	\$200.00
14" Electric Cut-Off Saw	All Models	\$185.00	\$408.00
18V 1/2" Hammer Driver	All Models	\$35.00	\$85.00
18V 1/4" Impact Driver	All Models	\$45.00	\$90.00
18V 20oz Sausage Caulking Gun	All Models	\$35.00	\$115.00
18V 2-Port Battery Charger	All Models	\$15.00	\$35.00
18V 3/8" Impact Driver	All Models	\$45.00	\$90.00
18V 3/8" Right Angle Drill	All Models	\$45.00	\$90.00
18V 4-Port Battery Charger	All Models	\$25.00	\$65.00
18V Angle Grinder	All Models	\$40.00	\$95.00
18V Circular Saw	All Models	\$50.00	\$100.00
18V Cordless Blower	All Models	\$20.00	\$60.00
18V Cordless Crown Stapler	All Models	\$45.00	\$100.00
18V Cordless Drywall Cut Tool	All Models	\$30.00	\$80.00
18V Cordless Multi-Tool	All Models	\$25.00	\$75.00
18V Cordless Vacuum	All Models	\$20.00	\$50.00
18V High Torque Impact Wrench	All Models	\$40.00	\$120.00
18V Jig Saw	All Models	\$50.00	\$125.00
18V Portable Band Saw	All Models	\$60.00	\$120.00
18V Reciprocating Saw	All Models	\$75.00	\$125.00
1-9/16" Rotary Hammer	All Models	\$125.00	\$285.00
2" Submersible Sump Pump	All Models	\$115.00	\$225.00
20' Grade Rod	All Models	\$25.00	\$52.00
20V Cordless Grease Gun Kit	All Models	\$45.00	\$115.00
3/4" Electric Impact Wrench	All Models	\$80.00	\$175.00
3/4" Submersible Pump	All Models	\$15.00	\$75.00
3/8" Drill Motor	All Models	\$25.00	\$56.00
3-1/4" Hand Planer	All Models	\$45.00	\$90.00
36V Cordless 7-1/4" Circular Saw	All Models	\$33.00	\$100.00
36V Cordless Backpack Vacuum	All Models	\$48.00	\$145.00
5 Amp Drywall Cutout Tool Kit	All Models	\$40.00	\$90.00
Angle Grinder	All Models - All Sizes	\$60.00	\$170.00
Backpack Vacuum	2-4 Gallon	\$50.00	\$100.00
Bander 3/4" + Crimper, Ratchet, Snips	All Models	\$125.00	\$300.00
Biscuit Joiner	All Models	\$45.00	\$90.00
Builders Level	All Models	\$125.00	\$300.00
Burke Bar	All Models	\$15.00	\$35.00
Chain Saw	18"-24" - All Models	\$145.00	\$325.00
Chop Saw - Metal	All Models	\$100.00	\$300.00
Cordless 18V Strip Screw Gun	All Models	\$35.00	\$85.00
Core Drill	Hand Held/Stand - Wet/Dry - 5" Max	\$310.00	\$670.00
Dremel Multi Tool	All Models	\$25.00	\$50.00
Dust Mop w/Bucket	All Models	\$15.00	\$35.00
Electric Chain Saw	18"-24" - All Models	\$150.00	\$285.00
Electric Demolition Breaker	All Models - All Sizes	\$90.00	\$360.00
Electric Jigsaw	All Models	\$50.00	\$125.00
Electric Screwgun	All Models	\$50.00	\$105.00
Fiber Cement Saw	All Models	\$56.00	\$115.00
Fine/Coarse Push Brooms	All Models	\$15.00	\$35.00
Floor Scraper	All Models	\$15.00	\$35.00
Gas Cut-Off Saw	12"-14" - All Models	\$185.00	\$408.00
Gas Powered Backpack Leaf Blower	All Models	\$100.00	\$250.00
Gas Powered Leaf Blower	Handheld - All Models	\$50.00	\$125.00
Hardie Plank Shears	All Models	\$75.00	\$150.00
Heat Gun	All Models	\$15.00	\$35.00

HEPA Wet/Dry Shop Vacuum	12-16 Gallon - All Models	\$85.00	\$135.00
Hicky Bar	All Models	\$15.00	\$35.00
Hilti Core Motor Vacuum Pump	All Models	\$100.00	\$250.00
Landscape Rake	All Models	\$22.00	\$44.00
Magnetic Metal Collector Wheeled	All Models	\$15.00	\$35.00
Manual Operated Epoxy Gun	All Models	\$20.00	\$35.00
Metal Cutting Shears	All Models	\$75.00	\$150.00
Mortar Grinder	All Models	\$40.00	\$95.00
Orbital Sander	All Models	\$35.00	\$65.00
Osculating Multi-Tool	All Models	\$35.00	\$75.00
Particle Counter	All Models	\$175.00	\$395.00
Pick & Pick Axe	All Models	\$9.00	\$10.00
Portable Band Saw	All Models	\$60.00	\$120.00
Portable Electric Router	All Models	\$35.00	\$75.00
Portable Gas/Electric Welder	208/110V	\$115.00	\$460.00
Portable Manual Mag Drill	All Models	\$15.00	\$45.00
Post Hole Digger	All Models	\$15.00	\$35.00
Powder Actuated Fastener	Automatic - All Models	\$175.00	\$325.00
Powder Actuated Pole Attachment	2' - 7' Attachment	\$18.00	\$45.00
Pry Bar	All Models	\$5.00	\$5.00
Razor Blade Scraper	All Models	\$15.00	\$35.00
Reciprocating Saw	All Models	\$44.00	\$152.00
Reciprocating Saw	All Models	\$44.00	\$152.00
Rotating Inspection Scope	All Models	\$50.00	\$95.00
Rotating Laser Receiver Eye	All Models	\$60.00	\$125.00
Scoop Shovel	All Models	\$15.00	\$26.00
Scrub Brush	All Models	\$15.00	\$15.00
Self Leveling Dot Laser	2 - 5 Point	\$90.00	\$125.00
Self Leveling Rotating Laser	All Models	\$210.00	\$430.00
Shingle Remover	All Models	\$15.00	\$35.00
Sledge Hammer	All Models	\$16.00	\$32.00
Spade Point Shovel	All Models	\$15.00	\$26.00
Square Point Shovel	All Models	\$15.00	\$26.00
Squeegee	All Models	\$15.00	\$35.00
Steel Rake	All Models	\$8.00	\$10.00
Steel Tamp	All Models	\$15.00	\$35.00
Sump Pump Hose	2" x 50'-0"	\$10.00	\$20.00
Time Lapse Construction Camera	All Models	\$25.00	\$85.00
Toe Kick Saw	All Models	\$20.00	\$45.00
Torque Wrench	All Models	\$10.00	\$25.00
T-Post Driver	All Models	\$15.00	\$35.00
Trench Shovel	All Models	\$25.00	\$50.00
Trimble Adjustable Tri-pod Legs	All Models	\$20.00	\$65.00
Trimble Bipod	All Models	\$20.00	\$65.00
Trimble Prism Pole	All Models	\$15.00	\$35.00
Trimble Robotic Total Station	All Models	\$690.00	\$2,750.00
Trimble Tablet with Field Link for Structures - Windows 7	All Models	\$250.00	\$1,000.00
Tri-Pod Material Roller	All Models	\$16.00	\$32.00
Tri-Pod Material Roller	All Models	\$16.00	\$32.00
Tri-pod Self Leveling Laser Support Legs	All Models	\$25.00	\$52.00
Water Hose	3/4" - 1" Hose Width	\$5.00	\$15.00
Water Pump Can (For Coring Machine)	All Models	\$45.00	\$75.00
Wet/Dry Shop Vacuum	12 - 16 Gallon Wet/Dry	\$50.00	\$100.00
Worm Drive 10-1/4" Circular Saw	All Models	\$90.00	\$175.00
Worm Drive 16-15/16" Circular Saw	All Models	\$79.00	\$265.00
Worm Drive 7-1/4" Circular Saw	All Models	\$56.00	\$115.00
Worm Drive 8" Metal Cutting Circular Saw	All Models	\$100.00	\$200.00
Worm Drive Skilsaw Chain Beam Saw	All Models	\$100.00	\$225.00
SAFETY EQUIPMENT			
10' Premium Cross Arm Strap	All Models	\$15.00	\$35.00
100' Poly Steel Rope Vertical Lifeline Assembly	All Models	\$50.00	\$100.00
100' Poly Steel Rope Vertical Lifeline Assembly	All Models	\$50.00	\$100.00
100' Polyester Horizontal Lifeline	All Models	\$75.00	\$175.00
11' Self Retractable Lifeline	All Models	\$35.00	\$50.00
12' Premium Cross Arm Strap	All Models	\$15.00	\$35.00
18" Shock Absorbing Extension Lanyard	All Models	\$15.00	\$35.00
30' Self Retractable Lifeline	All Models	\$125.00	\$300.00
4' Single Shock Absorbing Lanyard	All Models	\$15.00	\$35.00
50' Poly Steel Rope Vertical Lifeline Assembly	All Models	\$50.00	\$100.00
50' Self Retractable Lifeline	All Models	\$125.00	\$300.00

6' Double Self Retractable Lifeline w/Rebar Hook	All Models	\$15.00	\$35.00
6' Double Shock Absorbing Lanyard w/PERI Rebar Hooks	All Models	\$15.00	\$35.00
6' Premium Cross Arm Strap	All Models	\$10.00	\$25.00
6' Self Retractable Lifeline	All Models	\$15.00	\$45.00
6' Self Retractable Lifeline	All Models	\$15.00	\$45.00
6' Single Shock Absorbing Lanyard	All Models	\$15.00	\$35.00
60' Horizontal Lifeline	All Models	\$132.00	\$525.00
85' Self Retractable Lifeline	All Models	\$215.00	\$475.00
Aluminum Stanchion Pole	All Models	\$69.00	\$275.00
Armadillo SRL Cradle	All Models	\$50.00	\$105.00
Chain Rebar/Positioning Lanyard w/PERI Rebar Hook	All Models	\$15.00	\$35.00
Delineator	42" Delineator w/Rubber Base	\$5.00	\$10.00
Fire Extinguisher	5lbs - 20lbs - All Models	\$25.00	\$45.00
Fire Hose	2" x 50'-0" - 100'-0" Sections	\$18.00	\$35.00
First Aid Kit	10 Person - 50 Person - All Models	\$15.00	\$35.00
Full Body Harness	All Models	\$35.00	\$50.00
Guardian Roof Stanchion	All Models	\$15.00	\$45.00
Skyhook Roof Anchor	All Models	\$10.00	\$20.00
Window Gap Anchor	All Models	\$125.00	\$300.00

TEMPORARY POWER & LIGHTING

10kW Generator	All Models	\$263.00	\$700.00
18V LED Task Light	All Models	\$25.00	\$65.00
30' Temp Power Pole w/Flood Light	All Models	\$200.00	\$375.00
5kW/180Hz Generator	All Models	\$200.00	\$450.00
60Hz Generator	1600 Watt - All Models	\$104.00	\$334.00
60hz Generator	3800 Watt - All Models	\$175.00	\$350.00
Extension Cord	12/3 - All Models - All Sizes	\$15.00	\$25.00
Extension Cord 3-Way	12/3 - All Models - All Sizes	\$5.00	\$10.00
GFCI Extension Cord 3-Way	12/3 - All Models - All Sizes	\$15.00	\$35.00
Hang-A-Light	105W Halogen - All Models	\$25.00	\$75.00
Light Tower	All Models	\$348.00	\$637.00
Portable LED Light Stand	All Models	\$25.00	\$65.00
Portable LED Task Light (No Stand)	All Models	\$10.00	\$25.00
Portable Power Distribution Center	50amp - All Models	\$65.00	\$160.00
String Light	120V - All Models - All Sizes	\$50.00	\$80.00
Temporary Power Cord	50amp - All Models - All Sizes	\$75.00	\$115.00
Temporary Power Cord 3-Way	50amp - All Models - All Sizes	\$15.00	\$45.00
Temporary Power Starter Cord	50amp - All Models - All Sizes	\$55.00	\$95.00

MISCELLANEOUS EQUIPMENT

1 Cubic Yard Capacity Concrete Bucket w/Side Chute	All Models	\$180.00	\$340.00
1,000 lb. Utility Wagon	All Models	\$25.00	\$65.00
1,800LBS Eco Blocks	All Models	\$10.00	\$18.00
1.5 Yard Tilt Truck	All Models	\$145.00	\$275.00
1/2 Yard Tilt Truck	All Models	\$125.00	\$200.00
10' Aluma Shore Beam	All Models	\$35.00	\$65.00
10' Guard Railing - Scaffolding	All Models	\$1.00	\$3.00
10' Rolling Scaffold Plank - Scaffolding	All Models	\$65.00	\$175.00
10' x 2' Cross Brace - Scaffolding	All Models	\$1.00	\$3.00
10' x 4' Cross Brace - Scaffolding	All Models	\$1.00	\$3.00
108 Gallon Diesel Fuel Storage Box w/20gal Manual Pump	All Models	\$20.00	\$75.00
14" Baker Scaffold Outriggers	All Models	\$18.00	\$55.00
15"-20" Pressure Washer Scrubber Attachment - Master #	All Models	\$17.00	\$50.00
16' Aluma Shore Beam	All Models	\$45.00	\$75.00
2 Yard Trash Material Handler	All Models	\$60.00	\$225.00
20 Gallon - 55 Gallon Trash Container	All Models	\$15.00	\$35.00
24" Pressure Washer Sidewalk Scrubber	All Models	\$35.00	\$115.00
3 Cubic Yard Capacity Concrete Bucket w/Side Chute	All Models	\$180.00	\$340.00
3' x 5' End Frames - Scaffolding	All Models	\$4.00	\$12.00
3,000 Lb. Load Drywall Cart	All Models	\$50.00	\$100.00
3,500 PSI Gas Pressure Washer	All Models	\$275.00	\$600.00
3,600LBS Eco Blocks	All Models	\$10.00	\$18.00
3000 PSI Gas Pressure Washer	All Models	\$250.00	\$525.00
4 Yard Trash Material Handler	All Models	\$115.00	\$460.00
4" Trash Pump- Gas	All Models	\$225.00	\$400.00
4,000 PSI Gas Pressure Washer	All Models	\$275.00	\$600.00
4,000 PSI Gas Pressure Washer	All Models	\$275.00	\$600.00
5 Gallon Portable Water Container	All Models	\$5.00	\$10.00
5' Guard Railing - Scaffolding	All Models	\$1.00	\$3.00
5' x 5' End Frames - Scaffolding	All Models	\$4.00	\$12.00

5,500 Lb. Load Pallet Truck	All Models	\$115.00	\$275.00
55 Gallon Gas Fuel Storage Box w/20gal Manual Pump	All Models	\$20.00	\$75.00
6' Alumina Shore Beam	All Models	\$25.00	\$50.00
6' Rolling Scaffold	All Models	\$50.00	\$100.00
6' Rolling Scaffold Handrail System	All Models	\$25.00	\$65.00
6'x10' x 1" Steel Plate	All Models	\$85.00	\$200.00
8" Caster - Master #	All Models	\$1.00	\$1.00
8'x10' x 1" Steel Plate	All Models	\$95.00	\$215.00
8'x15' x 3/4"-1" Steel Plate	All Models	\$95.00	\$235.00
Adjustable Socket Jack - Scaffolding	All Models	\$1.00	\$3.00
Brother MFC Printer	All Models	\$50.00	\$125.00
Cable Spool Cart	All Models	\$50.00	\$150.00
Clamp Ladder Bracket - Scaffolding	All Models	\$1.00	\$1.00
Clamp Ladder Section - Scaffolding	All Models	\$2.00	\$5.00
Conduit/Pipe Mac Rack Cart	All Models	\$75.00	\$190.00
Crosswalk Closed Ahead Signage	All Models	\$10.00	\$25.00
Crosswalk Closed Signage	All Models	\$10.00	\$25.00
Cube Material Handling Truck	Cube Truck - 4716 - 16cu'	\$63.00	\$250.00
Data Vault	All Models	\$425.00	\$1,500.00
Detour Signage	All Models	\$10.00	\$25.00
Digital Radio w/ Speaker Mic. Tier Program, Retainer Clip	All Models	\$42	\$125
Fixed 12 MP Webcam w/ Digital Zoom	True Look - 12MP, 90W Solar Panel, 5 day Back Up	\$175.00	\$700.00
Fixed 12 MP Webcam w/ Digital Zoom	All Models	\$175.00	\$700.00
Floor Jack	All Models - 3-Ton	\$25	\$100
Folding Office Chair	All Models	\$4.00	\$5.00
Folding Office Table	All Models	\$15.00	\$32.00
Forklift Self Dumping Hopper	All Models	\$180.00	\$340.00
Fuel Box	All Models	\$75.00	\$125.00
Guard Rail Swing Gate - Scaffolding	All Models	\$2.00	\$5.00
Guard Railing Post - Scaffolding	All Models	\$1.00	\$3.00
Jobsite Storage Box	All Models	\$85.00	\$200.00
Left Lane Merge	All Models	\$10.00	\$25.00
Left Turn Only Signage	All Models	\$10.00	\$25.00
Lifting Bar - 2K lb. WLL - 23" Chute - Master #	All Models	\$19.17	\$57.50
Microwave	All Models	\$25.00	\$75.00
Mini Fridge	All Models	\$50.00	\$125.00
Motorola Radio	All Models	\$15.00	\$35.00
No Left Turn Signage	All Models	\$10.00	\$25.00
No Right Turn Signage	All Models	\$10.00	\$25.00
No Through Traffic	All Models	\$10.00	\$25.00
Office Printer	All Models	\$250.00	\$625.00
Pedestrian Detour Signage	All Models	\$10.00	\$25.00
Portable Hand Truck	All Models	\$10.00	\$25.00
Rescue Stretcher w/ Bridal Swing	All Models	\$25.00	\$175.00
Right Lane Closed Ahead	All Models	\$10.00	\$25.00
Right Lane Merge	All Models	\$10.00	\$25.00
Right Turn Only Signage	All Models	\$10.00	\$25.00
Road Closed Ahead (Roll-up & Fixed)	All Models	\$10.00	\$25.00
Road Closed Signage (Roll-up)	All Models	\$10.00	\$25.00
Road Work Ahead Signage	All Models	\$10.00	\$25.00
Road Work Ahead Signage (Roll-up)	All Models	\$10.00	\$25.00
Rolling Work Station Utility Cart	All Models	\$115	\$205
Rolling Work Station Utility Cart	All Models	\$115.00	\$205.00
Shore Posts	All Models	\$20.00	\$35.00
Shoring Storage Cart w/Casters	All Models	\$0.00	\$0.00
Shoring Storage Cart w/Casters - Master #	All Models	\$34.00	\$135.00
Sidewalk Closed & Detour Signage	All Models	\$50.00	\$80.00
Sidewalk Closed Ahead & Detour Signage	All Models	\$50.00	\$80.00
Sidewalk Closed Ahead Signage	All Models	\$10.00	\$25.00
Sidewalk Closed Signage	All Models	\$10.00	\$25.00
Steel Eco Pan	16"-24" - All Models	\$111.00	\$444.00
Steel Material Fly Box	All Models - All Sizes	\$50.00	\$200.00
Steel Plywood Carts w/Crane Pick points	All Models	\$100.00	\$399.00
Temporary Metal Street Signage Stand w/Flags	All Models	\$20.00	\$45.00
Type I Barricade	All Models	\$10.00	\$25.00
Type II Barricade	All Models	\$10.00	\$25.00
Type III Barricade	All Models	\$10.00	\$25.00
Utility Cart	All Models	\$75.00	\$125.00
Water Barrier	All Models	\$8.00	\$33.00
Wraparound Door - 5mm door - 23" - Master #	All Models	\$28.00	\$84.00

Wraparound Door - 5mm Door - 30" - Master #	All Models	\$28.00	\$84.00
Wraparound Regular - 5mm- 23" - Master #	All Models	\$16.11	\$48.33
Wraparound Regular - 5mm- 30" - Master #	All Models	\$16.11	\$48.33
Wraparound Top Hopper - 5mm door - 23" - Master #	All Models	\$21.00	\$63.00
Wraparound Top Hopper - 5mm Door - 30" - Master #	All Models	\$21.00	\$63.00

LADDERS

10' Fiberglass Step Ladder	375lb Capacity	\$60.00	\$132.00
12' Fiberglass Step Ladder	375lb Capacity	\$60.00	\$140.00
16' Fiberglass Extension Ladder	300lb Capacity	\$60.00	\$120.00
20' Fiberglass Extension ladder	300lb Capacity	\$60.00	\$120.00
24' Fiberglass Extension Ladder	300lb Capacity	\$60.00	\$120.00
28' Fiberglass Extension Ladder	300lb Capacity	\$75.00	\$150.00
32' Fiberglass Extension Ladder	300lb Capacity	\$75.00	\$145.00
4' Fiberglass Step Ladder	375lb Capacity	\$50.00	\$100.00
40' Fiberglass Extension Ladder	300lb Capacity	\$108.00	\$228.00
6' Fiberglass Step Ladder	375lb Capacity	\$50.00	\$108.00
8' Fiberglass Step Ladder	375lb Capacity	\$40.00	\$120.00

SIGNAGE

PPE Cortex Sign (2x4 - 4x6)	All Models	\$10.00	\$25.00
Safety Pride Cortex Sign (2'x2' - 4'x4')	All Models	\$15.00	\$35.00
4'x8' Bremik Di-Bond Sign	All Models	\$20.00	\$55.00
2'x3' Bremik Di-Bond Sign	All Models	\$15.00	\$35.00
4'x4' Bremik Di-Bond Sign	All Models	\$15.00	\$35.00
Mesh Bremik Logo Privacy Screen (6'x12' - 6'x50')	All Models	\$20.00	\$55.00
70% Black Mesh Privacy Screen (6'x12' - 50')	All Models	\$5.00	\$10.00
7.5' x 9.5' Bremik Tower Crane Sign	All Models	\$85.00	\$345.00
Mesh Bremik Safety Logo Privacy Screen (6'x12' - 6'x50')	All Models	\$20.00	\$55.00
Mesh Bremik Safety Logo / Requirements Privacy Screen (6'x12' - 6'x50')	All Models	\$20.00	\$55.00
Site Safety Information Board	All Models	\$10.00	\$25.00

VEHICLES

14K Deckover Trailer	All Models	\$120.00	\$450.00
14K Dump Trailer w/Side Kit	All Models	\$320.00	\$1,280.00
14K Tilt Deck Trailer	All Models	\$120.00	\$450.00
2x4 - 4x4 Vehicle	All Models	\$250.00	\$750.00
Utility Trailer	All Models	\$65.00	\$275.00

TECHNOLOGY

iPad with Case	All Models	\$45.00	\$170.00
Maturity Reader	All Models	\$50.00	\$149.00
Infrared Camera	All Models	\$167.00	\$500.00

**All equipment not shown will be billed at 80% book rate*

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit E – List of Documents

BREMIK

CONSTRUCTION

1026 SE STARK ST. | PORTLAND, OR 97214 | P 503.688.1000 | F 503.688.1005 | WWW.BREMIK.COM

TUALATIN SERVICE CENTER		
EXHIBIT E - LIST OF DOCUMENTS		
SHEET NUMBER & TITLE	DATE	ADDENDUM
GENERAL		
GO.01 - GENERAL PROJECT INFORMATION	2/7/2020	1
G1.01 - CODE SUMMARY	1/20/2020	
CIVIL		
C100 - EXISTING CONDITIONS PLAN	1/20/2020	
C110 - CIVIL DEMOLITION PLAN	1/20/2020	
C200 - CIVIL SITE PLAN	1/20/2020	
C210 - SITE GRADING PLAN	1/20/2020	
C211 - GRADING PLAN	2/7/2020	1
C300 - STORM SEWER PLAN	1/20/2020	
C400 - WATER AND SANITARY SEWER PLAN	2/7/2020	1
C500 - CIVIL DETAILS	1/20/2020	
C501 - CIVIL DETAILS	1/20/2020	
EC100 - EROSION AND SEDIMENT CONTROL PLAN	1/20/2020	
ECHO - EROSION AND SEDIMENT CONTROL PLAN	1/20/2020	
EC200 - EROSION AND SEDIMENT CONTROL DETAILS	1/20/2020	
EC210 - EROSION AND SEDIMENT CONTROL DETAILS	1/20/2020	
LANDSCAPE		
L1.00 - TREE PROTECTION PLAN	1/20/2020	
L2.00 - LANDSCAPE PLAN	2/7/2020	1
L3.00 - IRRIGATION PLAN	2/7/2020	1
L400 - LANDSCAPE DETAILS	1/20/2020	
ARCHITECTURAL		
AO.01 - ARCHITECTURAL GENERAL NOTES	2/7/2020	1
AO.10 - GENERAL DIAGRAMS	1/20/2020	
AO.20 - ASSEMBLIES	2/7/2020	1
AD.01 - DEMOLITION PLAN	1/20/2020	
A1.01 - SITE PLAN	1/20/2020	
A1.02 - SITE DETAILS	2/7/2020	1
AS.11 - FIRST FLOOR SLAB PLAN	2/7/2020	1
A2.11 - FIRST FLOOR PLAN	2/7/2020	1
A2.12 - FIRST FLOOR PLAN - DIMENSIONS	1/20/2020	
A2.21 - ROOF PLAN	2/7/2020	1
A2.31 - FIRST FLOOR REFLECTED CEILING PLAN	2/7/2020	1
A2.41 - FIRST FLOOR FINISH PLAN	1/20/2020	
A2.61 - FIRST FLOOR FURNITURE PLAN	2/7/2020	1

A3.01 - EXTERIOR ELEVATIONS	2/7/2020	1
A4.01 - BUILDING SECTIONS	2/7/2020	1
A5.01 - WALL SECTIONS	2/7/2020	1
A5.02 - WALL SECTIONS	2/7/2020	1
A6.01 - ENLARGED PLANS - BATHROOMS	2/7/2020	1
A7.01 - GENERAL EXTERIOR DETAILS	1/20/2020	
A7.21 - EXTERIOR DETAILS - OPENINGS	2/7/2020	1
A7.31 - EXTERIOR DETAILS	2/7/2020	1
A7.32 - EXTERIOR DETAILS	2/7/2020	1
A7.33 - EXTERIOR DETAILS - ROOF	2/7/2020	1
A7.34 - EXTERIOR DETAILS - SEISMIC JOINTS	2/7/2020	1
A7.35 - EXTERIOR DETAILS	2/7/2020	1
A8.01 - INTERIOR ELEVATIONS	2/7/2020	1
A8.02 - INTERIOR ELEVATIONS	2/7/2020	1
A8.03 - INTERIOR ELEVATIONS	2/7/2020	1
A9.01 - GENERAL INTERIOR DETAILS	2/7/2020	1
A9.02 - INTERIOR DETAILS	1/20/2020	
A9.11 - INTERIOR DETAILS - CASEWORK	1/20/2020	
A9.12 - INTERIOR DETAILS - CASEWORK	2/7/2020	1
A10.01 - DOOR SCHEDULE AND DOOR TYPES	2/7/2020	1
A10.11 - WINDOW SCHEDULE AND TYPES	2/7/2020	1
A10.21 - FINISH SCHEDULE AND LEGEND	2/7/2020	1

STRUCTURAL

S1.01 - STRUCTURAL NOTES	1/20/2020	
S2.11 - FOUNDATION PLAN	2/7/2020	1
S2.21 - ROOF FRAMING PLAN	2/7/2020	1
S3.01 - FOUNDATION DETAILS	2/7/2020	1
S4.01 - FRAMING DETAILS	2/7/2020	1
S4.02 - FRAMING DETAILS	2/7/2020	1

PLUMBING

P001 - SYMBOL LIST AND GENERAL NOTES - PLUMBING	2/7/2020	1
P002 - SCHEDULES-PLUMBING	2/7/2020	1
PD201 - FIRST FLOOR DEMO OVERALL PLAN - PLUMBING	2/7/2020	1
P200 - UNDERGROUND OVERALL PLAN	2/7/2020	1
P201 - FIRST FLOOR OVERALL PLAN - WASTE AND VENT	2/7/2020	1
P202 - FIRST FLOOR OVERALL PLAN - WATER AND GAS	2/7/2020	1
P301 - ROOF OVERALL PLAN - PLUMBING	2/7/2020	1
P501 - SANITARY RISER DIAGRAMS	2/7/2020	1
P502 - DOMESTIC WATER RISER DIAGRAMS	2/7/2020	1
P601 - DETAILS - PLUMBING	2/7/2020	1

MECHANICAL

M001 - SYMBOL LIST AND GENERAL NOTES - MECHANICAL	2/7/2020	1
M002 - SCHEDULES - MECHANICAL	2/7/2020	1
M101 - ZONE OVERALL PLAN - MECHANICAL	2/7/2020	1
MD201 - FIRST FLOOR DEMO OVERALL PLAN - MECHANICAL	2/7/2020	1
M201 - FIRST FLOOR OVERALL PLAN - MECHANICAL	2/7/2020	1
M202 - ROOF OVERALL PLAN - MECHANICAL	2/7/2020	1

M301 - FIRST FLOOR OVERALL PLAN - MECHANICAL	2/7/2020	1
M501 - VRF PIPING DIAGRAMS - MECHANICAL	2/7/2020	1
M601 - DETAILS - MECHANICAL	2/7/2020	1

ELECTRICAL

E001 - SYMBOL LIST AND GENERAL NOTES - ELECTRICAL	2/7/2020	1
E002 - LUMINAIRE SCHEDULE	2/7/2020	1
E102 - SITE PLAN - ELECTRICAL	2/7/2020	1
ED102 - SITE PLAN DEMO - ELECTRICAL	2/7/2020	1
E201 - FIRST FLOOR OVERALL PLAN - LIGHTING	2/7/2020	1
ED201 - FIRST FLOOR DEMO PLAN - LIGHTING	2/7/2020	1
E301 - FIRST FLOOR OVERALL PLAN - POWER	2/7/2020	1
E302 - ROOF OVERALL PLAN - POWER	2/7/2020	1
E401 - DETAILS - ELECTRICAL	2/7/2020	1
ED301 - FIRST FLOOR DEMO PLAN - POWER	2/7/2020	1
E501 - SINGLE LINE DIAGRAMS - ELECTRICAL	2/7/2020	1
E601 - SCHEDULES - ELECTRICAL	2/7/2020	1

TECHNOLOGY

T001 - SYMBOL LIST AND GENERAL NOTES - TECHNOLOGY	1/20/2020
T103 - FIRST FLOOR OVERALL PLAN - NEW - TECHNOLOGY	1/20/2020
T501 - ENLARGED FLOOR PLANS - TECHNOLOGY	1/20/2020
T601 - DETAILS - TECHNOLOGY	1/20/2020

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit F – Specifications

BREMIK

CONSTRUCTION

1026 SE Stark St. | Portland, OR 97214 | P 503.688.1000 | F 503.688.1005 | www.bremik.com

Tualatin Service Center

EXHIBIT F - SPECIFICATIONS

Specification Section & Title

Addendum

DIVISION 0 BIDDING AND CONTRACTING REQUIREMENTS

00 43 25 Pre-Bid Substitution Request Form

DIVISION 1 GENERAL REQUIREMENTS

01 11 00 Summary of Work

01 25 00 Product Substitution

01 26 00 Modification Procedures

01 29 00 Application for Payment

01 29 73 Schedule of Values

01 31 00 Coordination

01 31 19 Project Meetings

01 32 00 Construction Schedules and Daily Reports

01 33 00 Submittals

01 33 50 Bidder Designed and Engineered Systems

01 42 16 Explanations and Definitions

01 42 19 Reference Specifications and Standards

01 43 00 Quality Assurance

01 45 00 Quality Control

01 56 00 Temporary Facilities & Security Controls

01 60 00 Materials and Equipment

01 61 16 Special Requirements - Sustainable Building Practices

01 71 23 Field Engineering

01 73 29 Cutting and Patching

01 74 00 Cleaning and Waste Management

01 77 00 Contract Closeout

01 78 23 Operation and Maintenance Data

01 78 36 Warranties

01 78 39 Project Record Documents

DIVISION 2 EXISTING CONDITIONS

02 26 00 Hazmat Consideration

02 32 00 Soils Investigation

02 41 19 Selective Demolition

DIVISION 3 CONCRETE

03 10 00 Concrete Formwork

03 20 00 Concrete Reinforcing

03 30 00 Cast-In-Place Concrete

03 35 00 Concrete Finishing

03 35 19 Concrete Slab Grinding, Polishing and Finishing

DIVISION 4 MASONRY

04 21 00 Mechanically Attached Masonry Veneer

DIVISION 5 METALS

05 12 00 Structural Steel

05 30 00 Metal Decking

05 50 00 Metal Fabrications

DIVISION 6 WOOD AND PLASTICS

06 10 00 Rough Carpentry

06 17 00 Prefabricated Wood Joists and Beams

06 18 00 Glue Laminated Beams

06 20 00 Finish Carpentry

DIVISION 7 THERMAL AND MOISTURE PROTECTION

07 10 00 Waterproofing

07 14 00 Interior Membrane Waterproofing

07 21 00 Insulation

07 25 00 Weather Resistive Barriers

07 42 13 Preformed Metal Siding

07 42 43 Composite Panel Siding

07 54 23 Single-Ply Roofing: TPO

07 60 00 Flashing and Sheet Metal

07 72 00 Roof Hatch and Access Ladders

07 90 00 Sealants

07 95 00 Expansion Control

DIVISION 8 DOORS AND WINDOWS

08 11 00 Steel Doors & Frames

08 14 00 Wood Doors

08 33 13 Overhead Coiling Counter Doors

08 33 26 Overhead Coiling Security Grilles

08 34 00 Access Doors

08 40 00 Aluminum Entrances and Storefronts

08 63 00 Metal Framed Skylights

08 71 00 Finish Hardware

08 80 00 Glass & Glazing

08 87 00 Glazing Surface Films

DIVISION 9 FINISHES

09 28 00 Fiber Reinforced Cement Board

09 29 00 Gypsum Board

09 30 00 Tile

09 51 00 Acoustic Ceilings

09 54 26 Specialty Wood Ceilings

09 65 00 Resilient Flooring

09 68 00 Carpeting

09 72 16 Vinyl Wall Covering

09 72 19 Fabric Wall Covering

09 90 00 Painting

DIVISION 10 SPECIALTIES

10 14 00 Identifying Plaques and Signage
1021 13.13 Metal Toilet Partitions
10 22 26 Operable Partitions
10 26 00 Wall Protection
10 28 00 Toilet Accessories
10 44 00 Fire Extinguishers and Cabinets
10 51 00 Lockers
10 75 00 Flagpoles
10 82 00 Treillage

DIVISION 11 EQUIPMENT

11 31 00 Residential Appliances

DIVISION 12 FURNISHINGS

12 21 00 Window Coverings
12 32 00 Manufactured Casework
1248 13 Entrance Floor Mats and Frame

DIVISION 13 SPECIAL CONSTRUCTION

Not Used

DIVISION 14 CONVEYING EQUIPMENT

Not Used

DIVISION 21 FIRE SUPPRESSION

21 00 00 Fire Suppression Basic Requirements
21 05 00 Common Work Results for Fire Suppression
21 13 00 Fire Suppression Sprinkler Systems

DIVISION 22 PLUMBING

22 00 00 Plumbing Basic Requirements
22 05 19 Plumbing Devices
22 05 23 General-Duty Valves for Plumbing Piping
22 05 29 Hangers and Supports for Plumbing Piping and Equipment
22 05 53 Identification for Plumbing Piping and Equipment
22 05 93 Testing, Adjusting and Balancing for Plumbing
22 07 00 Plumbing Insulation
22 10 00 Plumbing Piping
22 30 00 Plumbing Equipment
22 40 00 Plumbing Fixtures

DIVISION 23 HEATING, VENTILATION AND AIR-CONDITIONING (HVAC)

23 00 00 Heating, Ventilating and Air Conditioning (HVAC) Basic Requirements
23 05 13 Common Motor Requirements for HVAC Equipment
23 05 29 Hangers and Supports for HVAC Piping, Ductwork and Equipment
23 05 48 Vibration and Seismic Controls for HVAC Equipment
23 05 53 Identification for HVAC Piping, Ductwork and Equipment
23 05 93 Testing, Adjusting and Balancing for HVAC
23 07 00 HVAC Insulation
23 11 23 Facility Fuel - Natural Gas Piping and Systems
23 21 13 HVAC Piping
23 31 00 HVAC Ducts and Casings
23 33 00 Air Duct Accessories
23 34 00 HVAC Fans

- 23 37 00 Air Outlets and Inlets
- 23 62 01 Variable Refrigerant Flow_Volume (VRF_VRV) Systems
- 23 63 13 Air Cooled Refrigerant Condensers
- 23 72 23 Packaged Air-To-Air Energy Recovery Units
- 23 81 26 Small Split System and Unitary HVAC Equipment

DIVISION 26 ELECTRICAL

- 26 00 00 Electrical Basic Requirements
- 26 05 09 Equipment Wiring
- 26 05 19 Low-Voltage Electrical Power Conductors and Cables
- 26 05 26 Grounding and Bonding for Electrical Equipment
- 26 05 33 Raceways
- 26 05 34 Boxes
- 26 05 43 Electrical Vaults and Underground Raceways
- 26 05 53 Identification for Electrical Systems
- 26 09 00 Contactors and Control Devices
- 26 09 23 Occupancy and Vacancy Sensors
- 26 09 24 Daylighting Controls
- 26 22 00 Low-Voltage Transformers
- 26 24 13 Switchboards
- 26 24 16 Panelboards
- 26 27 13 Electrical Metering
- 26 27 16 Electrical Cabinets and Enclosures
- 26 27 26 Wiring Devices
- 26 28 00 Overcurrent Protective Devices
- 26 28 16 Enclosed Switches and Circuit Breakers
- 26 29 13 Enclosed Controllers
- 26 31 00 Photovoltaic Systems
- 26 36 00 Transfer Switches
- 26 43 00 Surge Protective Devices
- 26 51 00 Lighting

DIVISION 27 COMMUNICATIONS

- 27 00 00 Communications Basic Requirements
- 27 05 28 Pathways for Communications Systems
- 27 11 01 Communication Equipment Rooms
- 27 13 00 Communications Backbone Cabling
- 27 15 00 Communications Horizontal Cabling
- 27 53 19 Distributed Antenna System

DIVISION 28 ELECTRONIC SAFETY AND SECURITY

- 28 00 00 Electronic Safety and Security Basic Requirements
- 28 10 00 Access Control and Intrusion Detection
- 28 23 00 Video Surveillance
- 28 31 00 Fire Detection and Alarm

DIVISION 31 EARTHWORK

- 31 10 00 Site Clearing
- 31 20 00 Earth Moving
- 31 23 17 Trenching
- 31 23 23.43 Structural Foam Formwork

31 25 00 Erosion and Sediment Control

DIVISION 32 EXTERIOR IMPROVEMENTS

32 11 32 Aggregate Base Courses

32 12 16 Asphalt Paving

32 13 13 Concrete Paving

32 17 23 Pavement Markings

32 80 00 Irrigation

32 91 13 Soil Preparation

32 93 00 Plants

32 94 45 Landscape Maintenance

DIVISION 33 UTILITIES

33 11 00 Water Distribution Piping

33 12 00 Water Appurtenances

33 31 00 Sanitary Sewer Piping

33 39 00 Sanitary Sewer Structures

33 41 00 Storm Drainage Piping

33 44 00 Storm Drainage Inlets

33 46 00 Subdrainage

33 46 13 Rainwater Leaders and Radon Mitigation

33 49 00 Storm Drainage Structures

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit G – Guaranteed Maximum Price Estimate dated March 3, 2020

Tualatin Services Center

GMP Estimate

3/2/2020

BREMİK
CONSTRUCTION

1026 SE Stark Street
Portland, OR 97214

Phone: 503.688.1000
Fax: 503.688.1005

www.bremik.com

Div 1 General Conditions					\$566,280
010400	Principal-in-Charge				\$26,880
010410	Project Manager				\$89,280
010420	Project Superintendent				\$188,160
010450	Project Engineer				\$145,920
010460	Project Administrator				\$23,424
010470	Foreman				\$34,891
010650	Security				\$1,800
015100	Temporary Office Electricity				\$14,324
015120	Temporary Phones & Copiers				\$5,950
015130	Temporary Water				\$2,420
015140	Temporary Toilets				\$2,420
015180	Temporary Fire Extinguishers				\$1,514
015600	Hoisting and Equipment Rental				\$28,800
015650	Safety Equipment				\$7,200
015700	Gas and Oil				\$2,160
015900	Temporary Office & Storage				\$7,505
016000	Printing/Shipping and Office Supplies				\$5,760
016300	Temporary Signage				\$1,763
017100	Progressive and Final Cleaning				\$11,000
Div 2 General Requirements and Existing Conditions					\$160,544
020500	General Requirements				\$80,349
022220	Sawcutting and Demolition				\$80,195
Div 3 Concrete, Formwork, and Reinforcing					\$723,394
031500	General Concrete Items				\$4,306
032100	Reinforcing Steel				\$70,000
033010	Cast-In-Place Concrete				\$632,680
033600	Polished and Sealed Concrete				\$13,342
036000	Grouting				\$3,066
Div 4 Masonry					\$112,947
042000	CMU Veneer				\$112,947
Div 5 Metal Fabrications					\$112,554
051200	Structural and Misc. Steel				\$111,666
055000	Metal Decking				\$888
Div 6 Wood and Plastics					\$440,892
061000	Carpentry				\$287,894
061700	Trusses, Joists, Beams				\$36,644
062100	Exterior Siding and Trim at Existing				\$22,000
064200	Cabinetry and Countertops				\$94,354
Div 7 Thermal and Moisture Protection					\$496,522
071000	Waterproofing and Damproofing				\$31,785
071500	WRB				\$33,771
072100	Insulation				\$25,618
074000	Roofing				\$169,239
076000	Flashing and Sheetmetal				\$180,542
077000	Roof Accessories				\$3,469
079200	Expansion Joints and Caulking				\$52,098
Div 8 Doors and Windows					\$305,227

081000	Door Frames and Metal Doors				\$21,237
081000	Wood Doors				\$17,160
083300	Security Coiling Doors				\$16,445
083500	Access Doors				\$1,500
084000	Storefront Windows and Doors				\$169,647
086000	Skylights				\$10,626
081000	Door Hardware				\$66,868
088000	Window Tinting				\$1,744
Div 9	Finishes				\$425,030
092000	Drywall and Finish				\$167,892
093000	Tile and Interior Stone				\$28,111
092000	Acoustical Ceilings				\$81,780
096500	Resilient Flooring				\$45,287
096800	Carpet and Walk-off Mat				\$38,882
099000	Painting				\$63,077
Div 10	Specialties				\$117,678
101150	Marker and Tack Boards				\$10,762
103000	Flag Pole				\$11,935
104300	Signage				\$31,649
104500	Wall and Corner Guards				\$10,132
105000	Lockers				\$13,528
105500	Fire Extinguishers and Cabinets				\$1,446
106000	Toilet Partitions				\$3,737
106500	Operable Partitions				\$21,653
108100	Toilet Accessories				\$12,834
Div 12	Furnishings				\$22,595
124900	Window Shades - Manual				\$22,595
Div 21-23	Mechanical Systems				\$634,493
210000	Fire Protection				\$95,224
220000	Plumbing				\$207,728
230000	HVAC				\$331,541
Div 26-28	Electrical Systems				\$623,725
261000	Building Electrical Wiring				\$400,508
281000	Fire Alarm				\$32,864
282000	Access Control				\$14,332
283000	Tele Data				\$97,811
284000	Sound & Video				\$2,701
285000	Temporary Construction Electrical & Lighting				\$34,173
Div 31-33	Sitework and Utilities				\$431,433
312300	Earthwork and Utilities				\$302,745
321000	Asphalt Paving and Striping				\$19,479
321500	Site Concrete				\$39,927
322000	Site Furnishings				\$12,177
329000	Landscaping and Irrigation				\$57,105
Div 49	Other				\$324,158
490000	Safety Plan				\$9,150
015900	(3) Office Trailer w/ restroom- 10 x 44				\$14,472
015900	Set up and Take down				\$2,730
015900	(1) Meeting Room Trailer				\$4,744

015900	ADA Ramp and Deck				\$10,657
015900	Temporary Power				\$13,655
492000	Restroom Maintainance				\$8,750
492000	Permitting Comments Contingency				\$10,000
495000	Contractor's Construction Contingency (set at GMP)				\$250,000

Grand Subtotal **\$5,497,470**

Overhead & Mark-up	4.45 %	244,637
Liability Insurance	1.25 %	71,776
Arts Tax % (Not Included)	0.00 %	0
Commercial Activity Tax % (allowance)	0.40 %	23,256
Performance & Payment Bond	1 ls	<u>38,981</u>

GRAND TOTAL **\$5,876,120**

*** See Attached Exclusions & Clarifications

Project Specific Clarifications

- General
 - This complete list of exclusions, clarifications, and allowances shall be part of the contract and take precedent over any all drawing & specification hierarchy.
 - This estimate is based on Drawings and Specifications dated 1/20/20, Addendum #1, and Addendum #2.
 - This estimate does not include any amounts for changes in taxes, tariffs or similar charges that are enacted after the date of this quotation or time delays that arise from such changes.
 - Project does not include any work to the existing warehouse building other than allowance for solar panels.
 - Proposal assumes owner vacates existing building of personnel, furniture, and equipment prior to selective demolition of existing building.
 - Deferred submittals beyond what is listed on G0.01 are not included.

- Division 2
 - Selective demolition of existing office space
 - Selective demolition does not include removal, cataloging, and storage of any items
 - Demolition does not include any sidewalk other than 32' integral sidewalk at 108th apron
 - Demolition does not include abatement

- Division 3
 - 12" thick mat slab is included
 - No work to existing building foundation is included except for areas of new sanitary sewer trenching
 - Cold joint connection assumed at existing to new.
 - Galvanized rebar
 - Geo-foam is priced in base bid. Alternate for rock is proposed as cost savings
 - Concrete Polished is included at Lobby, all-gender restroom, toilet/shower, mud room, IT office. All other exposed concrete flooring is sealed.

- Division 4
 - CMU block is included around the multipurpose room.
 - CMU block is priced to match existing building. Color matching will be limited to standard colors that may not be exact match due to color fading on existing building or discontinued colors.
 - CMU Is priced to sit on brick ledge below finish grade.
 - Grout behind block included below finish grade only.
 - brick ties are priced in lieu of fasteners in specification

- Division 5
 - Decorative Fencing is not included in proposal
 - Structural steel is primed.
 - Steel canopy is included in proposal
 - (4) bollards are included in proposal at locations to be determined.
 - Metal roof access ladder is included. Does not include aluminum or special textured metal bars.
 - Canopy at courtyard is not included.

- Division 6
 - Joist package is by red-buit.
 - Casework includes concrete countertops.
 - All decorative wood in priced as 9wood under division 9.
 - Pricing excludes dais for multi-purpose room.

- Division 7
 - Insulation is included at new walls only
 - Rigid insulation is included at new exterior walls on exterior façade and at exposed stem wall face on the interior
 - Expansion joints are included except where cold joint between need and existing concrete is called out.

- Division 8

- Includes new interior doors throughout, new storefront at existing, and replacing door 108A
- Overhead security grilles are priced as "Wayne Dalton" a subsidiary of Overhead Door
- Salvage of doors is not included in pricing. Price available if requested.
- Window film is included at lobby windows and engineering window only
- Excludes hardware or work at openings S-3,S-4,S-5,S-7, E-11A,E-112A,E-114A

- Division 9
 - New drywall at existing building is only included where demolition of drywall occurs. Existing wall to remain are assumed to be painted or covered in wall covering. Floating of walls is not included.
 - Includes 1x4 ceiling tiles at lobby only
 - 9wood included at courts and permits soffit area only. Only includes scope per bid documents dated 1/20/20, Addendum #1, and Addendum #2.
 - Wall covering material 3 (WC-3) is not included. OFCI
 - Tackable surface material is assumed to be wall covering. Price includes installation only. Material OFCI.

- Division 10
 - Protective Wall Paneling scope unclear and included as allowance only.
 - Flag pole is stand alone with concrete base. Connection to the building will require further design information
 - Manual Operable partition is included at the mutlipurpose room only. Does not include white board. Is designed with fabric finish.
 - Signage is priced based on drawings and specifications. Pricing will change if changes are made to the design.

- Division 11
 - New appliances are set as an allowance

- Division 12
 - Motorized window coverings are not included

- Division 21
 - Pricing includes new and existing to be sprinkled
 - Pricing does not include sprinklers under exterior canopy
 - Pricing includes connection to existing fire water line

- Division 22
 - Pricing includes radon system
 - Pricing includes water tank. See VE option
 - Pricing includes new fixtures throughout

- Division 23
 - HVAC does not included DDC controls
 - HVAC includes relocating Server room FCU
 - Existing ductwork to be reused. Pricing does not include duct cleaning.

- Division 26
 - Includes temporary power for office trailers
 - Moving the server is not included. By Owner
 - Pricing included unit price option for (1) solar panel
 - Pricing includes DAS system
 - Pricing includes installing owner provide AV equipment
 - Pricing includes security alarm system

- Division 31
 - Pricing includes connection of utilities to existing meters and pipes.

- Pricing include allowance for (1) dry-well decommissioning.
 - Pricing includes allowance for demolition of existing shed due to unknown foundation and utility connections are determined
 - Pricing does not included work to existing foundation
 - Pricing does not include public or private utilites off site.
 - Pricing includes allowance for fences and gates until scope is more clearly defined.
- Division 32
 - Landscaping includes planting and irrigation.
 - Pricing assumes use of existing irrigation control system.
 - Pricing does not include removal of large heritage tree.

Project Specific Exclusions

- Warranty and/or guaranty of any existing condition, system or assembly.
- Work to existing warehouse
- Moving of furniture
- Appliances purchase
- Landscape Maintenance Program

Master Project Exclusions

- Building Permits & Plan Check Fees
- Testing & Special Inspections
- System Development Charges
- Hazardous Material Abatement
- Rock Excavation
- Unforeseen Site Conditions
- Overhead Power Line Relocation
- Costs for LEED or Other Incentive Based Certification
- OCIP/CCIP Wrap Insurance Premiums and Deductibles
- Building Commissioning
- Cost of Builder's Risk Premium and Deductible

Project Specific Allowances

- Exterior Siding and WRB replacement-Existing building walls (allowance) : \$12000
- Existing floor preparation (allowance) : \$2700
- Painting - Exterior siding (allowance) : \$3360
- Tack Board (Allowance): \$10782
- Wall Paneling (Allowance) - Scope Unclear : \$5601.872
- Demolish Shed (Allowance) : \$16073
- Video and Flush System (Allowance) : \$2700
- Decommission Drywell (Allowance) : \$3500
- Private Locates (allowance) : \$1500
- Driveway Fences & Gates (allowance) : \$4900
- Personnel Fences & Gates Panic Hardware (allowance) : \$3200
- Benches (allowance): \$3000

Phase	Item	Quantity	Unit	Unit Price	Grand Total
Div 1	General Conditions				\$566,280
	Supervision	48	wks	\$ 9,868	\$473,664
010400	Principal-in-Charge	48	wks	\$ 560	\$26,880
010410	Project Manager	48	wks	\$ 1,860	\$89,280
010420	Project Superintendent	48	wks	\$ 3,920	\$188,160
010450	Project Engineer	48	wks	\$ 3,040	\$145,920
010460	Project Administrator	48	wks	\$ 488	\$23,424
	Security	15633	sf	\$ 0.12	\$1,800
010650	Office Alarm--Set up	1	ls	\$ 600	\$600
010650	Office Alarm--Monitor	48	wks	\$ 25.00	\$1,200
	Temporary Utilities and Offices (Bremik)	11	mo	\$ 3,103	\$34,133
015100	Temporary Construction set-up	11	mo	\$ 1,302	\$14,324
015120	Construction Office Phones & Fax Set-up	1	ls	\$ 800	\$800
015120	Construction Office Phone & Fax Monthly Charges	11	mo	\$ 250	\$2,750
015120	Copier or Multi-Function Device--Copy/Scan/Fax	48	wks	\$ 50.00	\$2,400
015130	Hydrant Use Fees	1	ls	\$ 500	\$500
015130	Bottled Drinking Water	48	wks	\$ 40.00	\$1,920
015140	Temporary Toilets	11	mo	\$ 220	\$2,420
015180	Temporary Fire Extinguishers	15000	sf	\$ 0.10	\$1,514
015900	Delivery and set-up	1	ls	\$ 750	\$750
015900	Temporary Furnishings	1	ls	\$ 480	\$480
015900	Cleaning & Return	1	ls	\$ 500	\$500
015900	On-site PM & Superintendent trailer	11	mo	\$ 525	\$5,775
	Hoisting and Equipment Rental	15633	sf	\$ 1.84	\$28,800
015600	Forklift	48	wks	\$ 600	\$28,800
	Safety Equipment	15633	sf	\$ 0.46	\$7,200
015650	First-Aid Equipment	48	wks	\$ 50.00	\$2,400
015650	Temporary Rails and Ladders	48	wks	\$ 100	\$4,800
	Gas and Oil	15633	sf	\$ 0.14	\$2,160
015700	Equipment Gas & Oil	48	wks	\$ 45.00	\$2,160
	Printing/Shipping and Office Supplies	15633	sf	\$ 0.37	\$5,760
016000	Delivery Services	48	wks	\$ 30.00	\$1,440
016200	Printing	48	wks	\$ 40.00	\$1,920
016250	Office Supplies	48	wks	\$ 50.00	\$2,400
	Temporary Signage	11	mo	\$ 160	\$1,763
016300	Signage	1	ls	\$ 1,763	\$1,763
	Progressive and Final Cleaning	11	mo	\$ 1,000	\$11,000
017200	Drop Boxes	11	mo	\$ 1,000	\$11,000
Div 2	General Requirements and Existing Conditions				\$160,544
	General Requirements	10.5	mo	\$ 7,652	\$80,349
010470	Foreman	48	wks	\$ 727	\$34,891
015600	Forklift Operator	48	wks	\$ 363	\$17,446
017100	General Clean-up	48	wks	\$ 222	\$10,679
017100	Final Cleaning	1	ls	\$ 7,680	\$7,680
017100	Pressure Wash Site Walks	2676	sf	\$ 0.60	\$1,617
015150	Temporary Fence	1000	lf	\$ 8.04	\$8,037
	Sawcutting and Demolition	6187	sf	\$ 12.96	\$80,195
022220	Selective Demolition	1	ls	\$ 53,400	\$53,400
022220	Temporary Walls & Dust Partitions	6271	sf	\$ 1.22	\$7,645
022220	Temporary Roof	3500	sf	\$ 3.06	\$10,720
022220	Temporary Opening Protection	610	sf	\$ 3.94	\$2,401
022220	Temporary Board Up	6	ea	\$ 171	\$1,029
022270	MEP Safe-off	1	ls	\$ 5,000	\$5,000
Div 3	Concrete, Formwork, and Reinforcing				\$723,394
	General Concrete Items	1	ls	\$ 4,306	\$4,306
031500	Concrete Wash Out	4	ea	\$ 538	\$2,152
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
	Reinforcing Steel	61425	lbs	\$ 1.14	\$70,000

Phase	Item	Quantity	Unit	Unit Price	Grand Total
032100	Reinforcing Bar Material	1	ls	\$ 70,000	\$70,000
	Cast-In-Place Concrete	398	cy	\$ 1,590	\$632,680
033010	Cast-In-Place Concrete	1	ls	\$ 447,180	\$447,180
033010	Geo-foam	1	ls	\$ 155,000	\$155,000
033010	Spray-Lock	1	ls	\$ 23,000	\$23,000
033010	Monument Sign Footing	1	ls	\$ 7,500	\$7,500
	Polished and Sealed Concrete	2054	sf	\$ 6.50	\$13,342
033600	Polished and Sealed Concrete	1	ls	\$ 13,342	\$13,342
	Grouting	25	ea	\$ 123	\$3,066
036000	Base plate Grouting	25	ea	\$ 123	\$3,066
Div 4	Masonry				\$112,947
	CMU Veneer	3931	sf	\$ 28.73	\$112,947
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
042000	CMU Veneer	1	ls	\$ 100,914	\$100,914
042000	Caulk Control Joints	1	ls	\$ 1,009	\$1,009
042000	Brick & CMU Sealer	1	ls	\$ 8,870	\$8,870
Div 5	Metal Fabrications				\$112,554
	Structural and Misc. Steel	15633	sf	\$ 7.14	\$111,666
051200	Structural Steel - Furnish	1	ls	\$ 67,948	\$67,948
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
051210	Structural Steel - Install	1	ls	\$ 34,235	\$34,235
051200	Set column anchor bolts	60	ea	\$ 21.91	\$1,315
051200	Grout column base plates	15	ea	\$ 65.73	\$986
051200	Bollards - Steel, concrete filled	4	ea	\$ 988	\$3,952
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
	Metal Decking	15633	sf	\$ 0.06	\$888
055000	3x20 ga Metal Decking	608	sf	\$ 1.46	\$888
Div 6	Wood and Plastics				\$440,892
	Carpentry	15633	sf	\$ 18.42	\$287,894
061000	Rough Carpentry Framing	1	ls	\$ 285,740	\$285,740
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
061000	Trusses, Joists, Beams	15633	sf	\$ 2.34	\$36,644
061700	Wood Trusses, Joists, and Beams	1	ls	\$ 34,490	\$34,490
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
	Exterior Siding and Trim at Existing	1100	sf	\$ 20.00	\$22,000
062100	Exterior Siding and WRB replacement-Existing building walls (allowance)	1100	sf	\$ 20.00	\$22,000
	Cabinetry and Countertops	1	sf	\$ 94,354	\$94,354
064200	Casework & Countertops	1	ls	\$ 91,006	\$91,006
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
064100	Cabinet Backing & Blocking	176	lf	\$ 12.91	\$2,271
Div 7	Thermal and Moisture Protection				\$496,522
	Waterproofing and Damproofing	1485	ls	\$ 21.40	\$31,785
071000	Foundation Waterproofing and Damproofing	1	ls	\$ 31,785	\$31,785
	WRB	8453	ls	\$ 4.00	\$33,771
071500	Main Building WRB - New Building	1	ls	\$ 33,771	\$33,771
	Insulation	18833	sf	\$ 1.36	\$25,618
072100	Interior Batt and Rigid Insulation	1	LS	\$ 25,618	\$25,618
	Roofing	13185	sf	\$ 12.84	\$169,239
074000	TPO Roofing	1	sf	\$ 168,162	\$168,162
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
	Flashing and Sheetmetal	13185	sf	\$ 13.69	\$180,542
076000	Sheet Metal and Metal Siding	1	ls	\$ 176,510	\$176,510
076000	Flashing at expansion joint	192	sf	\$ 21.00	\$4,032
	Roof Accessories	1	ls	\$ 3,469	\$3,469
077000	Roof Hatch	1	ls	\$ 3,469	\$3,469
	Expansion Joints and Caulking	2164	sf	\$ 24.07	\$52,098
079200	Caulking & Sealants	1	ls	\$ 10,688	\$10,688

Phase	Item	Quantity	Unit	Unit Price	Grand Total
079200	Expansion Joint	1	ls	\$ 41,410	\$41,410
Div 8	Doors and Windows				\$305,227
	Door Frames and Metal Doors	31	ea	\$ 685	\$21,237
081000	Hollow Metal Doors & Frames	1	ls	\$ 20,160	\$20,160
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
	Wood Doors	38	sf	\$ 452	\$17,160
081000	Wood Doors	1	ls	\$ 17,160	\$17,160
	Security Coiling Doors	1	ls	\$ 16,445	\$16,445
083300	Coiling Doors	1	ls	\$ 16,445	\$16,445
	Access Doors	15633	sf	\$ 0.10	\$1,500
083500	Access Doors (allowance)	1	ls	\$ 1,500	\$1,500
	Storefront Windows and Doors	1316	sf	\$ 129	\$169,647
084000	Storefront Windows and Doors	1	ls	\$ 168,570	\$168,570
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
	Skylights	6	ea	\$ 1,771	\$10,626
086000	Skylight	1	ls	\$ 8,037	\$8,037
086000	Opening protection	6	ea	\$ 431	\$2,589
	Door Hardware	15633	sf	\$ 4.28	\$66,868
081000	Metal and Wood Door Hardware	1	ls	\$ 18,899	\$18,899
081000	Storefront Door Hardware	1	ls	\$ 18,409	\$18,409
081000	Doors, Frames, and Hardware Install	1	ls	\$ 29,560	\$29,560
	Window Tinting	15633	sf	\$ 0.11	\$1,744
088000	Window Tinting	1	ls	\$ 1,744	\$1,744
Div 9	Finishes				\$425,030
	Drywall and Finish	11245	sf	\$ 14.93	\$167,892
092000	Drywall and Finish Package	1	ls	\$ 140,234	\$140,234
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
092000	Dry-out Heat	15633	sf	\$ 1.63	\$25,505
	Tile and Interior Stone	1588	sf	\$ 17.70	\$28,111
093000	Ceramic Tile	1	ls	\$ 24,873	\$24,873
015600	Material Coordination & Storage	0.5	wks	\$ 1,077	\$538
093000	Existing floor preparation (allowance)	1	ls	\$ 2,700	\$2,700
	Acoustical Ceilings	14848	sf	\$ 5.51	\$81,780
092000	Acoustical Ceilings	1	ls	\$ 81,780	\$81,780
	Resilient Flooring	1865	sf	\$ 24.28	\$45,287
096500	LVT - 1	1	ls	\$ 25,258	\$25,258
096500	Rubber Base - 1	1	ls	\$ 6,144	\$6,144
096500	Floor Protection	15633	sf	\$ 0.89	\$13,885
	Carpet and Walk-off Mat	9929	sf	\$ 3.92	\$38,882
096800	Carpet Tile	1	ls	\$ 38,882	\$38,882
	Painting	11245	sf	\$ 5.61	\$63,077
099000	Painting	1	ls	\$ 59,997	\$59,997
099000	Painting - Exterior Siding (Allowance)	1100	sf	\$ 2.80	\$3,080
Div 10	Specialties				\$117,678
	Marker and Tack Boards	305	sf	\$ 35.29	\$10,762
101150	Tack Boards (allowance)	405	sf	\$ 26.57	\$10,762
	Flag Pole	1	ea	\$ 11,935	\$11,935
103000	Flag Pole Supply	1	ls	\$ 4,054	\$4,054
103000	Flag Pole Install	1	ls	\$ 7,250	\$7,250
103000	Deferred Submittal Permit Cost	1	ls	\$ 631	\$631
	Signage	1	ls	\$ 31,649	\$31,649
104300	Interior and Exterior Signage	1	ls	\$ 31,649	\$31,649
	Wall and Corner Guards	21	sf	\$ 482	\$10,132
104500	Wall Paneling (Allowance) - Scope Unclear	232	sf	\$ 24.15	\$5,602
104500	Corner Guards	21	ls	\$ 216	\$4,530
	Lockers	30	ea	\$ 451	\$13,528
105000	Lockers - Supply and Install	1	ls	\$ 12,990	\$12,990

Phase	Item	Quantity	Unit	Unit Price	Grand Total
015600	Material Coordination & Storage	0.5	wks	\$ 1,077	\$538
	Fire Extinguishers and Cabinets	4	ea	\$ 361	\$1,446
105500	Fire Extinguishers & Cabinets	4	ea	\$ 361	\$1,446
	Toilet Partitions	5	ea	\$ 747	\$3,737
106000	Toilet Partitions	1	ls	\$ 3,737	\$3,737
	Operable Partitions	504	sf	\$ 42.96	\$21,653
106500	Operable Partition - 44'Lx12'H	1	ls	\$ 21,115	\$21,115
015600	Material Coordination & Storage	0.5	wks	\$ 1,077	\$538
	Toilet Accessories	1	ls	\$ 12,834	\$12,834
108100	Toilet Accessories	1	ls	\$ 6,696	\$6,696
108100	Grab Bar--Straight	12	ea	\$ 80.73	\$969
108100	Toilet Paper Holder	10	ea	\$ 80.73	\$807
108100	Sanitary Napkin Vendor	10	ea	\$ 80.73	\$807
108100	Sanitary Napkin Disposal	5	ea	\$ 80.73	\$404
108100	Paper Towel Dispenser	4	ea	\$ 80.73	\$323
108100	Toilet Seat Cover	5	ea	\$ 80.73	\$404
108100	Soap Dispenser	5	ea	\$ 17.43	\$87
108100	Mirrors	8	ea	\$ 80.73	\$646
108100	Changing Table	1	ea	\$ 80.73	\$81
108100	Mop Holder	2	ea	\$ 47.87	\$96
108100	Bench	3	ea	\$ 278	\$834
108100	Grab Bar	3	ea	\$ 146	\$439
108100	Soap Dispenser	3	ea	\$ 80.73	\$242
	Appliances Excluded				\$0
Div 12	Furnishings				\$22,595
	Window Shades - Manual	1219	sf	\$ 18.54	\$22,595
124900	Window Coverings	1	ls	\$ 22,595	\$22,595
Div 21-23	Mechanical Systems				\$634,493
	Fire Protection	9479	sf	\$ 10.05	\$95,224
210000	Fire Sprinkler System	1	ls	\$ 84,440	\$84,440
210000	Sprinkler Under Entry Canopy (allowance)	1	ls	\$ 10,000	\$10,000
210000	Deferred Submittals Processing	1	ls	\$ 784	\$784
	Plumbing	15633	sf	\$ 13.29	\$207,728
220000	Plumbing	1	ls	\$ 204,790	\$204,790
220000	Water Storage Tank (excluded)				\$0
210000	Deferred Submittals Processing	1	ls	\$ 784	\$784
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
	HVAC	15633	sf	\$ 21.21	\$331,541
230000	HVAC	1	ls	\$ 323,803	\$323,803
220000	Selective BIM modeling and clash detection	40	hrs	\$ 120	\$4,800
210000	Deferred Submittals Processing	1	ls	\$ 784	\$784
015600	Material Coordination & Storage	2	wks	\$ 1,077	\$2,154
Div 26-28	Electrical Systems				\$623,725
	Building Electrical Wiring	15633	sf	\$ 25.62	\$400,508
261000	Building Electrical Wiring	1	ls	\$ 398,647	\$398,647
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
210000	Deferred Submittals Processing	1	ls	\$ 784	\$784
	Low Voltage Systems	15633	sf	\$ 12.09	\$189,044
281000	Fire Alarm	1	ls	\$ 32,864	\$32,864
282000	Access Control & Security Systems	1	ls	\$ 14,332	\$14,332
283000	Low Voltage Systems	1	ls	\$ 97,811	\$97,811
284000	Sound & Video Systems -- Install	1	ls	\$ 2,701	\$2,701
289000	Move Server Room (Excluded)	1	ls		\$0
289000	DAS System	1	ls	\$ 41,336	\$41,336
	Temporary Construction Electrical & Lighting	15633	sf	\$ 2.19	\$34,173
285000	Temporary Electrical Set-Up, maintenance, & Rental	11	mo	\$ 1,546	\$17,004

Phase	Item	Quantity	Unit	Unit Price	Grand Total
285000	Temporary Lighting Set-Up, maintenance, & Rental	11	mo	\$ 1,486	\$16,344
285000	Utility Company Monthly Charges	11	mo	\$ 75.00	\$825
Div 31-33	Sitework and Utilities				\$431,433
	Earthwork and Utilities	17080	sf	\$ 17.73	\$302,745
312300	Earthwork and Utilities	1	ls	\$ 252,067	\$252,067
312300	Demolish Shed (Allowance)	1	ls	\$ 16,073	\$16,073
312300	Video and Flush System (Allowance)	1	ls	\$ 2,700	\$2,700
312300	Decommission Drywell (Allowance)	1	ea	\$ 3,500	\$3,500
312300	Private Locates (allowance)	1	ls	\$ 1,500	\$1,500
312300	Existing Tree Protection	444	lf	\$ 4.11	\$1,824
010500	Survey	1	ls	\$ 9,592	\$9,592
010470	Building Layout	15633	sf	\$ 0.42	\$6,538
010470	Site Layout	79992	sf	\$ 0.09	\$7,089
210000	Deferred Submittals Processing	1	ls	\$ 784	\$784
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
	Asphalt Paving and Striping	4356	sf	\$ 4.47	\$19,479
321000	Asphalt Patching at Utility Trenches	1	ls	\$ 14,720	\$14,720
321050	Pavement Striping	1	ls	\$ 4,759	\$4,759
	Site Concrete	3310	sf	\$ 12.06	\$39,927
321500	Site Concrete	1	ls	\$ 37,370	\$37,370
321500	Green Screen Footings	1	ls	\$ 2,557	\$2,557
	Site Furnishings	79992	sf	\$ 0.15	\$12,177
322000	Driveway Fences & Gates (allowance)	70	lf	\$ 70.00	\$4,900
322000	Personnel Fences & Gates Panic Hardware (allowance)	1	ls	\$ 3,200	\$3,200
322000	Benches (allowance)	2	ea	\$ 1,500	\$3,000
015600	Material Coordination & Storage	1	wks	\$ 1,077	\$1,077
	Landscaping and Irrigation	79992	sf	\$ 0.71	\$57,105
329000	Landscape & Irrigation	1	ls	\$ 52,654	\$52,654
329000	Green Screen	1	ls	\$ 2,451	\$2,451
329000	Maintenance Program (excluded)				\$0
210000	Deferred Submittals (Vegetation Screen and Footings)	1	ls	\$ 2,000	\$2,000
Div 49	Other				\$324,158
	Safety Plan	0.18%			\$9,150
490000	Safety & Pick Plans	0.18%			\$9,150
	City of Tualatin - Temporary Offices	8	mo	\$ 6,876	\$55,008
015900	(3) Office Trailer w/ restroom- 10 x 44	8	mo	\$ 1,809	\$14,472
015900	Set up and Take down	1	ls	\$ 2,730	\$2,730
015900	(1) Meeting Room Trailer	8	mo	\$ 593	\$4,744
015900	ADA Ramp and Deck	1000	sf	\$ 10.66	\$10,657
015900	Temporary Power	8	mo	\$ 1,707	\$13,655
492000	Restroom Maintenance	35	wks	\$ 250	\$8,750
	Permitting Comments Contingency	1.00	%		\$10,000
492000	Permitting Comments Contingency	1.00	ls	\$ 10,000	\$10,000
	Contractor's Contingency	1.00	%		\$250,000
495000	Contractor's Construction Contingency (set at GMP)	1.00	ls	\$ 250,000	\$250,000

\$5,497,470

Overhead & Mark-up 4.45 % \$244,637

Subtotal **\$5,742,107**

010150 Liability Insurance 1.25 % \$71,776

Subtotal **\$5,813,884**

010200 Arts Tax % (Not Included) 0.00 % \$0



Project: Tualatin Services Center
 Estimate: GMP Estimate
 Estimate Date: 3/2/2020

Phase	Item	Quantity	Unit	Unit Price	Grand Total
	Subtotal				\$5,813,884
	Commercial Activity Tax % (allowance)		0.40 %		\$23,256
	Subtotal				\$5,837,139
		0	0.00 %		\$0
	Subtotal				\$5,837,139
	Performance & Payment Bond				
010100	First \$500,000		0.00745		\$3,725
010100	\$500,000-\$2,500,000		0.00745		\$14,900
010100	\$2,500,000-\$5,000,000		0.00615		\$15,375
010100	\$5,000,000-\$7,500,000		0.00595		\$4,981
010100	over \$7,500,000		0.0057		\$0
GRAND TOTAL					\$5,876,120

*** See Attached Exclusions & Clarifications

City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit H – Proof of Bond and Insurance

BREMIK

CONSTRUCTION

1026 SE Stark St. | Portland, OR 97214 | P 503.688.1000 | F 503.688.1005 | www.bremik.com

Tualatin Service Center

EXHIBIT H – CONTRACTOR INSURANCE

Title	Date	
Certificate of Insurance	3/2/2020	
AIA Document A312 - 2010 - Performance Bond	3/3/2020	

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Contractors' General Liability Extension Endorsement

It is understood and agreed that this endorsement amends the **COMMERCIAL GENERAL LIABILITY COVERAGE PART** as follows. If any other endorsement attached to this policy amends any provision also amended by this endorsement, then that other endorsement controls with respect to such provision, and the changes made by this endorsement with respect to such provision do not apply.

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Contractors' General Liability Extension Endorsement

1. ADDITIONAL INSUREDS

a. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization described in paragraphs **A.** through **H.** below whom a **Named Insured** is required to add as an additional insured on this **Coverage Part** under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this **Coverage Part**; and

(2) was executed prior to:

(a) the **bodily injury** or **property damage**; or

(b) the offense that caused the **personal and advertising injury**,

for which such additional insured seeks coverage.

b. However, subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:

(1) a higher limit of insurance than required by such contract or agreement; or

(2) coverage broader than required by such contract or agreement, and in no event broader than that described by the applicable paragraph **A.** through **H.** below.

Any coverage granted by this endorsement shall apply only to the extent permissible by law.

A. Controlling Interest

Any person or organization with a controlling interest in a **Named Insured**, but only with respect to such person or organization's liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of:

1. such person or organization's financial control of a **Named Insured**; or

2. premises such person or organization owns, maintains or controls while a **Named Insured** leases or occupies such premises;

provided that the coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

B. Co-owner of Insured Premises

A co-owner of a premises co-owned by a **Named Insured** and covered under this insurance but only with respect to such co-owner's liability for **bodily injury**, **property damage** or **personal and advertising injury** as co-owner of such premises.

C. Lessor of Equipment

Any person or organization from whom a **Named Insured** leases equipment, but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** caused, in whole or in part, by the **Named Insured's** maintenance, operation or use of such equipment, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.

D. Lessor of Land

Any person or organization from whom a **Named Insured** leases land but only with respect to liability for **bodily injury**, **property damage** or **personal and advertising injury** arising out of the ownership, maintenance or use of such land, provided that the **occurrence** giving rise to such **bodily injury**, **property damage** or the offense giving rise to such **personal and advertising injury** takes place prior to the termination of such lease.



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The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

E. Lessor of Premises

An owner or lessor of premises leased to the **Named Insured**, or such owner or lessor's real estate manager, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of the ownership, maintenance or use of such part of the premises leased to the **Named Insured**, and provided that the **occurrence** giving rise to such **bodily injury or property damage**, or the offense giving rise to such **personal and advertising injury**, takes place prior to the termination of such lease. The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

F. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee or receiver's liability for **bodily injury, property damage or personal and advertising injury** arising out of the **Named Insured's** ownership, maintenance, or use of a premises by a **Named Insured**.

The coverage granted by this paragraph does not apply to structural alterations, new construction or demolition operations performed by, on behalf of, or for such additional insured.

G. State or Governmental Agency or Subdivision or Political Subdivisions – Permits

A state or governmental agency or subdivision or political subdivision that has issued a permit or authorization but only with respect to such state or governmental agency or subdivision or political subdivision's liability for **bodily injury, property damage or personal and advertising injury** arising out of:

1. the following hazards in connection with premises a **Named Insured** owns, rents, or controls and to which this insurance applies:
 - a. the existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - b. the construction, erection, or removal of elevators; or
 - c. the ownership, maintenance or use of any elevators covered by this insurance; or
2. the permitted or authorized operations performed by a **Named Insured** or on a **Named Insured's** behalf.

The coverage granted by this paragraph does not apply to:

- a. **Bodily injury, property damage or personal and advertising injury** arising out of operations performed for the state or governmental agency or subdivision or political subdivision; or
- b. **Bodily injury or property damage** included within the **products-completed operations hazard**.

With respect to this provision's requirement that additional insured status must be requested under a written contract or agreement, the Insurer will treat as a written contract any governmental permit that requires the **Named Insured** to add the governmental entity as an additional insured.

H. Trade Show Event Lessor

1. With respect to a **Named Insured's** participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom the **Named Insured** is required to include as an additional insured, but only with respect to such person or organization's liability for **bodily injury, property damage or personal and advertising injury** caused by:
 - a. the **Named Insured's** acts or omissions; or



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b. the acts or omissions of those acting on the **Named Insured's** behalf,

in the performance of the **Named Insured's** ongoing operations at the trade show event premises during the trade show event.

2. The coverage granted by this paragraph does not apply to **bodily injury** or **property damage** included within the **products-completed operations hazard**.

2. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE

The **Other Insurance** Condition in the **COMMERCIAL GENERAL LIABILITY CONDITIONS** Section is amended to add the following paragraph:

If the **Named Insured** has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. For the purpose of this Provision 2., the additional insured's own insurance means insurance on which the additional insured is a named insured. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization.

3. BODILY INJURY – EXPANDED DEFINITION

Under **DEFINITIONS**, the definition of **bodily injury** is deleted and replaced by the following:

Bodily injury means physical injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the physical injury, sickness or disease.

4. BROAD KNOWLEDGE OF OCCURRENCE/ NOTICE OF OCCURRENCE

Under **CONDITIONS**, the condition entitled **Duties in The Event of Occurrence, Offense, Claim or Suit** is amended to add the following provisions:

A. BROAD KNOWLEDGE OF OCCURRENCE

The **Named Insured** must give the Insurer or the Insurer's authorized representative notice of an **occurrence**, offense or **claim** only when the **occurrence**, offense or **claim** is known to a natural person **Named Insured**, to a partner, executive officer, manager or member of a **Named Insured**, or an **employee** designated by any of the above to give such notice.

B. NOTICE OF OCCURRENCE

The **Named Insured's** rights under this **Coverage Part** will not be prejudiced if the **Named Insured** fails to give the Insurer notice of an **occurrence**, offense or **claim** and that failure is solely due to the **Named Insured's** reasonable belief that the **bodily injury** or **property damage** is not covered under this **Coverage Part**. However, the **Named Insured** shall give written notice of such **occurrence**, offense or **claim** to the Insurer as soon as the **Named Insured** is aware that this insurance may apply to such **occurrence**, offense or **claim**.

5. BROAD NAMED INSURED

WHO IS AN INSURED is amended to delete its Paragraph 3. in its entirety and replace it with the following:

3. Pursuant to the limitations described in Paragraph 4. below, any organization in which a **Named Insured** has management control:

a. on the effective date of this **Coverage Part**; or

b. by reason of a **Named Insured** creating or acquiring the organization during the **policy period**,



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qualifies as a **Named Insured**, provided that there is no other similar liability insurance, whether primary, contributory, excess, contingent or otherwise, which provides coverage to such organization, or which would have provided coverage but for the exhaustion of its limit, and without regard to whether its coverage is broader or narrower than that provided by this insurance.

But this **BROAD NAMED INSURED** provision does not apply to:

- (a) any partnership, limited liability company or joint venture; or
- (b) any organization for which coverage is excluded by another endorsement attached to this **Coverage Part**.

For the purpose of this provision, management control means:

- A. owning interests representing more than 50% of the voting, appointment or designation power for the selection of a majority of the Board of Directors of a corporation; or
 - B. having the right, pursuant to a written trust agreement, to protect, control the use of, encumber or transfer or sell property held by a trust.
4. With respect to organizations which qualify as **Named Insureds** by virtue of Paragraph 3. above, this insurance does not apply to:
- a. **bodily injury** or **property damage** that first occurred prior to the date of management control, or that first occurs after management control ceases; nor
 - b. **personal or advertising injury** caused by an offense that first occurred prior to the date of management control or that first occurs after management control ceases.
5. The insurance provided by this **Coverage Part** applies to **Named Insureds** when trading under their own names or under such other trading names or doing-business-as names (dba) as any **Named Insured** should choose to employ.

6. BROADENED LIABILITY COVERAGE FOR DAMAGE TO YOUR PRODUCT AND YOUR WORK

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusions **k.** and **l.** and replace them with the following:

This insurance does not apply to:

k. Damage to Your Product

Property damage to your product arising out of it, or any part of it except when caused by or resulting from:

- (1) fire;
- (2) smoke;
- (3) collapse; or
- (4) explosion.

l. Damage to Your Work

Property damage to your work arising out of it, or any part of it and included in the **products-completed operations hazard**.

This exclusion does not apply:

- (1) If the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor; or
- (2) If the cause of loss to the damaged work arises as a result of:



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- (a) fire;
- (b) smoke;
- (c) collapse; or
- (d) explosion.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for the sum of **damages** arising out of any one **occurrence** because of **property damage to your product and your work** that is caused by fire, smoke, collapse or explosion and is included within the **product-completed operations hazard**. This sublimit does not apply to **property damage to your work** if the damaged work, or the work out of which the damage arises, was performed on the **Named Insured's** behalf by a subcontractor.

C. This **Broadened Liability Coverage For Damage To Your Product And Your Work** Provision does not apply if an endorsement of the same name is attached to this policy.

7. CONTRACTUAL LIABILITY – RAILROADS

With respect to operations performed within 50 feet of railroad property, the definition of **insured contract** is replaced by the following:

Insured Contract means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner is not an **insured contract**;
- b. A sidetrack agreement;
- c. Any easement or license agreement;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to the **Named Insured's** business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury or property damage** to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the **Insured**, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (1) above and supervisory, inspection, architectural or engineering activities.

8. ELECTRONIC DATA LIABILITY

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **p. Electronic Data** and replace it with the following:



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This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data** that does not result from physical injury to tangible property.

However, unless Paragraph (1) above applies, this exclusion does not apply to **damages** because of **bodily injury**.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relation expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in Paragraph (1) or (2) above.

B. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to 5. above, \$100,000 is the most the Insurer will pay under **Coverage A** for all **damages** arising out of any one **occurrence** because of **property damage** that results from physical injury to tangible property and arises out of **electronic data**.

C. The following definition is added to **DEFINITIONS**:

Electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

D. For the purpose of the coverage provided by this **ELECTRONIC DATA LIABILITY** Provision, the definition of **property damage** in **DEFINITIONS** is replaced by the following:

Property damage means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **occurrence** that caused it; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate **electronic data**, resulting from physical injury to tangible property. All such loss of **electronic data** shall be deemed to occur at the time of the **occurrence** that caused it.

For the purposes of this insurance, **electronic data** is not tangible property.

E. If Electronic Data Liability is provided at a higher limit by another endorsement attached to this policy, then the \$100,000 limit provided by this **ELECTRONIC DATA LIABILITY** Provision is part of, and not in addition to, that higher limit.

9. ESTATES, LEGAL REPRESENTATIVES, AND SPOUSES

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such **spouse**. No coverage is provided for any act, error or omission of an estate, heir, legal



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representative, or **spouse** outside the scope of such person's capacity or status as such, provided however that the **spouse** of a natural person **Named Insured** and the **spouses** of members or partners of joint venture or partnership **Named Insureds** are **Insureds** with respect to such **spouses'** acts, errors or omissions in the conduct of the **Named Insured's** business.

10. EXPECTED OR INTENDED INJURY – EXCEPTION FOR REASONABLE FORCE

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Expected or Intended Injury** and replace it with the following:

This insurance does not apply to:

Expected or Intended Injury

Bodily injury or **property damage** expected or intended from the standpoint of the **Insured**. This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

11. GENERAL AGGREGATE LIMITS OF INSURANCE - PER PROJECT

A. For each construction project away from premises the **Named Insured** owns or rents, a separate Construction Project General Aggregate Limit, equal to the amount of the General Aggregate Limit shown in the Declarations, is the most the Insurer will pay for the sum of:

1. All **damages** under **Coverage A**, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
2. All medical expenses under **Coverage C**,

that arise from **occurrences** or accidents which can be attributed solely to ongoing operations at that construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations, nor the Construction Project General Aggregate Limit of any other construction project.

B. All:

1. **Damages** under **Coverage B**, regardless of the number of locations or construction projects involved;
2. **Damages** under **Coverage A**, caused by **occurrences** which cannot be attributed solely to ongoing operations at a single construction project, except **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard**; and
3. Medical expenses under **Coverage C** caused by accidents which cannot be attributed solely to ongoing operations at a single construction project,

will reduce the General Aggregate Limit shown in the Declarations.

C. The limits shown in the Declarations for Each Occurrence, for Damage To Premises Rented To You and for Medical Expense continue to apply, but will be subject to either the Construction Project General Aggregate Limit or the General Aggregate Limit shown in the Declarations, depending on whether the **occurrence** can be attributed solely to ongoing operations at a particular construction project.

D. When coverage for liability arising out of the **products-completed operations hazard** is provided, any payments for **damages** because of **bodily injury** or **property damage** included in the **products-completed operations hazard** will reduce the Products-Completed Operations Aggregate Limit shown in the Declarations, regardless of the number of projects involved.

E. If a single construction project away from premises owned by or rented to the **Insured** has been abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.



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F. The provisions of **LIMITS OF INSURANCE** not otherwise modified by this endorsement shall continue to apply as stipulated.

12. IN REM ACTIONS

A quasi in rem action against any vessel owned or operated by or for the **Named Insured**, or chartered by or for the **Named Insured**, will be treated in the same manner as though the action were in personam against the **Named Insured**.

13. INCIDENTAL HEALTH CARE MALPRACTICE COVERAGE

Solely with respect to **bodily injury** that arises out of a **health care incident**:

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Insuring Agreement** is amended to replace Paragraphs **1.b.(1)** and **1.b.(2)** with the following:

b. This insurance applies to **bodily injury** provided that the professional health care services are incidental to the **Named Insured's** primary business purpose, and only if:

(1) such **bodily injury** is caused by an **occurrence** that takes place in the **coverage territory**.

(2) the **bodily injury** first occurs during the **policy period**. All **bodily injury** arising from an **occurrence** will be deemed to have occurred at the time of the first act, error, or omission that is part of the **occurrence**; and

B. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to:

i. add the following to the **Employers Liability** exclusion:

This exclusion applies only if the **bodily injury** arising from a **health care incident** is covered by other liability insurance available to the **Insured** (or which would have been available but for exhaustion of its limits).

ii. delete the exclusion entitled **Contractual Liability** and replace it with the following:

This insurance does not apply to:

Contractual Liability

the **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees.

iii. add the following additional exclusions:

This insurance does not apply to:

Discrimination

any actual or alleged discrimination, humiliation or harassment, including but not limited to **claims** based on an individual's race, creed, color, age, gender, national origin, religion, disability, marital status or sexual orientation.

Dishonesty or Crime

Any actual or alleged dishonest, criminal or malicious act, error or omission.

Medicare/Medicaid Fraud

any actual or alleged violation of law with respect to Medicare, Medicaid, Tricare or any similar federal, state or local governmental program.

Services Excluded by Endorsement



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Any **health care incident** for which coverage is excluded by endorsement.

C. DEFINITIONS is amended to:

i. add the following definitions:

Health care incident means an act, error or omission by the **Named Insured's employees** or **volunteer workers** in the rendering of:

- a. **professional health care services** on behalf of the **Named Insured** or
- b. Good Samaritan services rendered in an emergency and for which no payment is demanded or received.

Professional health care services means any health care services or the related furnishing of food, beverages, medical supplies or appliances by the following providers in their capacity as such but solely to the extent they are duly licensed as required:

- a. Physician;
- b. Nurse;
- c. Nurse practitioner;
- d. Emergency medical technician;
- e. Paramedic;
- f. Dentist;
- g. Physical therapist;
- h. Psychologist;
- i. Speech therapist;
- j. Other allied health professional; or

Professional health care services does not include any services rendered in connection with human clinical trials or product testing.

ii. delete the definition of **occurrence** and replace it with the following:

Occurrence means a **health care incident**. All acts, errors or omissions that are logically connected by any common fact, circumstance, situation, transaction, event, advice or decision will be considered to constitute a single **occurrence**;

iii. amend the definition of **Insured** to:

- a. add the following:
 - the **Named Insured's employees** are **Insureds** with respect to:
 - (1) **bodily injury** to a **co-employee** while in the course of the **co-employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business; and
 - (2) **bodily injury** to a **volunteer worker** while performing duties related to the conduct of the **Named Insured's** business;
- when such **bodily injury** arises out of a **health care incident**.



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- the **Named Insured's volunteer workers** are **Insureds** with respect to:
 - (1) **bodily injury** to a **co-volunteer worker** while performing duties related to the conduct of the **Named Insured's** business; and
 - (2) **bodily injury** to an **employee** while in the course of the **employee's** employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business;

when such **bodily injury** arises out of a **health care incident**.

- b. delete Subparagraphs **(a), (b), (c) and (d)** of Paragraph **2.a.(1)** of **WHO IS AN INSURED**.

- D. The **Other Insurance** condition is amended to delete Paragraph **b.(1)** in its entirety and replace it with the following:

Other Insurance

b. Excess Insurance

- (1) To the extent this insurance applies, it is excess over any other insurance, self insurance or risk transfer instrument, whether primary, excess, contingent or on any other basis, except for insurance purchased specifically by the **Named Insured** to be excess of this coverage.

14. JOINT VENTURES / PARTNERSHIP / LIMITED LIABILITY COMPANIES

WHO IS AN INSURED is amended to delete its last paragraph and replace it with the following:

No person or organization is an **Insured** with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a **Named Insured** in the Declarations, except that if the **Named Insured** was a joint venturer, partner, or member of a limited liability company and such joint venture, partnership or limited liability company terminated prior to or during the **policy period**, such **Named Insured** is an **Insured** with respect to its interest in such joint venture, partnership or limited liability company but only to the extent that:

- a. any offense giving rise to **personal and advertising injury** occurred prior to such termination date, and the **personal and advertising injury** arising out of such offense first occurred after such termination date;
- b. the **bodily injury** or **property damage** first occurred after such termination date; and
- c. there is no other valid and collectible insurance purchased specifically to insure the partnership, joint venture or limited liability company; and

If the joint venture, partnership or limited liability company is or was insured under a **consolidated (wrap-up) insurance program**, then such insurance will always be considered valid and collectible for the purpose of paragraph c. above. But this provision will not serve to exclude **bodily injury, property damage** or **personal and advertising injury** that would otherwise be covered under the **Contractors General Liability Extension Endorsement** provision entitled **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS**. Please see that provision for the definition of **consolidated (wrap-up) insurance program**.

15. LEGAL LIABILITY – DAMAGE TO PREMISES / ALIENATED PREMISES / PROPERTY IN THE NAMED INSURED'S CARE, CUSTODY OR CONTROL

- A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete exclusion **j. Damage to Property** in its entirety and replace it with the following:

This insurance does not apply to:

- j. **Damage to Property**



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Property damage to:

- (1) Property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- (3) Property loaned to the **Named Insured**;
- (4) Personal property in the care, custody or control of the **Insured**;
- (5) That particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on the **Named Insured's** behalf are performing operations, if the **property damage** arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to **property damage** (other than damage by fire) to premises rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, nor to the contents of premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in **LIMITS OF INSURANCE**.

Paragraph (2) of this exclusion does not apply if the premises are **your work**.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

Paragraphs (3) and (4) of this exclusion do not apply to **property damage** to:

- i. tools, or equipment the **Named Insured** borrows from others, nor
- ii. other personal property of others in the **Named Insured's** care, custody or control while being used in the **Named Insured's** operations away from any **Named Insured's** premises.

However, the coverage granted by this exception to Paragraphs (3) and (4) does not apply to:

- a. property at a job site awaiting or during such property's installation, fabrication, or erection;
- b. property that is **mobile equipment** leased by an **Insured**;
- c. property that is an **auto**, aircraft or watercraft;
- d. property in transit; or
- e. any portion of **property damage** for which the **Insured** has available other valid and collectible insurance, or would have such insurance but for exhaustion of its limits, or but for application of one of its exclusions.

A separate limit of insurance and deductible apply to such property of others. See **LIMITS OF INSURANCE** as amended below.

- B. Under COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete its last paragraph and replace it with the following:



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Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to a **Named Insured** or temporarily occupied by a **Named Insured** with permission of the owner, nor to damage to the contents of premises rented to a **Named Insured** for a period of 7 or fewer consecutive days.

A separate limit of insurance applies to this coverage as described in **LIMITS OF INSURANCE**.

C. The following paragraph is added to **LIMITS OF INSURANCE**:

Subject to **5.** above, \$25,000 is the most the Insurer will pay under **Coverage A** for **damages** arising out of any one **occurrence** because of the sum of all **property damage** to borrowed tools or equipment, and to other personal property of others in the **Named Insured's** care, custody or control, while being used in the **Named Insured's** operations away from any **Named Insured's** premises. The Insurer's obligation to pay such **property damage** does not apply until the amount of such **property damage** exceeds \$1,000. The Insurer has the right but not the duty to pay any portion of this \$1,000 in order to effect settlement. If the Insurer exercises that right, the **Named Insured** will promptly reimburse the Insurer for any such amount.

D. Paragraph **6.**, Damage To Premises Rented To You Limit, of **LIMITS OF INSURANCE** is deleted and replaced by the following:

6. Subject to Paragraph **5.** above, (the Each Occurrence Limit), the Damage To Premises Rented To You Limit is the most the Insurer will pay under **Coverage A** for **damages** because of **property damage** to any one premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner, including contents of such premises rented to the **Named Insured** for a period of 7 or fewer consecutive days. The Damage To Premises Rented To You Limit is the greater of:

- a.** \$500,000; or
- b.** The Damage To Premises Rented To You Limit shown in the Declarations.

E. Paragraph **4.b.(1)(a)(ii)** of the **Other Insurance** Condition is deleted and replaced by the following:

(ii) That is property insurance for premises rented to the **Named Insured**, for premises temporarily occupied by the **Named Insured** with the permission of the owner; or for personal property of others in the **Named Insured's** care, custody or control;

16. LIQUOR LIABILITY

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Liquor Liability**.

This **LIQUOR LIABILITY** provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

17. MEDICAL PAYMENTS

A. LIMITS OF INSURANCE is amended to delete Paragraph **7.** (the Medical Expense Limit) and replace it with the following:

7. Subject to Paragraph **5.** above (the Each Occurrence Limit), the Medical Expense Limit is the most the Insurer will pay under **Coverage C – Medical Payments** for all medical expenses because of **bodily injury** sustained by any one person. The Medical Expense Limit is the greater of:

- (1)** \$15,000 unless a different amount is shown here: \$N,NNN,NNN,NNN; or
- (2)** the amount shown in the Declarations for Medical Expense Limit.

B. Under **COVERAGES**, the **Insuring Agreement of Coverage C – Medical Payments** is amended to replace Paragraph **1.a.(3)(b)** with the following:

(b) The expenses are incurred and reported to the Insurer within three years of the date of the accident; and



Contractors' General Liability Extension Endorsement

18. NON-OWNED AIRCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended as follows:

The exclusion entitled **Aircraft, Auto or Watercraft** is amended to add the following:

This exclusion does not apply to an aircraft not owned by any **Named Insured**, provided that:

1. the pilot in command holds a currently effective certificate issued by the duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
2. the aircraft is rented with a trained, paid crew to the **Named Insured**; and
3. the aircraft is not being used to carry persons or property for a charge.

19. NON-OWNED WATERCRAFT

Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended to delete subparagraph (2) of the exclusion entitled **Aircraft, Auto or Watercraft**, and replace it with the following.

This exclusion does not apply to:

(2) a watercraft that is not owned by any **Named Insured**, provided the watercraft is:

- (a) less than 75 feet long; and
- (b) not being used to carry persons or property for a charge.

20. PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION

A. Under **DEFINITIONS**, the definition of **personal and advertising injury** is amended to add the following tort:

- Discrimination or humiliation that results in injury to the feelings or reputation of a natural person.

B. Under **COVERAGES, Coverage B – Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to:

1. delete the Exclusion entitled **Knowing Violation Of Rights Of Another** and replace it with the following:

This insurance does not apply to:

Knowing Violation of Rights of Another

Personal and advertising injury caused by or at the direction of the **Insured** with the knowledge that the act would violate the rights of another and would inflict **personal and advertising injury**. This exclusion shall not apply to discrimination or humiliation that results in injury to the feelings or reputation of a natural person, but only if such discrimination or humiliation is not done intentionally by or at the direction of:

- (a) the **Named Insured**; or
 - (b) any **executive officer**, director, stockholder, partner, member or manager (if the **Named Insured** is a limited liability company) of the **Named Insured**.
2. add the following exclusions:

This insurance does not apply to:

Employment Related Discrimination

Discrimination or humiliation directly or indirectly related to the employment, prospective employment, past employment or termination of employment of any person by any **Insured**.



Contractors' General Liability Extension Endorsement

Premises Related Discrimination

discrimination or humiliation arising out of the sale, rental, lease or sub-lease or prospective sale, rental, lease or sub-lease of any room, dwelling or premises by or at the direction of any **Insured**.

Notwithstanding the above, there is no coverage for fines or penalties levied or imposed by a governmental entity because of discrimination.

The coverage provided by this **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization whose status as an **Insured** derives solely from

- Provision 1. **ADDITIONAL INSURED** of this endorsement; or
- attachment of an additional insured endorsement to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY –DISCRIMINATION OR HUMILIATION** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

21. PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY

A. Under **COVERAGES, Coverage B –Personal and Advertising Injury Liability**, the paragraph entitled **Exclusions** is amended to delete the exclusion entitled **Contractual Liability**.

B. Solely for the purpose of the coverage provided by this **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** provision, the following changes are made to the section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**:

1. Paragraph 2.d. is replaced by the following:

d. The allegations in the **suit** and the information the Insurer knows about the offense alleged in such **suit** are such that no conflict appears to exist between the interests of the **Insured** and the interests of the indemnitee;

2. The first unnumbered paragraph beneath Paragraph 2.f.(2)(b) is deleted and replaced by the following:

So long as the above conditions are met, attorneys fees incurred by the Insurer in the defense of that indemnitee, necessary litigation expenses incurred by the Insurer, and necessary litigation expenses incurred by the indemnitee at the Insurer's request will be paid as **defense costs**. Such payments will not be deemed to be **damages** for **personal and advertising injury** and will not reduce the limits of insurance.

C. This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply if **Coverage B –Personal and Advertising Injury Liability** is excluded by another endorsement attached to this **Coverage Part**.

This **PERSONAL AND ADVERTISING INJURY - CONTRACTUAL LIABILITY** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

22. PROPERTY DAMAGE – ELEVATORS

A. Under **COVERAGES, Coverage A – Bodily Injury and Property Damage Liability**, the paragraph entitled **Exclusions** is amended such that the **Damage to Your Product** Exclusion and subparagraphs (3), (4) and (6) of the **Damage to Property** Exclusion do not apply to **property damage** that results from the use of elevators.

B. Solely for the purpose of the coverage provided by this **PROPERTY DAMAGE – ELEVATORS** Provision, the **Other Insurance** conditions is amended to add the following paragraph:

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis that is Property insurance covering property of others damaged from the use of elevators.



Contractors' General Liability Extension Endorsement

23. SUPPLEMENTARY PAYMENTS

The section entitled **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B** is amended as follows:

- A. Paragraph **1.b.** is amended to delete the \$250 limit shown for the cost of bail bonds and replace it with a \$5,000. limit; and
- B. Paragraph **1.d.** is amended to delete the limit of \$250 shown for daily loss of earnings and replace it with a \$1,000. limit.

24. UNINTENTIONAL FAILURE TO DISCLOSE HAZARDS

If the **Named Insured** unintentionally fails to disclose all existing hazards at the inception date of the **Named Insured's Coverage Part**, the Insurer will not deny coverage under this **Coverage Part** because of such failure.

25. WAIVER OF SUBROGATION - BLANKET

Under **CONDITIONS**, the condition entitled **Transfer Of Rights Of Recovery Against Others To Us** is amended to add the following:

The Insurer waives any right of recovery the Insurer may have against any person or organization because of payments the Insurer makes for injury or damage arising out of:

1. the **Named Insured's** ongoing operations; or
2. **your work** included in the **products-completed operations hazard**.

However, this waiver applies only when the **Named Insured** has agreed in writing to waive such rights of recovery in a written contract or written agreement, and only if such contract or agreement:

1. is in effect or becomes effective during the term of this **Coverage Part**; and
2. was executed prior to the **bodily injury, property damage or personal and advertising injury** giving rise to the **claim**.

26. WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

Note: The following provision does not apply to any public construction project in the state of Oklahoma, nor to any construction project in the state of Alaska, that is not permitted to be insured under a **consolidated (wrap-up) insurance program** by applicable state statute or regulation.

If the endorsement **EXCLUSION – CONSTRUCTION WRAP-UP** is attached to this policy, or another exclusionary endorsement pertaining to Owner Controlled Insurance Programs (O.C.I.P.) or Contractor Controlled Insurance Programs (C.C.I.P.) is attached, then the following changes apply:

- A. The following wording is added to the above-referenced endorsement:

With respect to a **consolidated (wrap-up) insurance program** project in which the **Named Insured** is or was involved, this exclusion does not apply to those sums the **Named Insured** become legally obligated to pay as **damages** because of:

1. **Bodily injury, property damage, or personal or advertising injury** that occurs during the **Named Insured's** ongoing operations at the project, or during such operations of anyone acting on the **Named Insured's** behalf; nor
2. **Bodily injury or property damage** included within the **products-completed operations hazard** that arises out of those portions of the project that are not **residential structures**.

- B. Condition **4. Other Insurance** is amended to add the following subparagraph **4.b.(1)(c)**:

This insurance is excess over:



Contractors' General Liability Extension Endorsement

(c) Any of the other insurance whether primary, excess, contingent or any other basis that is insurance available to the **Named Insured** as a result of the **Named Insured** being a participant in a **consolidated (wrap-up) insurance program**, but only as respects the **Named Insured's** involvement in that **consolidated (wrap-up) insurance program**.

C. **DEFINITIONS** is amended to add the following definitions:

Consolidated (wrap-up) insurance program means a construction, erection or demolition project for which the prime contractor/project manager or owner of the construction project has secured general liability insurance covering some or all of the contractors or subcontractors involved in the project, such as an Owner Controlled Insurance Program (O.C.I.P.) or Contractor Controlled Insurance Program (C.C.I.P.).

Residential structure means any structure where 30% or more of the square foot area is used or is intended to be used for human residency, including but not limited to:

1. single or multifamily housing, apartments, condominiums, townhouses, co-operatives or planned unit developments; and
2. the common areas and structures appurtenant to the structures in paragraph 1. (including pools, hot tubs, detached garages, guest houses or any similar structures).

However, when there is no individual ownership of units, **residential structure** does not include military housing, college/university housing or dormitories, long term care facilities, hotels or motels. **Residential structure** also does not include hospitals or prisons.

This **WRAP-UP EXTENSION: OCIP, CCIP, OR CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS** Provision does not apply to any person or organization who otherwise qualifies as an additional insured on this **Coverage Part**.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is understood and agreed as follows:

- I. **WHO IS AN INSURED** is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** caused in whole or in part by your acts or omissions, or the acts or omissions of those acting on your behalf:
 - A. in the performance of your ongoing operations subject to such **written contract**; or
 - B. in the performance of **your work** subject to such **written contract**, but only with respect to **bodily injury or property damage** included in the **products-completed operations hazard**, and only if:
 1. the **written contract** requires you to provide the additional insured such coverage; and
 2. this **coverage part** provides such coverage.
- II. But if the **written contract** requires:
 - A. additional insured coverage under the 11-85 edition, 10-93 edition, or 10-01 edition of CG2010, or under the 10-01 edition of CG2037; or
 - B. additional insured coverage with "arising out of" language; or
 - C. additional insured coverage to the greatest extent permissible by law;then paragraph I. above is deleted in its entirety and replaced by the following:

WHO IS AN INSURED is amended to include as an **Insured** any person or organization whom you are required by **written contract** to add as an additional insured on this **coverage part**, but only with respect to liability for **bodily injury, property damage or personal and advertising injury** arising out of **your work** that is subject to such **written contract**.
- III. Subject always to the terms and conditions of this policy, including the limits of insurance, the Insurer will not provide such additional insured with:
 - A. coverage broader than required by the **written contract**; or
 - B. a higher limit of insurance than required by the **written contract**.
- IV. The insurance granted by this endorsement to the additional insured does not apply to **bodily injury, property damage, or personal and advertising injury** arising out of:
 - A. the rendering of, or the failure to render, any professional architectural, engineering, or surveying services, including:
 1. the preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
 2. supervisory, inspection, architectural or engineering activities; or
 - B. any premises or work for which the additional insured is specifically listed as an additional insured on another endorsement attached to this **coverage part**.
- V. Under **COMMERCIAL GENERAL LIABILITY CONDITIONS**, the Condition entitled **Other Insurance** is amended to add the following, which supersedes any provision to the contrary in this Condition or elsewhere in this **coverage part**:



Blanket Additional Insured - Owners, Lessees or Contractors - with Products-Completed Operations Coverage Endorsement

Primary and Noncontributory Insurance

With respect to other insurance available to the additional insured under which the additional insured is a named insured, this insurance is primary to and will not seek contribution from such other insurance, provided that a **written contract** requires the insurance provided by this policy to be:

1. primary and non-contributing with other insurance available to the additional insured; or
2. primary and to not seek contribution from any other insurance available to the additional insured.

But except as specified above, this insurance will be excess of all other insurance available to the additional insured.

VI. Solely with respect to the insurance granted by this endorsement, the section entitled **COMMERCIAL GENERAL LIABILITY CONDITIONS** is amended as follows:

The Condition entitled **Duties In The Event of Occurrence, Offense, Claim or Suit** is amended with the addition of the following:

Any additional insured pursuant to this endorsement will as soon as practicable:

1. give the Insurer written notice of any **claim**, or any **occurrence** or offense which may result in a **claim**;
2. send the Insurer copies of all legal papers received, and otherwise cooperate with the Insurer in the investigation, defense, or settlement of the **claim**; and
3. make available any other insurance, and tender the defense and indemnity of any **claim** to any other insurer or self-insurer, whose policy or program applies to a loss that the Insurer covers under this **coverage part**. However, if the **written contract** requires this insurance to be primary and non-contributory, this paragraph 3. does not apply to insurance on which the additional insured is a named insured.

The Insurer has no duty to defend or indemnify an additional insured under this endorsement until the Insurer receives written notice of a **claim** from the additional insured.

VII. Solely with respect to the insurance granted by this endorsement, the section entitled **DEFINITIONS** is amended to add the following definition:

Written contract means a written contract or written agreement that requires you to make a person or organization an additional insured on this **coverage part**, provided the contract or agreement:

- A. is currently in effect or becomes effective during the term of this policy; and
- B. was executed prior to:
 1. the **bodily injury** or **property damage**; or
 2. the offense that caused the **personal and advertising injury**;for which the additional insured seeks coverage.

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

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Policy No:
Endorsement No:
Effective Date:

Insured Name:

BUSINESS AUTO COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERED AUTOS

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

A. Description Of Covered Auto Designation Symbols

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-fault	Only those "autos" you own that are required to have no-fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have no-fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

19	Mobile Equipment Subject To Compulsory Or Financial Responsibility Or Other Motor Vehicle Insurance Law Only	Only those "autos" that are land vehicles and that would qualify under the definition of "mobile equipment" under this policy if they were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where they are licensed or principally garaged.
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B. Owned Autos You Acquire After The Policy Begins

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol **7** is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
 - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
 - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos

If Covered Autos Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Covered Autos Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. "Loss"; or
 - e. Destruction.

SECTION II – COVERED AUTOS LIABILITY COVERAGE

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Covered Autos Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

1. Who Is An Insured

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
 - (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

2. Coverage Extensions

a. Supplementary Payments

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All court costs taxed against the "insured" in any "suit" against the "insured" we defend. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the "insured".
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

b. Out-of-state Coverage Extensions

While a covered "auto" is away from the state where it is licensed, we will:

- (1) Increase the Limit of Insurance for Covered Autos Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

B. Exclusions

This insurance does not apply to any of the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

- a. An "employee" of the "insured" arising out of and in the course of:
 - (1) Employment by the "insured"; or
 - (2) Performing the duties related to the conduct of the "insured's" business; or
- b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

5. Fellow Employee

"Bodily injury" to:

- a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
- b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or

- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

9. Operations

"Bodily injury" or "property damage" arising out of the operation of:

- a. Any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to or part of a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraph a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed;
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site; or
- (3) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
 - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

12. War

"Bodily injury" or "property damage" arising directly or indirectly out of:

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined resulting from any one "accident" is the Limit Of Insurance for Covered Autos Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

SECTION III – PHYSICAL DAMAGE COVERAGE

A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

a. Comprehensive Coverage

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

b. Specified Causes Of Loss Coverage

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

c. Collision Coverage

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

2. Towing

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. Coverage Extensions

a. Transportation Expenses

We will pay up to \$20 per day, to a maximum of \$600, for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes Of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

b. Loss Of Use Expenses

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes Of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

B. Exclusions

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

b. War Or Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" due and confined to:
- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

This exclusion does not apply to such "loss" resulting from the total theft of a covered "auto".

4. We will not pay for "loss" to any of the following:
- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.

- b. Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.

- d. Any accessories used with the electronic equipment described in Paragraph c. above.

5. Exclusions 4.c. and 4.d. do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

- a. Permanently installed in or upon the covered "auto";
- b. Removable from a housing unit which is permanently installed in or upon the covered "auto";
- c. An integral part of the same unit housing any electronic equipment described in Paragraphs a. and b. above; or
- d. Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.

6. We will not pay for "loss" to a covered "auto" due to "diminution in value".

C. Limits Of Insurance

1. The most we will pay for:

- a. "Loss" to any one covered "auto" is the lesser of:

- (1) The actual cash value of the damaged or stolen property as of the time of the "loss"; or
- (2) The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

- b. All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss" is \$1,000, if, at the time of "loss", such electronic equipment is:

- (1) Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;

- (2) Removable from a permanently installed housing unit as described in Paragraph **b.(1)** above; or
 - (3) An integral part of such equipment as described in Paragraphs **b.(1)** and **b.(2)** above.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
 3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

SECTION IV – BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

A. Loss Conditions

1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:

- (1) How, when and where the "accident" or "loss" occurred;

- (2) The "insured's" name and address; and
- (3) To the extent possible, the names and addresses of any injured persons and witnesses.

b. Additionally, you and any other involved "insured" must:

- (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
- (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
- (4) Authorize us to obtain medical records or other pertinent information.
- (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.

c. If there is "loss" to a covered "auto" or its equipment, you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Covered Autos Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

4. Loss Payment – Physical Damage Coverages

At our option, we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

5. Transfer Of Rights Of Recovery Against Others To Us

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

B. General Conditions

1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

4. No Benefit To Bailee – Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

5. Other Insurance

- a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Covered Autos Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own; or
- (2) Primary while it is connected to a covered "auto" you own.

- b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

- c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Covered Autos Liability Coverage is primary for any liability assumed under an "insured contract".

- d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

6. Premium Audit

- a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.
- b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere in the world if a covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us applies to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

SECTION V – DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means:
 1. A land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or

2. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these.
- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
 - (1) Being transported or towed by, handled or handled for movement into, onto or from the covered "auto";
 - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
 - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraph **6.b.** or **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (a) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (b) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G.** "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.
- H.** "Insured contract" means:
1. A lease of premises;
 2. A sidetrack agreement;
 3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
 - b. That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
 - c. That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.
- I.** "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- J.** "Loss" means direct and accidental loss or damage.
- K.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 2. Vehicles maintained for use solely on or next to premises you own or rent;
 3. Vehicles that travel on crawler treads;

4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or
 - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in Paragraph 1., 2., 3. or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers; or
6. Vehicles not described in Paragraph 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - a. Equipment designed primarily for:
 - (1) Snow removal;
 - (2) Road maintenance, but not construction or resurfacing; or
 - (3) Street cleaning;
 - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well-servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- M. "Property damage" means damage to or loss of use of tangible property.
- N. "Suit" means a civil proceeding in which:
 1. Damages because of "bodily injury" or "property damage"; or
 2. A "covered pollution cost or expense";
 to which this insurance applies, are alleged.
 "Suit" includes:
 - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the "insured" must submit or does submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
- O. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- P. "Trailer" includes semitrailer.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CONTRACTORS EXTENDED COVERAGE ENDORSEMENT
- BUSINESS AUTO PLUS -**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

I. LIABILITY COVERAGE

A. Who Is An Insured

The following is added to **Section II, Paragraph A.1., Who Is An Insured:**

1. **a.** Any incorporated entity of which the Named Insured owns a majority of the voting stock on the date of inception of this Coverage Form; provided that,
 - b.** The insurance afforded by this provision **A.1.** does not apply to any such entity that is an "insured" under any other liability "policy" providing "auto" coverage.
2. Any organization you newly acquire or form, other than a limited liability company, partnership or joint venture, and over which you maintain majority ownership interest.

The insurance afforded by this provision **A.2.:**

- a.** Is effective on the acquisition or formation date, and is afforded only until the end of the policy period of this Coverage Form, or the next anniversary of its inception date, whichever is earlier.
- b.** Does not apply to:
 - (1) "Bodily injury" or "property damage" caused by an "accident" that occurred before you acquired or formed the organization; or
 - (2) Any such organization that is an "insured" under any other liability "policy" providing "auto" coverage.
3. Any person or organization that you are required by a written contract to name as an additional insured is an "insured" but only with respect to their legal liability for acts or omissions of a person, who qualifies as an "insured" under Section II – Who Is An Insured and for whom Liability Coverage is afforded under this policy. If required by written contract, this insurance will be primary and non-contributory to insurance on which the additional insured is a Named Insured.
4. An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in that "employee's"

name, with your permission, while performing duties related to the conduct of your business.

"Policy," as used in this provision **A. Who Is An Insured**, includes those policies that were in force on the inception date of this Coverage Form but:

1. Which are no longer in force; or
2. Whose limits have been exhausted.

B. Bail Bonds and Loss of Earnings

Section II, Paragraphs A.2. (2) and A.2. (4) are revised as follows:

1. In **a.(2)**, the limit for the cost of bail bonds is changed from \$2,000 to \$5,000; and
2. In **a.(4)**, the limit for the loss of earnings is changed from \$250 to \$500 a day.

C. Fellow Employee

Section II, Paragraph B.5 does not apply.

Such coverage as is afforded by this provision C. is excess over any other collectible insurance.

II. PHYSICAL DAMAGE COVERAGE

A. Glass Breakage – Hitting A Bird Or Animal – Falling Objects Or Missiles

The following is added to **Section III, Paragraph A.3.:**

With respect to any covered "auto," any deductible shown in the Declarations will not apply to glass breakage if such glass is repaired, in a manner acceptable to us, rather than replaced.

B. Transportation Expenses

Section III, Paragraph A.4.a. is revised, with respect to transportation expense incurred by you, to provide:

- a.** \$60 per day, in lieu of \$20; subject to
- b.** \$1,800 maximum, in lieu of \$600.

C. Loss of Use Expenses

Section III, Paragraph A.4.b. is revised, with respect to loss of use expenses incurred by you, to provide:

- a.** \$1,000 maximum, in lieu of \$600.

D. Hired "Autos"

The following is added to **Section III, Paragraph A.:**

5. Hired "Autos"

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered "auto" you lease, hire, rent or borrow without a driver; and
- b. Any covered "auto" hired or rented by your "employee" without a driver, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.
- c. The most we will pay for any one "accident" or "loss" is the actual cash value, cost of repair, cost of replacement or \$75,000, whichever is less, minus a \$500 deductible for each covered auto. No deductible applies to "loss" caused by fire or lightning.
- d. The physical damage coverage as is provided by this provision is equal to the physical damage coverage(s) provided on your owned "autos."
- e. Such physical damage coverage for hired "autos" will:
 - (1) Include loss of use, provided it is the consequence of an "accident" for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
 - (2) Such coverage as is provided by this provision will be subject to a limit of \$750 per "accident."

E. Airbag Coverage

The following is added to **Section III, Paragraph B.3.:**

The accidental discharge of an airbag shall not be considered mechanical breakdown.

F. Electronic Equipment

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any permanently installed electronic equipment including its antennas and other accessories.

- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

G. Diminution In Value

The following is added to **Section III, Paragraph B.6.:**

Subject to the following, the "diminution in value" exclusion does not apply to:

- a. Any covered "auto" of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered "auto" of the private passenger type hired or rented by your "employee" without a driver for a period of 30 days or less, under a contract in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.
- c. Such coverage as is provided by this provision is limited to a "diminution in value" loss arising directly out of accidental damage and not as a result of the failure to make repairs; faulty or incomplete maintenance or repairs; or the installation of substandard parts.
- d. The most we will pay for "loss" to a covered "auto" in any one accident is the lesser of:
 - (1) \$5,000; or
 - (2) 20% of the "auto's" actual cash value (ACV).

III. Drive Other Car Coverage – Executive Officers

The following is added to **Sections II and III:**

1. Any "auto" you don't own, hire or borrow is a covered "auto" for Liability Coverage while being used by, and for Physical Damage Coverage while in the care, custody or control of, any of your "executive officers," except:
 - a. An "auto" owned by that "executive officer" or a member of that person's household; or
 - b. An "auto" used by that "executive officer" while working in a business of selling, servicing, repairing or parking "autos."

Such Liability and/or Physical Damage Coverage as is afforded by this provision.

- (1) Equal to the greatest of those coverages afforded any covered "auto"; and

(2) Excess over any other collectible insurance.

2. For purposes of this provision, "executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document, and, while a resident of the same household, includes that person's spouse.

Such "executive officers" are "insureds" while using a covered "auto" described in this provision.

IV. BUSINESS AUTO CONDITIONS

A. Duties In The Event Of Accident, Claim, Suit Or Loss

The following is added to **Section IV, Paragraph A.2.a.**:

- (4) Your "employees" may know of an "accident" or "loss." This will not mean that you have such knowledge, unless such "accident" or "loss" is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

The following is added to **Section IV, Paragraph A.2.b.**:

- (6) Your "employees" may know of documents received concerning a claim or "suit." This will not mean that you have such knowledge, unless receipt of such documents is known to you or if you are not an individual, to any of your executive officers or partners or your insurance manager.

B. Transfer Of Rights Of Recovery Against Others To Us

The following is added to **Section IV, Paragraph A.5. Transfer Of Rights Of Recovery Against Others To Us:**

We waive any right of recovery we may have, because of payments we make for injury or

damage, against any person or organization for whom or which you are required by written contract or agreement to obtain this waiver from us.

This injury or damage must arise out of your activities under a contract with that person or organization.

You must agree to that requirement prior to an "accident" or "loss."

C. Concealment, Misrepresentation or Fraud

The following is added to **Section IV, Paragraph B.2.**:

Your failure to disclose all hazards existing on the date of inception of this Coverage Form shall not prejudice you with respect to the coverage afforded provided such failure or omission is not intentional.

D. Other Insurance

The following is added to **Section IV, Paragraph B.5.**:

Regardless of the provisions of Paragraphs **5.a.** and **5.d.** above, the coverage provided by this policy shall be on a primary non-contributory basis. This provision is applicable only when required by a written contract. That written contract must have been entered into prior to "Accident" or "Loss."

E. Policy Period, Coverage Territory

Section IV, Paragraph B. 7.(5).(a). is revised to provide:

- a. 45 days of coverage in lieu of 30 days.

V. DEFINITIONS

Section V. Paragraph C. is deleted and replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish, mental injury or death resulting from any of these.

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PARAMOUNT EXCESS AND UMBRELLA LIABILITY POLICY

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

The "Insurer" refers to the insurer providing this insurance as set forth on the Declarations of this Policy. Words and phrases that appear in **bold** have special meaning. Refer to the section entitled **DEFINITIONS**.

I. COVERAGES

A. Coverage A - Excess Follow Form Liability

The Insurer will pay on behalf of the **Insured** those **damages** in excess of the applicable **underlying limits**. Coverage hereunder will attach only after the full amount of the applicable **underlying limits** have been exhausted through payment in legal currency of covered loss under all applicable **underlying insurance** and to which this Coverage A applies.

Coverage A under this Policy will then apply in conformance with the provisions of the applicable **underlying insurance** except for the premium, limits of insurance, deductible, retentions, or any defense obligations and any other terms and conditions specifically set forth in this Policy.

Upon exhaustion of the applicable **underlying limits**, the Insurer shall only pay for **damages** in excess of the applicable **underlying limits**. This Coverage A does not provide coverage for any loss not covered by the applicable **underlying insurance** except and to the extent that such loss is not paid under the applicable **underlying insurance** solely by reason of the exhaustion of the applicable **underlying limits** through payment of loss thereunder.

This Coverage applies:

1. if the applicable **underlying insurance** is on an occurrence basis, then only if that which must take place in the policy period of the **underlying insurance** in order to trigger coverage, takes place during this **policy period**; and
2. if the applicable **underlying insurance** is on a claims made basis, then only if:
 - a. that which must take place in the **underlying insurance** in order to trigger coverage, takes place after the retroactive date and prior to the end of the **policy period**; and
 - b. the **claim** is first made during the **policy period**.

B. Coverage B - Umbrella Liability

The Insurer will pay on behalf of the **Insured** those **damages** in excess of the **retained amount**:

1. that an **Insured** becomes legally obligated to pay because of **bodily injury, property damage or personal and advertising injury**; or
2. because of liability for **bodily injury or property damage** assumed under an **insured contract**, provided the **bodily injury or property damage** occurs subsequent to the execution of such **insured contract**;

and provided that:

- a. the **bodily injury or property damage** occurs during the **policy period**;
- b. the **bodily injury or property damage** is caused by an **occurrence** that takes place in the **coverage territory**;



- c. the **personal and advertising injury** is caused by an offense arising out of the **Named Insured's** business; and
- d. the offense giving rise to **personal and advertising injury** was first committed during the **policy period** and in the **coverage territory**;

Provided, however, that **Coverage B - Umbrella Liability**:

- i. does not apply to:
 - (a) any part of **damages** to which **underlying insurance** applies; or
 - (b) any part of **damages** to which **underlying insurance** would have applied regardless of:
 - (1) the availability of **underlying insurance**; or
 - (2) the exhaustion of the applicable **underlying limits**;
 - (c) any **defense costs** related to **damages** as described in a. and b. above.
- ii. applies only if prior to the effective date of the **policy period**, no **authorized insured**:
 - (a) knew that such **bodily injury** or **property damage** had occurred, in whole or in part. If any **authorized insured** knew, prior to the **policy period**, that any such **bodily injury** or **property damage** had occurred, then any continuation, change or resumption of such **bodily injury** or **property damage** during or after the **policy period** will be deemed to have been known prior to the **policy period**; or
 - (b) knew that any offense giving rise to **personal and advertising injury** had occurred, in whole or in part.

Bodily injury or **property damage** which occurs during the **policy period** and was not, prior to the **policy period**, known to have occurred by any **authorized insured**, includes any continuation, change or resumption of that **bodily injury** or **property damage** after the end of the **policy period**.

An **authorized insured** will be deemed to know:

- 1. that such **bodily injury** or **property damage** occurred, at the earliest time when such **authorized insured**:
 - a. reports the **bodily injury** or **property damage** to the Insurer or any other insurer;
 - b. receives a **claim** arising out of the **bodily injury** or **property damage**; or
 - c. becomes aware by any other means that the **bodily injury** or **property damage** has occurred or has begun to occur;
- 2. that such offense giving rise to **personal and advertising injury** occurred, on the date of the first utterance or dissemination or, if there is no utterance or dissemination, then on the first date of the activity giving rise to a **claim**.

C. Coverage C - Crisis Management Expenses

The Insurer will reimburse the **Named Insured** for **crisis management expenses** incurred by the **Named Insured** as a direct result of its response to a **crisis management event** that first occurs during the **policy period**, provided:

- 1 such **crisis management event** is reported to the Insurer as soon as reasonably practicable following the **crisis management event**, or within 72 hours after such **crisis management event** begins if such **crisis management event** is likely to give rise to **bodily injury** or **property damage**;



2. such **crisis management expenses** are incurred within 180 days after the **crisis management event** and reported to the Insurer as soon as reasonably practicable; and,
3. such **crisis management expenses** are approved in advance by the Insurer.

The period of time for which the Insurer will pay **crisis management expenses** will not be limited by the expiration of the **policy period**.

D. Coverage D – Key Employee

The Insurer will reimburse the **Named Insured** for **key employee replacement expenses** due to the **Named Insured's** permanent loss of the services of a **key employee** provided that:

1. the **Named Insured** would not have incurred such **key employee replacement expenses** if the **Named Insured** had not lost the services of the **key employee**;
2. such **key employee replacement expenses** are incurred by the **Named Insured** within 180 days of the **covered accident** and reported to the Insurer as soon as reasonably practicable;
3. such loss of service is caused by a **covered accident**;
4. the **covered accident** occurs during the **policy period**; and
5. a replacement for such **key employee** is hired within 180 days after the **covered accident**.

The period of time for which the Insurer will pay **key employee replacement expenses** will not be limited by the expiration of the **policy period**.

II. DEFENSE COSTS PAYMENT AND RELATED DUTIES

A. The Insurer has the right and duty to defend any **suit**, and the right to assume control of the investigation and settlement of any **claim**, against the **Insured**, as follows:

1. with respect to the **Coverage A - Excess Follow Form Liability**, upon exhaustion through payment in legal currency of the full amount of the applicable **underlying limits** over which **Coverage A** applies.
2. with respect to the **Coverage B - Umbrella Liability**, upon receipt by the Insurer of a **claim** to which Coverage B applies.

When the Insurer has the duty to defend any **suit** and the right to investigate any **claim** but is prevented by law from doing so, the **Insured** will undertake such defense and investigation, and the Insurer will reimburse the **Insured** for the **defense costs**.

The Insurer's obligation to defend any **suit**, investigate any **claim**, or reimburse for any **defense costs** does not apply if any other insurer has a duty to defend. Further, any obligation to defend any **suit**, investigate any **claim**, or reimburse for any **defense costs** ceases upon exhaustion of the applicable limits of insurance of this Policy.

B. The Insurer may, at the Insurer's sole discretion and at the Insurer's own cost, elect to participate in the investigation, settlement or defense of any **claim** against any of the **Insureds** for matters covered by this Policy even if the applicable **underlying limit** has not been exhausted.

C. The Insurer will pay **defense costs** as follows:

- 1 with respect to the **Coverage A - Excess Follow Form Liability**, **defense costs** are paid within or excess of the limits of insurance as set forth in the applicable **underlying insurance**.
2. with respect to the **Coverage B - Umbrella Liability**, **defense costs** are paid in excess of and do not erode the limits of insurance or the **retained amount**.

D Where the Insurer investigates a **claim** or defends a **suit**, the Insurer will do so even if the allegations of a **claim** are groundless, false, or fraudulent. If Insurer investigates a **claim** or defends a **suit**, Insurer will



do so only until the Insurer:

1. makes payment of; or
2. offers to pay; or
3. deposits in court

that part of a judgment up to but not exceeding the Insurer's applicable limits of insurance.

- E. No **Insured** shall admit liability, consent to any judgment, agree to any settlement or make any settlement offer which is reasonably likely to involve this Policy without the Insurer's prior written consent, such consent not to be unreasonably withheld. The **Insureds** agree that they shall not knowingly take any action that increases the Insurer's exposure for **damages** or **defense costs** under this Policy.

III. EXCLUSIONS

A. Coverage A - Excess Follow Form Liability and Coverage B - Umbrella Liability Exclusions

With respect to both the **Coverage A- Excess Follow Form Liability** and **Coverage B -Umbrella Liability**, this Insurance does not apply to:

1. Access to or Disclosure of Confidential or Personal Information and Data-Related Liability

any actual or alleged **damages** arising out of:

- a. any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- b. the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate **electronic data**.

This exclusion applies even if **damages** are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by the **Named Insured** or others arising out of that which is described in paragraph **a.** or **b.** above.

However, unless paragraph **a.** above applies, this exclusion does not apply to **bodily injury** to the extent that such liability is covered by **underlying insurance**.

2. Asbestos

- a. any actual or alleged liability arising out of the actual, alleged or threatened exposure at any time to **asbestos**; or
- b. any actual or alleged loss, cost or expense that may be awarded or incurred:
 - i. by reason of a **claim** for any such injury or damage; or
 - ii. in complying with a governmental direction or request to test for, monitor, clean up, remove, contain or dispose of **asbestos**.

3. Damage to Impaired Property or Property not Physically Injured

any actual or alleged **property damage** to **impaired property** or property that has not been physically injured, arising out of:

- a. a defect, deficiency, inadequacy or dangerous condition in **your product** or **your work**; or
- b. a delay or failure by the **Named Insured** or anyone acting on the **Named Insured's** behalf to perform a contract or agreement in accordance with its terms.



This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to **your product** or **your work** after it has been put to its intended use.

4. Damage to Premises Rented or Occupied by the Named Insured

any actual or alleged **property damage** to premises rented to the **Named Insured** or in the case of damage by fire, while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with the permission of the owner.

5. Distribution or Recording of Material or Information in Violation of Laws

any actual or alleged liability arising directly or indirectly out of any actual or alleged:

- a. violation of:
 - i. the Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
 - ii. the CAN-SPAM Act of 2003, including any amendment of or addition to such law;
 - iii. the Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
 - iv. any statute, ordinance, regulation or law other than the TCPA, CAN-SPAM Act of 2003, or FCRA, including FACTA, and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information; or
- b. conversion or consumption of another's tangible property or electronic assets. For the purpose of this provision, electronic assets include but are not limited to minute allowances, text message allowances, and other electronic consumables.

6. Employment Related Practices

any actual or alleged **bodily injury** or **personal and advertising injury** to:

- a. a person arising out of any actual or alleged:
 - i. refusal to employ that person;
 - ii. termination of that person's employment;
 - iii. employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- b. the **spouse**, child, parent, brother or sister of that person as a consequence of such **bodily injury** or **personal and advertising injury** to that person at whom any of the employment-related practices described in paragraphs a. i., ii., or iii. above is directed.

This exclusion applies:

- a. whether the injury-causing event described in paragraphs a. i., ii., or iii. above occurs before employment, during employment or after employment of that person;
- b. whether the **Insured** may be liable as an employer or in any other capacity; and
- c. to any obligation to share damages with or repay someone else who must pay damages because of the injury.

However, this exclusion does not apply to **bodily injury** a person sustains during a job interview while attempting to demonstrate a physical capability or skill required by the job to the extent that

such liability is covered by **underlying insurance**.

7. ERISA

any actual or alleged liability arising out of any actual or alleged obligation of any **Insured** under the Employees Retirement Income Security Act of 1974 or any similar common or statutory law anywhere in the world including any amendments or additions thereto.

8. Nuclear Energy Liability

any actual or alleged **bodily injury, property damage or personal and advertising injury**:

- a. with respect to which an **Insured** under this policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of insurance;
- b. resulting from the **hazardous properties of nuclear material** and with respect to which:
 - i. any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or
 - ii. the **Insured** is, or had this Policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization; or
- c. resulting from **hazardous properties of nuclear material**, if:
 - i. the **nuclear material**:
 - (a) is at any **nuclear facility** owned by, or operated by or on behalf of, an **Insured** or
 - (b) has been discharged or dispersed therefrom;
 - ii. the **nuclear material** is contained in **spent fuel or nuclear waste** at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an **Insured**;
or
 - iii. the **bodily injury, property damage or personal and advertising injury** arises out of the furnishing by an **Insured** of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any **nuclear facility**, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion applies only to **property damage** to such **nuclear facility** and any property thereat.
- d. Under any Medical Payments coverage, to expenses with respect to **bodily injury** resulting from the **hazardous properties of nuclear material** and arising out of the operation of a **nuclear facility** by any person or organization.

Solely as used in this exclusion:

- (a) **property damage** includes all forms of radioactive contamination of property;
- (b) **hazardous properties** includes but is not limited to radioactive, toxic or explosive properties;
- (c) source material, special nuclear material, and by-product material have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
- (d) **spent fuel** means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a **nuclear reactor**.

9. Recall of Products, Work or Impaired Property

any actual or alleged loss, cost or expense incurred by the **Named Insured** or any person or entity, for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of **your product, your work or impaired property**, if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

10. Unfair Competition/Antitrust Claims/RICO Claims

any actual or alleged liability arising out of any:

- a. unfair competition, dilution, deceptive trade practices, or civil actions for consumer fraud;
- b. charges of price fixing, monopolization or restraint of trade; or
- c. any violation of:
 - i. the Federal Trade Commission Act;
 - ii. the Sherman Act, the Clayton Act, or any federal statutory provision regarding anti-trust, monopoly, price fixing, price discrimination, predatory pricing or restraint of trade;
 - iii. the Racketeer Influenced and Corrupt Organizations Act;
 - iv. any rules or regulations promulgated under or in connection with the above statutes; or
 - v. any state, federal or local statute or other law which similarly regulates business practices.

11. Uninsured/Underinsured Motorists

any actual or alleged liability arising out of any obligations under an uninsured/underinsured motorist law, a personal injury protection law, a reparations benefit law or other similar law.

12. War

any actual or alleged liability arising, directly or indirectly out of any:

- a. war, including undeclared or civil war;
- b. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

13. Workers' Compensation and Similar Laws /Nonsubscriber Status

any actual or alleged liability arising out of any obligation of any **Insured**:

- a. under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- b. by reason of a statement of non-subscription on file with any applicable Worker's Compensation authority of any State indicating the **Named Insured** has chosen not to participate in the Workers Compensation system in accordance with laws of such state.

B. Coverage A - Excess Follow Form Liability Exclusions

With respect to **Coverage A - Excess Follow Form Liability**, this Insurance does not apply to:

1. Coverages Subject to a Sub Limit

any actual or alleged liability, loss, cost or expense covered under any **underlying insurance** which is



subject to a **sub limit**.

2. Crisis Management Expenses

crisis management expenses except as provided for in **Coverage C** above even if such insurance is afforded under **underlying insurance** or would have been afforded but for the exhaustion of the **underlying limits**.

3. Pollution

- a. any actual or alleged **bodily injury** or **property damage** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**:
 - i. at or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any **Insured** except that this subparagraph does not apply to:
 - (a) **bodily injury** or **property damage** arising out of heat, smoke or fumes from a **hostile fire**; or
 - (b) **bodily injury** if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - ii. at or from any premises, site or location which is or was at any time used by or for any **Insured** or others for the handling, storage, disposal, processing or treatment of waste;
 - iii. which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any **Insured** or any person or organization for whom the **Named Insured** may be legally responsible; or
 - iv. at or from any premises, site or location on which any **Insured** or any contractors or subcontractors working directly or indirectly on any **Insured's** behalf are performing operations:
 - (a) If the **pollutants** are brought on or to the premises, site or location in connection with such operations by such **Insured**, contractor or subcontractor; except that this subparagraph does not apply to **bodily injury** or **property damage** arising out of:
 - (1) the escape of fuels, lubricants, or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for operation of **mobile equipment** or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the **bodily injury** or **property damage** arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such **Insured**, contractor or subcontractor; or
 - (2) heat, smoke or fumes from a **hostile fire**; or
 - (b) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**;
 - v. that are, or that are contained in property that is:
 - (a) being transported or towed by, or handled for movement into, onto or from a covered **auto**;
 - (b) otherwise in the course of transit; or



- (c) being stored, disposed of, treated or processed in or upon the covered **auto** except that this subparagraph does not apply to fuels, lubricants, fluids, exhaust, gases or other similar **Pollutants** that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered **auto** or its parts if the **pollutants** escape or are discharged, dispersed or released directly from an **auto** part designed by its manufacturer to hold, store, receive or dispose of such **pollutants**;
- vi. before the **pollutants** or property in which the **pollutants** are contained are moved from the place where they are accepted by the **Insured** for movement into or onto the covered **auto**;
or
- vii. after the **pollutants** or property in which the **pollutants** are contained are moved from the covered **auto** to the place where they are finally delivered, disposed of or abandoned by the **Insured**.

Subparagraphs **vi.** and **vii.** do not apply if the **pollutants** or property in which the **pollutants** are contained are upset, overturned or damaged as a result of the maintenance or use of a covered **auto** and the discharge, dispersal, release or escape of the **pollutants** is caused directly by such upset, overturn or damage.

- b. any actual or alleged **personal and advertising injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time.
- c. any actual or alleged loss, cost or expense arising out of any:
 - i. request, demand, order or statutory or regulatory requirement that any **Insured** or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants**; or
 - ii. **claim** by or on behalf of a governmental authority for **damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

However, if liability for **damages** because of **property damage** is not excluded by paragraph **a.** of this exclusion, then neither will paragraph **c.** above serve to exclude such **damages**.

C. Coverage B - Umbrella Liability Exclusions

With respect to the **Coverage B - Umbrella Liability**, this Insurance does not apply to:

1. Aircraft, Auto, Watercraft or Mobile Equipment

any actual or alleged **bodily injury, property damage, personal and advertising injury** arising out of the ownership, maintenance, operation, use, **loading or unloading** or entrustment to others of any:

- a. **aircraft** owned by any **Insured** or rented, loaned or chartered by or on behalf of any **Insured** without crew; or
- b. **autos, watercraft or mobile equipment**

This exclusion applies even if such **claim** against an **Insured** alleges negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that **Insured**.

This exclusion does not apply to:

- i. watercraft while ashore on premises the **Named Insured** owns or rents;
- ii. watercraft the **Named Insured** does not own that is:
 - (a) less than 55 feet long; and
 - (b) not being used to carry persons or property for a charge; or



- iii. liability assumed under any **insured contract** for the ownership, maintenance or use of watercraft.

2. Contractual Liability

any actual or alleged **bodily injury, property damage or personal and advertising injury** for which an **Insured** is obligated to pay **damages** by reason of the assumption of liability in a contract or agreement other than an **insured contract**. This exclusion does not apply to liability that the **Insured** would have in the absence of such contract or agreement.

3. Damage to Property

any actual or alleged **property damage** to:

- a. property the **Named Insured** owns, rents, or occupies, including any costs or expenses incurred by the **Named Insured**, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- b. premises the **Named Insured** sells, gives away or abandons, if the **property damage** arises out of any part of those premises;
- c. property loaned to the **Named Insured**;
- d. personal property in the care, custody or control of the **Insured**;
- e. that particular part of real property on which the **Named Insured** or any contractors or subcontractors working directly or indirectly on its behalf are performing operations, if the **property damage** arises out of those operations; or
- f. that particular part of any property that must be restored, repaired or replaced because **your work** was incorrectly performed on it.

Paragraph b. of this exclusion does not apply if the premises are **your work** and were never occupied, rented or held for rental by the **Named Insured**.

Paragraphs c., d., e. and f. of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph f. of this exclusion does not apply to **property damage** included in the **products-completed operations hazard**.

4. Damage to Your product

any actual or alleged **property damage** to **your product** arising out of it or any part of it.

5. Damage to Your work

any actual or alleged **property damage** to **your work** arising out of it or any part of it and included in the **products-completed operations hazard**. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on the **Named Insured's** behalf by a subcontractor.

6. Employee Injury

any actual or alleged **bodily injury** or **personal and advertising injury** to:

- a. an **employee** arising out of and in the course of employment by the **Insured** or performing duties related to the conduct of the **Insured's** business; or
- b. the **spouse**, child, parent, brother or sister of that **employee** as a consequence of a. above.



This exclusion applies:

- i. whether an **Insured** may be liable as an employer or in any other capacity; and
- ii. to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the **Insured** under an **insured contract**.

7. Expected or Intended injury

any actual or alleged **bodily injury** or **property damage** arising out of an act or omission:

- a. intended by an **Insured**; or
- b. that would be expected from the standpoint of a reasonable person in the circumstances of the **Insured**;

to cause **bodily injury** or **property damage**, even if the actual **bodily injury** or **property damage** is of a different degree or type than intended or expected.

This exclusion does not apply to **bodily injury** or **property damage** resulting from the use of reasonable force to protect persons or property.

8. Fungi or Other Organic Pathogens

- a. any actual or alleged **bodily injury**, **property damage** or **personal and advertising injury** arising out of any actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or growth or presence of any **fungi or other organic pathogens**;
- b. any actual or alleged loss, cost or expense arising out of or relating to the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to or assessing the effects of **fungi or other organic pathogens** by any **Insured** or by anyone else; or
- c. any actual or alleged **property damage** caused by water where there also exists any **property damage** arising out of or relating to, in whole or in part, the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or growth or presence of any **fungi or other organic pathogens**.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage, loss, cost or expense.

9. Liquor Liability

any actual or alleged **bodily injury** or **property damage** for which any **Insured** may be held liable by reason of:

- a. causing or contributing to the intoxication of any person, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on the **Insured's** premises, for consumption on the **Insured's** premises;
- b. the furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the **claims** against any **Insured** allege negligence or other wrongdoing in:

- i. the supervision, hiring, employment, training or monitoring of others by that **Insured**; or

- ii. providing or failing to provide transportation with respect to any person that may be under the influence of alcohol,

if the **occurrence** which caused the **bodily injury** or **property damage** involved that which is described in paragraph **a.**, **b.** or **c.** above.

10. Nonemployment Related Discrimination

any actual or alleged personal and advertising injury arising out of any actual or alleged nonemployment related discrimination committed intentionally against a person.

11. Personal and Advertising Injury

any actual or alleged **personal and advertising injury**:

a. Breach of Contract

arising out of breach of contract, except an implied contract to use another's advertising idea in the **Named Insured's advertisement**.

b. Criminal Acts or Conduct

arising out of any actual or alleged criminal act or omission committed by or at the direction of any **Insured**. This exclusion does not apply to the extent liability is imposed upon the **Insured** for acts or omissions of another committed without the knowledge or consent of the **Insured**.

c. Electronic Chat Rooms or Bulletin Boards

arising out of an electronic chat room or bulletin board the **Insured** hosts, owns, or over which the **Insured** exercises control.

d. Infringement of Copyright, Patent, Trademark or Trade Secret

arising out of infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in the **Named Insured's advertisement**. However, this exclusion does not apply to infringement of copyright, trade dress or slogan in the **Named Insured's advertisement**.

e. Insureds in Media and Internet Type Businesses

committed by an **Insured** whose business is:

- i. advertising, broadcasting, publishing or telecasting;
- ii. designing or determining content or web-sites for others; or
- iii. an Internet search, access, content or service provider.

However, this exclusion does not apply to paragraph **A.**, **B.** or **C.** of **personal and advertising injury** as defined in the section entitled Definitions.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for the **Named Insured** or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

f. Knowing Violation of Rights of Another

caused by an actual or alleged offense, act or omission by or at the direction of the **Insured** if the **Insured** knew or should have known that such offense, act or omission would cause such **personal and advertising injury**.



g. Material Published Prior To Policy Period

arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the **policy period**.

h. Material Published with Knowledge of Falsity

arising out of written publication in any manner of material, if the **Insured** knew or should have known the material was false.

i. Quality or Performance of Goods – Failure to Conform to Statements

arising out of any failure of goods, products or services to conform to any statement of quality or performance made in the **Named Insured's advertisement**.

j. Unauthorized Use of Another's Name or Product

arising out of unauthorized use of another's name or product in the **Named Insured's** e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

k. Wrong Description of Prices

arising out of the wrong description of the price of goods, products or services stated in the **Named Insured's advertisement**.

12. Pollution

a any actual or alleged **bodily injury, property damage or personal and advertising injury** arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time.

b. any actual or alleged loss, cost or expense arising out of any:

i. request, demand, order, or statutory or regulatory requirement that anyone test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of **pollutants**; or

ii. **claim** by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of **pollutants**.

13. Silica

a. any actual or alleged **bodily injury** arising, in whole or in part, out of the actual, alleged or threatened respiration or ingestion at any time of **silica**; or

b. any actual or alleged **property damage** arising in whole or in part out of the actual, alleged or threatened presence of **silica**.

c. any actual or alleged **personal and advertising injury** arising, in whole or in part, out of the actual, alleged or threatened:

i. exposure at any time to; or

ii. presence at any time of;

silica.

14. Terrorism

any actual or alleged **bodily Injury, property damage or personal and advertising injury** arising out of any act of terrorism.



D. Coverage D - Key Employee Exclusions

With respect to **Coverage D – Key Employee**, this insurance does not apply to any actual or alleged:

1. Death or Disability

death or permanent disability of a **key employee** relating to, or arising out of:

- a. nuclear reaction or radiation or radioactive contamination, however caused;
- b. sickness or disease, including mental illness or mental injury;
- c. pregnancy, childbirth, miscarriage or abortion;
- d. suicide, attempted suicide or self inflicted bodily injury, while sane or insane;
- e. the **key employee's** intoxication, impairment or otherwise being under the influence of alcohol or controlled substances;
- f. war, including undeclared or civil war;
- g. warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- h. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. Other Expenses

- a. expenses the **Named Insured** incurs which the **Named Insured** would not have incurred if the **Named Insured** had used all reasonable means to:
 - i. find a permanent replacement for the **key employee**; and
 - ii. reduce or discontinue the **key employee** replacement expense;as soon as possible after the **Named Insured's** permanent loss of the services of the **key employee** caused by a **covered accident**.
- b. additional expenses incurred due to the **Named Insured's** loss of the services of a permanent replacement appointed or hired to replace a **key employee**, however caused. However, this exclusion does not apply if the replacement employee is included in the definition as a **key employee** and the **Named Insured's** loss of the services of the replacement employee is caused by a **covered accident**.

IV. WHO IS AN INSURED

The following persons or organizations are **Insureds**.

A. With respect to **Coverage A - Excess Follow Form Liability**, the **Named Insured** and any persons or organizations included as an insured under the provisions of **underlying insurance** are **Insureds**, and then only for the same coverage, except for limits of insurance, afforded under such **underlying insurance**.

B. With respect to the **Coverage B - Umbrella Liability**:

1. If the **Named Insured** is designated in the Declarations of this Policy as:
 - a. an individual, the **Named Insured** and the **Named Insured's spouse** are **Insureds**, but only with respect to the conduct of a business of which the **Named Insured** is the sole owner.
 - b. a partnership or joint venture, the **Named Insured** is an **Insured**. The **Named Insured's** members, the **Named Insured's** partners, and their **spouses** are also **Insureds**, but only with respect to the conduct of the **Named Insured's** business.



- c. a limited liability company, the **Named Insured** is an **Insured**. The **Named Insured's** members are also **Insureds**, but only with respect to the conduct of the **Named Insured's** business. The **Named Insured's** managers are **Insureds**, but only with respect to their duties as the **Named Insured's** managers.
- d. an organization other than a partnership, joint venture or limited liability company, the **Named Insured** is an **Insured**. The **Named Insured's** **executive officers** and directors are **Insureds**, but only with respect to their duties as the **Named Insured's** officers or directors. The **Named Insured's** stockholders are also **Insureds**, but only with respect to their liability as stockholders.
- e. a trust, the **Named Insured** is an **Insured**. The **Named Insured's** trustees are also **Insureds**, but only with respect to their duties as trustees.

2. Each of the following are also **Insureds**:

- a. The **Named Insured's** **volunteer workers** but only while performing duties related to the conduct of the **Named Insured's** business.
- b. The **Named Insured's** **employees**, other than either the **Named Insured's** **executive officers** (if the **Named Insured** is an organization other than a partnership, joint venture or limited liability company) or the **Named Insured's** managers (if the **Named Insured** is a limited liability company), but only for acts within the scope of their employment by the **Named Insured** or while performing duties related to the conduct of the **Named Insured's** business.

However, none of these **employees** or **volunteer workers** are **Insureds** for:

i. **bodily injury** or **personal and advertising injury**:

- (a) to the **Named Insured**, to the **Named Insured's** partners or members (if the **Named Insured** is a partnership or joint venture), to the **Named Insured's** members (if the **Named Insured** is a limited liability company), to a co-**employee** while in the course of his or her employment or performing duties related to the conduct of the **Named Insured's** business, or to the **Named Insured's** other **volunteer workers** while performing duties related to the conduct of the **Named Insured's** business;
- (b) to the **spouse**, child, parent, brother or sister of that co-**employee** or **volunteer worker** as a consequence of paragraph (i)(a) above;
- (c) for which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraph i. (a) or (b) above; or
- (d) arising out of his or her providing or failing to provide professional health care services.

ii. **property damage** to property:

- (a) owned, occupied or used by;
- (b) rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

the **Named Insured**, any of the **Named Insured's** **employees**, **volunteer workers**, any partner or member (if the **Named Insured** is a partnership or joint venture), or any member (if the **Named Insured** is a limited liability company).

- C. With respect to the **Coverage C - Crisis Event Management** and the **Coverage D - Key Employee**, the **Named Insured** is the **Insured**.

V. LIMITS OF INSURANCE

A. Multiple Insureds, claims, claimants

The limits of insurance shown in the Declarations of this Policy and the rules below fix the most the

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Insurer will pay regardless of the number of:

1. **Insureds**;
2. **claims** made or brought against the **Insured**;
3. persons or organizations making **claims** or bringing **claims**; and
4. coverages under this Policy.

B. Aggregate Limit

Subject to the paragraphs **D.** and **E.** below, the limit of insurance shown in the Declarations of this Policy as the Aggregate limit is the most that the Insurer will pay as **damages** under this Policy, regardless of which coverage applies, except for:

1. **damages** covered by any auto liability policy listed in the Schedule of **Underlying Insurance** where the limits of insurance of such auto liability policy are not aggregated; and
2. **damages** covered under the **products-completed operations hazard**.

The limits of insurance shown in the Declarations of this Policy apply to the entire **policy period**, regardless of length.

In addition, with respect to **Coverage A – Excess Follow Form Liability** only, the Aggregate limit shown in the Declarations of this Policy shall be applied in the same manner as the applicable Aggregate limits in the Schedule of **underlying insurance**.

C. Aggregate Products-Completed Operations Hazard

Subject to paragraph **D.** and **E.** below, the limit of insurance shown in the Declarations of this Policy as the Aggregate Products-Completed Operations Hazard limit is the most that the Insurer will pay as **damages** arising out of the **products-completed operations hazard**, regardless of whether such **damages** are or otherwise would be covered in any way under more than one coverage.

D. Policy Aggregate Limit

This provision **D.** only applies if an amount is shown in the Declarations as the Policy Aggregate Limit.

Subject to the Each **Incident** limit, Aggregate limit and Aggregate **products-completed operations hazard** limit, the Policy Aggregate limit is the most the Insurer will pay as **damages** under this Policy, regardless of which coverage applies, except for **damages** covered by any auto liability policy listed in the Schedule of **Underlying Insurance** where the limits of insurance of such auto liability policy are not aggregated.

E. Each Incident

Subject to paragraphs **B.**, **C.** and **D.** above, the limit of insurance shown in the Declarations of this Policy as the Each **Incident** limit is the most the Insurer will pay for the sum of all **damages** arising out of any one **incident** under this Policy, regardless of which coverage applies.

F. Crisis Management

Solely with respect to **Coverage C – Crisis Management Expenses**, the most the Insurer will pay is the limit of insurance shown on the Declarations of this Policy as the **Crisis Management Expenses** Aggregate limit, regardless of the number **crisis management events** for which **crisis management expenses** are incurred. **Crisis management expenses** are not subject to the **retained amount**.

The **Crisis Management Expenses** Aggregate limit of insurance is in addition to and will not erode any other limits of this Policy. The **Crisis Management Expenses** Aggregate limit of insurance shall be excess of any other limits of insurance available to the **Insured** for the same expenses.

G. Key Employee Replacement Expenses

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Solely with respect to **Coverage D – Key Employee**, the most the Insurer will pay for **key employee replacement expenses** is the **Key Employee** Aggregate limit shown on the Declarations of this Policy, regardless of the number **key employees** for which **key employee replacement expenses** are incurred. **Key employee replacement expenses** are not subject to the **retained amount**.

The **Key Employee Replacement Expenses** Aggregate limit of insurance is in addition to and will not erode any other limits of this Policy. The **Key Employee Replacement Expenses** Aggregate limit of insurance shall be excess of any other limits of insurance available to the **Insured** for the same expenses.

H. Defense Costs

Defense costs are either paid within or are in excess of the limits of insurance as set forth in paragraph **C.** of the section entitled **Defense Costs Payment and Related Duties**.

I. Exhaustion or Reduction of Applicable Underlying Limit

Solely with respect to **Coverage A - Excess Follow Form Liability**, if the applicable **underlying limits** are:

1. reduced solely by the payment of covered loss as set forth in **Coverage A** including related costs and expenses (if such related costs and expense reduce such limits) **Coverage A** will apply in excess of the remaining amount of such applicable **underlying limit**; or
2. exhausted, solely by the payment of covered loss as set forth in **Coverage A** including related costs and expenses (if such related costs and expense reduce such limits) then **Coverage A** will apply, subject to this Policy's limit of insurance provision and to the remaining terms and provisions and conditions of this Policy in place of such exhausted applicable **underlying limit**.

If any loss covered under any **underlying insurance** is subject to a **sub-limit** (whether or not such **sub-limit** erodes the limits generally available to all claims), then the **underlying limits** shall not be deemed depleted by payment of any such **sub-limits**.

Nothing herein shall serve to increase the limits of insurance shown in the Declarations of this Policy.

VI. CONDITIONS

A. Appeals

If the **Named Insured** or its **underlying insurers** elect not to appeal a judgment in excess of the limits of insurance afforded by the **underlying insurance** the Insurer may elect to appeal at the Insurer's expense. The Insurer's limits of insurance shall not be increased because of such appeal. However, the Insurer will pay the following costs and expenses:

1. all premium bonds to release attachments for an amount not in excess of the applicable limit of insurance of this policy;
2. all premiums on appeal bonds required in such defended **claims**, but without obligation to apply for or furnish such bonds;
3. court fees; and
4. costs and expenses taxed against the **Named Insured** by the appellate court and interest accruing after entry of a judgment against the **Named Insured** and before the Insurer has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance of this Policy. Where the **underlying insurers** terminate their liability to pay interest on the judgment by an offer to pay their limits, the **Named Insured** shall demand that such limits be paid. If the appeal is successful, such amounts not obligated to be paid shall be returned to such **underlying insurer**.

B. Cancellation and Nonrenewal

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The Cancellation/Nonrenewal provisions are as set forth in the Cancellation/Nonrenewal Endorsement attached to this Policy.

C. Changes to the Policy

Notice to any of the Insurer's agents or knowledge possessed by any such agent or any other person shall not act as a waiver or change in any part of this Policy, nor will such notice prevent the Insurer from asserting any rights under the provisions of this Policy. None of the provisions of this Policy will be waived, changed or modified except by written endorsement issued by the Insurer to form a part of this Policy.

D. Concealment, Misrepresentation and Fraud

No concealment, misrepresentation or fraud shall avoid or defeat recovery under this Policy unless such concealment, misrepresentation or fraud was material. Concealment, misrepresentation or fraud in the procurement of this Policy which if known by the Insurer would have led to refusal by the Insurer to make this contract or provide coverage, or to make this contract or provide coverage on different terms or conditions, will be deemed material.

E. Duties of the First Named Insured on the Declarations of this Policy

The **First Named Insured**, on behalf of all others, will be:

1. authorized to make changes in the terms of this Policy with the consent of the Insurer;
2. the payee of any premiums the Insurer refunds;
3. responsible for:
 - a. remitting the payment of all premiums due, but all **Named Insureds** jointly and severally agree to make such payments in full if the **First Named Insured** fails to pay the amount due within 10 days after the Insurer give written notice or demand;
 - b. keeping records of the information the Insurer requires for premium computation, and sending copies of such records at such times as requested by the Insurer;
 - c. notifying the Insurer that the **First Named Insured** on behalf of all others wants to cancel this Policy; and
 - d. providing any notice required under this Policy.

F. Economic and Trade Sanctions

This Policy does not provide coverage for an **Insured**, transaction or that part of loss that is uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

G. Entire Contract

By acceptance of this Policy, the **Insureds** agree that this Policy, including all endorsements to this Policy, constitute the entire contract existing between the parties relating to this insurance.

H. Estates, Legal Representatives and Spouses

The estates, heirs, legal representatives and **spouses** of any natural person **Insured** shall also be insured under this Policy; provided, however, coverage is afforded to such estates, heirs, legal representatives, and **spouses** only for **claims** arising solely out of their capacity or status as such and, in the case of a **spouse**, where such **claim** seeks **damages** from marital community property, jointly held property or property transferred from such natural person **Insured** to such spouse. No coverage is provided for any act, error or omission of an estate, heir, legal representative, or spouse outside the scope of such person's capacity or status as such provided however that this sentence does not apply to the spouse of:

1. a sole proprietorship **Named Insured**; or



- members or partners of joint venture or partnership **Named Insureds**.

Examination of the **Named Insured's Books and Records**

The Insurer may examine and audit the **Named Insured's** books and records as they relate to this Policy at any time during the **policy period** and up to 3 years afterward.

J. **Financial Impairment**

Bankruptcy, rehabilitation, receivership, liquidation or other financial impairment of the **Named Insured** or an **underlying insurer** shall neither relieve nor increase any of the Insurer's obligations under this Policy.

In the event there is diminished recovery or no recovery available to the **Named Insured** as a result of financial impairment of an **underlying insurer**, the coverage under this Policy shall apply only in excess of the **underlying limits**. Under no circumstances shall the Insurer be required to drop down and replace the **underlying limits**, or assume the obligations of the **Named Insured** or the financially impaired insurer.

K. **Headings**

The description in the headings and subheadings of this Policy is solely for convenience, and forms no part of the terms and conditions of coverage.

L. **Inspections and Surveys**

The Insurer has the right but is not obligated to:

- make inspections and surveys at any time;
- give the **Named Insured** reports on the conditions it finds;
- recommend changes; or
- conduct loss control and prevention activity.

Any inspections, surveys, reports, or recommendations relate only to insurability and the premiums to be charged.

The Insurer does not:

- make safety inspections;
- undertake to perform the duty of any organization to provide for the health or safety of workers or the public; nor
- warrant that conditions are safe or healthful or comply with laws, regulations, codes or standards.

This provision applies not only to the Insurer, but also to any rating, advisory, rate service, or similar organization which makes insurance inspections, surveys, recommendations, reports, or gives loss control or prevention advice, on its behalf.

M. **Legal Action Limitation**

No person or organization has a right under this Policy:

- to join the Insurer as a party or otherwise bring the Insurer into a **suit** asking for **damages** from an **Insured**; or
- to sue Insurer on this Policy unless all of its terms have been fully complied with.

A person or organization may sue the Insurer to recover on an agreed settlement or on a final judgment against an **Insured**; but the Insurer will not be liable for **damages** that are not payable under the terms of this Policy or that are in excess of the applicable limit of insurance. An "agreed settlement" means a settlement and release of liability signed by the Insurer, the **Insured** and the claimant or the claimant's legal representative.



N. Maintenance of Underlying Insurance

Solely with respect to **Coverage A - Excess Follow Form Liability**, while this Policy is in force the **First Named Insured** agrees that the **underlying insurance** and renewals and replacements thereof shall be maintained, without alterations of terms or conditions, in full effect during the term of this Policy; except for reduction or exhaustion of the limits of insurance in the **underlying insurance**, provided that such reduction or exhaustion is solely the result of **incidents** covered under this Policy.

If the **First Named Insured** fails to maintain **underlying insurance**, this condition shall not invalidate this Policy. However, in the event of such failure, the Insurer will only be liable to the same extent as if such **underlying insurance** was in full force and effect without alteration of its terms and conditions.

O. Notice of Claims/Crisis Management Event/Covered Accident

1. Solely with respect to **Coverage A - Excess Follow Form Liability**, if any **underlying insurance** is a policy issued by the Insurer or any of its affiliates, then notice of any **claim** under such **underlying insurance** is notice to the Insurer under this Policy.
2. It is a condition precedent to coverage under this Policy that:
 - a. subject to paragraph **b.** below, the **Insured** notify the Insurer as soon as practicable of an **incident** which an **Insured** believes may result in a **claim**. To the extent possible, notice should include:
 - i. how, when and where the **incident** took place;
 - ii. the names and addresses of any injured persons and witnesses; and
 - iii. the nature and location of any injury or damage arising out of the **incident**.
 - b. the **Insured** notify the Insurer as soon as practicable of an **incident** if it involves:
 - i. a demand against the **Insured** which exceeds 50% of any remaining applicable **underlying limit**;
 - ii. any **underlying insurance** reserve or monetary exposure exceeding \$500,000; or
 - iii. any of the following:
 - (a) brain damage, including but not limited to any neurological impairment of infants or adults and coma;
 - (b) spinal cord injury, including but not limited to paraplegia or quadriplegia;
 - (c) loss of any organ;
 - (d) severe disfigurement, including but not limited to burns and amputations; or
 - (e) death.
 - c. if a **claim** is made against any **Insured**, the **Named Insured**:
 - i. will immediately record the specifics of the **claim** and the date received and notify the Insurer of such **claim**;
 - ii. will immediately send the Insurer copies of any demands, notices, summonses or legal papers received in connection with the **claim**;
 - iii. will authorize the Insurer to obtain records and other information;
 - iv. will cooperate with the Insurer in the investigation or settlement of the **claim** or defense against the **suit**;will assist the Insurer, upon its request, in the enforcement of any right against any person



or organization which may be liable to the **Insured** because of injury or damage to which this insurance may also apply; and

- vi. will not voluntarily make a payment, except at its own cost, assume any obligation, or incur any expense, other than for first aid, without the Insurer's prior consent.

3. Cooperation

With respect to both **Coverage A - Excess Follow Form Liability** and **Coverage B – Umbrella Liability**, the **Named Insured** will cooperate with the Insurer in addressing all **claims** required to be reported to the Insurer in accordance with this paragraph **O. Notice of Claims/Crisis Management Event/Covered Accident**, and refuse, except solely at its own cost, to voluntarily, without the Insurer's approval, make any payment, admit liability, assume any obligation or incur any expense related thereto.

P. Notices

Any notices required to be given by an **Insured** shall be submitted in writing to the Insurer at the address set forth in the Declarations of this Policy.

Q. Other Insurance

If the **Insured** is entitled to be indemnified or otherwise insured in whole or in part for any **damages** or **defense costs** by any valid and collectible **other insurance** for which the **Insured** otherwise would have been indemnified or otherwise insured in whole or in part by this Policy, the limits of insurance specified in the Declarations of this Policy shall apply in excess of, and shall not contribute to a **claim, incident** or such event covered by such **other insurance**.

With respect to **Coverage A – Excess Follow Form Liability** only, if:

- a. the **Named Insured** has agreed in writing in a contract or agreement with a person or entity that this insurance would be primary and would not seek contribution from any other insurance available;
- b. **Underlying Insurance** includes that person or entity as an additional insured; and
- c. **Underlying Insurance** provides coverage on a primary and noncontributory basis as respects that person or entity;

then this insurance is primary to and will not seek contribution from any insurance policy where that person or entity is a named insured.

R. Premium

All premium charges under this Policy will be computed according to the Insurer's rules and rating plans that apply at the inception of the current **policy period**. Premium charges may be paid to the Insurer or its authorized representative.

S. In Rem Actions

A quasi *in rem* action against any vessel owned or operated by or for a **Named Insured**, or chartered by or for a **Named Insured**, will be treated in the same manner as though the action were *in personam* against the **Named Insured**.

T. Separation of Insureds

Except with respect to the limits of insurance, and any rights or duties specifically assigned in this Policy to the **First Named Insured**, this insurance applies:

1. as if each **Named Insured** were the only **Named Insured**; and
2. separately to each **Insured** against whom a **claim** is made.

U. Transfer^y of Interest

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Assignment of interest under this policy shall not bind the Insurer unless its consent is endorsed hereon.

V. Unintentional Omission

Based on Insurer's reliance on the **Named Insured's** representations as to existing hazards, if the **Named Insured** should unintentionally fail to disclose all such hazards at the effective date of this Policy, the Insurer will not deny coverage under this Policy because of such failure.

W. Waiver of Rights of Recovery

The Insurer waives any right of recovery it may have against any person or organization because of payments the Insurer makes under this Policy if the **Named Insured** has agreed in writing to waive such rights of recovery in a contract or agreement, and only if the contract or agreement:

1. is in effect or becomes effective during the **policy period**; and
2. was executed prior to loss.

VII. DEFINITIONS

For purposes of this Policy, words in bold face type, whether expressed in the singular or the plural, have the meaning set forth below.

Advertisement means a notice that is broadcast or published to the general public or specific market segments about the **Named Insured's** goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- A. notices that are published include material placed on the Internet or on similar electronic means of communication; and
- B. regarding web-sites, only that part of a web-site that is about the **Named Insured's** goods, products or services for the purposes of attracting customers or supporters is considered an **advertisement**.

Aircraft means any machine or device that is capable of atmospheric flight.

Arbitration proceeding means a formal alternative dispute resolution proceeding or administrative hearing to which an **Insured** is required to submit by statute or court rule or to which an **Insured** has submitted with the Insurer's consent.

Asbestos means the mineral in any form whether or not the asbestos was at any time airborne as a fiber, particle or dust, contained in or formed a part of a product, structure or other real or personal property, carried on clothing, inhaled or ingested, or transmitted by any other means.

Authorized Insured means any **executive officer**, member of the **Named Insured's** risk management or in-house general counsel's office, or any **employee** authorized by the **Named Insured** to give or receive notice of a **claim**.

Auto means:

- A. a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- B. any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, **auto** does not include **mobile equipment**.

Bodily injury means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury sustained by that person at any time which results as a consequence of the bodily injury, sickness or disease.

Claim means a:

- A. **suit**; or



- B. written or oral demand for **damages** alleging injury to which this insurance applies.

Coverage territory means:

- A. the United States of America (including its territories and possessions), Puerto Rico and Canada;
- B. international waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in paragraph **A.** above; or
- C. all other parts of the world if the injury or damage arises out of:
 - 1. goods or products made or sold by the **Named Insured** in the territory described in paragraph **A.** above;
 - 2. the activities of a natural person whose home is in the territory described in paragraph **A.** above, but is away for a short time on the **Named Insured's** business; or
 - 3. an offense that take place through the Internet or similar electronic means of communication, provided that the **Insured's** responsibility to pay **damages** is determined in a **suit** on the merits, in the territory described in paragraph **A.** above or in a settlement the Insurer agrees to.

Covered accident means a sudden and unexpected event, which solely and independently of any other cause results in the **key employee's** death or **permanent disability** within one year after the date of the sudden event.

Crisis management event means an event that an **executive officer** reasonably believes has resulted or may result in significant adverse regional or national media coverage and a claim for:

- A. **bodily injury, property damage** or any of the following **personal and advertising injury** offenses:
 - 1. false arrest, detention or imprisonment;
 - 2. malicious prosecution or abuse of process; or
 - 3. wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor; and
- B. **damages** to which this insurance applies, that are in excess of any applicable:
 - 1. **underlying limits**; or
 - 2. **retained amount.**

Crisis management expenses means **crisis management public relations expenses** and **crisis management other expenses** provided however **crisis management expenses** do not include any of the following:

- A. salary, wages, or benefits of the **Named Insured** or the **Named Insured's employees**;
- B. loss of business income;
- C. costs to acquire, repair or replace real or personal property; or
- D. expense to hire a public adjuster or appraiser or any other claim adjustment expenses incurred by a **Named Insured.**

Crisis management public relations expenses means reasonable and necessary expenses incurred in connection with a **crisis management event** by the **Named Insured**:

- A. to hire a **crisis management firm**;
- B. to set up call centers or similar inquiry management system to manage inquiries from, or to directly contact, individuals or entities that may be directly impacted by such **crisis management event**;
to create and deliver notification letters to contact individuals or entities that may be directly impacted



by the **crisis management event**; or

- D. other related miscellaneous expenses.

Crisis management other expenses means reasonable and necessary expenses incurred in connection with a **crisis management event** by the **Named Insured**:

- A. to pay medical expenses, funeral expenses, psychological counseling expenses, travel expenses, and temporary living expenses of a third party who incurs **bodily injury**, or a family member of such third party, by reason of such **crisis management event**;
- B. for travel expenses incurred by or on behalf of **Insureds** and at the direction of the **crisis management firm**;
- C. to secure the scene of a **crisis management event**; and
- D. other related miscellaneous expenses.

Crisis management firm means a public relations firm, law firm or crisis management firm approved by the Insurer to provide media management services and to respond to actual or anticipated adverse publicity arising out of a **crisis management event** or **covered accident**.

Damages means the amount an **Insured** is legally obligated to pay, either through:

- A. final adjudication of a **claim**; or
- B. through compromise or settlement of a **claim** with the Insurer's written consent or direction, because of covered **incidents**. In addition, **damages** includes the above-mentioned sums only after deducting all other recoveries and salvages.

However, **damages** does not include:

- 1. civil or criminal fines, sanctions, penalties or forfeitures, whether pursuant to law, statute, regulation or court rule;
- 2. injunctive or declaratory relief;
- 3. any amount that is not insurable under any applicable law; or
- 4. plaintiff's attorney fees associated with any of the above.

Notwithstanding paragraph **3.** above, **damages** shall include (subject always to this Policy's other terms, conditions and limitations) punitive and exemplary damages the enforceability of which shall be governed by such applicable law that most favors coverage for **damages**.

Defense costs mean:

- A. reasonable and necessary fees, costs, and expenses incurred by the Insurer or consented to by the Insurer and incurred by the **Named Insured** in the defense or appeal of a covered **suit** or in the investigation of any covered **claim**, and includes premium for appeal bonds arising out of a covered judgment, attachment bonds or similar bonds, but only for bond amounts up to the applicable limit of insurance. In addition, the Insurer will pay up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which **bodily injury** coverage applies. The Insurer has no obligation to provide such bonds.
- B. prejudgment interest awarded against an **Insured** on that part of a judgment covered by this policy. If the Insurer makes an offer to pay the applicable limit of insurance, the Insurer will not pay any prejudgment interest based on that period of time after the offer.

- C. post judgment interest which accrues after entry of judgment, but before the Insurer has paid or offered to pay, or deposited in court that part of the judgment which is within the limit of insurance of this Policy. The amount of interest the Insurer pays will be in direct proportion to the amount of **damages**



the Insurer pays in relation to the total amount of the judgment.

- D. all reasonable expenses incurred by a natural person **Insured** at the Insurer's request to assist the Insurer in the investigation or defense of the **claim**. This includes such **Insured's** actual loss of earnings up to \$750 per day, because of time off from work.
- E. all court costs taxed against the **Insured** in the **suit**. However, these payments do not include attorneys' fees or attorneys' expenses taxed against the **Insured**.

Electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Employee includes **leased workers** or employees loaned to the **Insured**. **Temporary workers** are not **employees**.

Executive Officer means any natural person holding any of the following positions created by the **Named Insured's** charter, constitution, bylaws or any other similar governing document:

- A. director, officer, trustee or governor of a corporation;
- B. management committee member of a joint venture;
- C. partner of a partnership;
- D. manager of a limited liability company; and
- E. trustee of a trust.

An **executive officer** is not an **employee**.

First Named Insured means the person or organization first listed as a **Named Insured** in the Declarations of this Policy.

Fungi means any form of fungus, including but not limited to, yeast, mold, mildew, rust, smut or mushroom, and including any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of fungi. However, **fungi** does not include any fungi intended by the **Insured** for human consumption.

Hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Impaired property means tangible property, other than **your product** or **your work** that cannot be used or is less useful because:

- A. it incorporates **your product** or **your work** that is known or thought to be defective, deficient, inadequate or dangerous; or
- B. the **Named Insured** has failed to fulfill the terms of a contract or agreement,

if such property can be restored to use by the repair, replacement, adjustment or removal of **your product** or **your work**; or the **Named Insured's** fulfilling the terms of the contract or agreement.

Incident means:

- A. with respect to **Coverage A - Excess Follow Form Liability**, a covered event as defined in applicable **underlying insurance**;
- B. solely with respect to **Coverage B - Umbrella Liability**:
 - 1. with respect to **bodily injury** and **property damage**, **incident** means an **occurrence**; or
 - C. 2. with respect to **personal and advertising injury**, **incident** means an offense that gives rise to such **personal and advertising injury**.



Insured means any person or organization set forth in the section entitled **WHO IS AN INSURED**.

Insured contract means:

- A. a contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to the **Named Insured** or temporarily occupied by the **Named Insured** with permission of the owner is not an **insured contract**;
- B. a sidetrack agreement;
- C. an easement or license agreement; except in connection with construction or demolition operations on or within 50 feet of a railroad;
- D. an obligation, as required by ordinance, to indemnify a municipality except in connection with work for a municipality;
- E. an elevator maintenance agreement; or
- F. the part of any other contract or agreement pertaining to its business (including an indemnification of a municipality in connection with work performed for a municipality) under which the **Named Insured** assumes the tort liability of another party to pay for **bodily injury** or **property damage** to a third person or organization, provided the **bodily injury** or **property damage** is caused, in whole or in part, by the **Named Insured** or by those acting on its behalf. However, such part of a contract or agreement shall only be considered an **insured contract** to the extent the **Named Insured's** assumption of the tort liability is permitted by law. "Tort liability" means liability that would be imposed by law in the absence of contracts or agreements. This paragraph F. does not include that part of a contract or agreement:
 - 1. that indemnifies a railroad for **bodily injury** or **property damage** arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - 2. that indemnifies an architect, engineer or surveyor for **bodily injury** or **property damage** arising out of:
 - a preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b giving directions or instructions, or failing to give them, if that is the primary cause of the **bodily injury** or **property damage**;
 - 3 under which an **Insured**, if an architect, engineer or surveyor, assumes liability for **bodily injury** or **property damage** arising out of such **Insured's** rendering or failure to render professional services, including those listed in paragraph 2. above and supervisory, inspection, architectural or engineering activities; or
 - 4. that indemnifies a person or organization for damage by fire to premises rented to or loaned to an **Insured**.

Key employee means any of the following officer and employment positions:

- A. Chief Executive Officer;
- B. Chief Operating Officer;
- C. Chief Financial Officer;
- D. Corporate Secretary;
- E. Treasurer;
- F. Executive Vice President; and

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G. Risk Manager

Key employee also means anyone added as such by endorsement to the Policy.

Key employee replacement expenses means the actual and necessary expenses incurred by the **Named Insured**:

- A. to continue the performance of the **key employee's** normal job responsibilities, with comparable quality, while a permanent replacement for the **key employee** is being sought, appointed or hired, and trained.
- B. to find a qualified permanent replacement to fill the **key employee's** position:
 1. costs of advertising the employment position opening;
 2. travel, lodging, meal and entertainment expenses incurred in interviewing job applicants for the employment position opening; and
 3. miscellaneous extra expenses incurred in finding, interviewing and negotiating with the job applicants, including, but not limited to, overtime pay, costs to verify the background and references of the job applicants and legal expenses incurred to draw up employment contracts.
- C. to minimize the amount of **key employee replacement expenses**, but only to the extent the amount of **key employee replacement expenses** otherwise payable under paragraphs 1. and 2. above are reduced.
- D. to relocate the replacement employee to an area within a reasonable commute from their place of employment.
- E. to pay the following reasonable and necessary expenses incurred in connection with the death or permanent disability of any **key employee**:
 1. to hire a **crisis management firm**.
 2. to create and deliver notification letters to contact individuals or entities that may be directly impacted by the **key employee covered accident**; or
 3. other related miscellaneous expenses
- F. **Key employee replacement expenses** also include first year amounts of the replacement employee's:
 1. annual base starting salary;
 2. employee perquisite costs; and
 3. employee benefit costs;

in excess of the amounts which would have been incurred for the **key employee** if the **Named Insured** had not lost the services of the **key employee**. However, the Insurer will not pay more for these expenses than 10% of the amounts which would have been incurred for the **key employee**.

Key employee replacement expenses do not include the following:

- a. any expenses which would have been incurred by the **Named Insured** for the **key employee** if the **Named Insured** had not lost the services of the **key employee**;
- b. any **key employee replacement expenses** that are paid for by any **other insurance**;
- c. except as provided in paragraph F. above, salary, wages, or benefits of the **Named Insured**, the **Named Insured's employees**, the **Named Insured's** temporary workers or **volunteer workers**;
- d. costs to acquire, repair or replace real or personal property;
- e. the **Named Insured's** loss of business income;
- f. expenses incurred by or on behalf of the **Named Insured** to hire a public adjuster or appraiser or any other claim adjustment expenses incurred by the **Named Insured**; and



- g. expenses incurred by or on behalf of the **Named Insured** due to **bodily injury, property damage, or personal and advertising injury**.

Leased worker means a person leased to the **Named Insured** by a labor leasing firm under an agreement between the **Named Insured** and such labor leasing firm, to perform duties related to the conduct of the **Named Insured's** business. **Leased worker** does not include a **temporary worker**.

Loading or unloading means the handling of property:

- A. after it is moved from the place where it is accepted for movement into or onto an **aircraft, watercraft or auto**;
- B. while it is in or on an **aircraft, watercraft or auto**; or
- C. while it is being moved from an **aircraft, watercraft or auto** to the place where it is finally delivered.

However, **loading or unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the **aircraft, watercraft or auto**.

Mobile equipment means any of the following types of land vehicles, including any attached machinery or equipment:

- A. bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- B. vehicles maintained for use solely on or next to premises the **Named Insured** owns or rents;
- C. vehicles that travel on crawler treads;
- D. vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - 1. power cranes, shovels, loaders, diggers or drills; or
 - 2. road construction or resurfacing equipment such as graders, scrapers or rollers;
- E. vehicles not described in **A., B., C.** or **D.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - 1. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - 2. cherry pickers and similar devices used to raise or lower workers; and
- F. vehicles not described in **A., B., C.** or **D.** above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:
 - 1. equipment designed primarily for:
 - a. snow removal;
 - b. road maintenance, but not construction or resurfacing; or
 - c. street cleaning;
 - 2. cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - 3. air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, **mobile equipment** does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are



considered **autos**.

Named Insured means the persons or organizations named as such in the Declarations of this Policy.

Nuclear facility means:

- A. any **nuclear reactor**;
- B. any equipment or device designed or used for:
 - 1. separating the isotopes of uranium or plutonium;
 - 2. processing or utilizing **spent fuel**; or
 - 3. handling, processing or packaging **nuclear waste**;
- C. any equipment or device used for the processing, fabricating or alloying of special **nuclear material** if at any time the total amount of such material in the custody of any **Insured** at the premises where such equipment is located consists of or contains more than:
 - 1. 25 grams of plutonium or uranium 233 or any combination thereof; or
 - 2. 250 grams of uranium 235; and
- D. any structure, basin, excavation, premises or place prepared or used for the storage or disposal of **nuclear waste**;

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

Nuclear material means source material, special nuclear material, or by-product material as these terms are defined in the Atomic Energy Act of 1954 or in any law amendatory thereof.

Nuclear reactor means an apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

Nuclear Waste means waste material:

- A. containing by-product material other than the tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material (as defined in the Atomic Energy Act of 1954 or in any law amendatory thereof) content; and
- B. resulting from the operation by any person or organization, of a **nuclear facility** included within paragraphs **A.** and **B.** of the definition of **nuclear facility**.

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Other insurance means any:

- A. valid and collectible policy of insurance;
- B. self insurance; or
- C. indemnity agreement by which an **Insured** arranges for funding or transferring its liabilities

that provides coverage that this Policy also provides. **Other insurance** does not include **underlying insurance** or any policy that was bought specifically to apply in excess of the limits of insurance shown in the Declarations of this Policy.

Other organic pathogens means any organic irritant or contaminant other than **fungi**, including but not limited to bacteria, microbes and viruses (whether or not a microorganism), that cause infection and disease.

Other organic pathogens includes any spores, mycotoxins, odors, variants, mutations, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of such

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pathogens, and any colony or group of the foregoing.

However, **other organic pathogens** does not mean pathogens that were transmitted directly from person to person.

Permanent disability means permanent physical inability, or mental inability due to a permanent physical inability, of the **key employee** to perform the normal duties of the applicable position for which the individual qualifies as a **key employee**.

Personal and advertising injury means injury, including consequential **bodily injury**, arising out of one or more of the following offenses:

- A. false arrest, detention or imprisonment;
- B. malicious prosecution or abuse of process;
- C. wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor;
- D. oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- E. oral or written publication, in any manner, of material that violates a person's right of privacy;
- F. the use of another's advertising idea in the **Named Insured's advertisement**; or
- G. infringing upon another's copyright, trade dress or slogan in the **Named Insured's advertisement**.

Policy period means the time from 12.01 A.M. on the effective date of this Policy as set forth in the Declarations of this Policy to the earlier of 12.01 A.M. of the expiration, termination or cancellation date of this Policy.

Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes medical waste and materials to be recycled, reconditioned or reclaimed.

Products-completed operations hazard means **bodily injury** or **property damage** occurring away from premises the **Named Insured** owns or rents and arising out of **your product** or **your work** except:

- A. products that are still in the **Named Insured's** physical possession; or
- B. work that has not yet been completed or abandoned. However, **your work** will be deemed completed at the earliest of the following times:
 - 1. when all of the work called for in the **Named Insured's** contract has been completed;
 - 2. when all of the work to be done at the job site has been completed if the **Named Insured's** contract calls for work at more than one job site; or
 - 3. when that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

However, **products-completed operations hazard** does not include **bodily injury** or **property damage** arising out of:

- A. the transportation of property, unless **bodily injury** or **property damage** arises out of a condition in or on a vehicle not owned or operated by the **Named Insured**, and that condition was created by the **loading or unloading** of that vehicle by any **Insured**;
- B. the existence of tools, uninstalled equipment or abandoned or unused materials; or



- C. products or operations for which the **underlying insurer** states that products-completed operations are subject to the General Aggregate Limit.

Property damage means:

- A. physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- B. loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the **incident** that caused it.

However, **electronic data** is not tangible property.

Retained amount means the self insured retention as set forth on the Declarations of this Policy or the amount payable by **other insurance**, whichever is greater.

Silica means the chemical compound silicon dioxide (SiO₂) in any form, including dust which contains silicon dioxide.

Spouse means any husband, wife or partner in a marriage or civil union or any person qualifying as a domestic partner under any federal, state or local laws or under the **Named Insured's** employee benefit plans or employee benefits program.

Sub limit means a limit that is lower than the **underlying limits**.

Suit means a civil proceeding in which **damages** because of injury or damage to which this insurance applies are alleged, including:

- A. an **arbitration proceeding** alleging such **damages**; or
- B. any other alternative dispute resolution proceeding in which such **damages** are claimed and to which the **Insured** submits with the Insurer's consent.

Temporary worker means a worker who is furnished to the **Named Insured** to substitute for a permanent **employee** on leave or to meet seasonal or short-term workload conditions.

Underlying insurance means policies of insurance listed in the Schedule of **Underlying Insurance** including renewal or replacement of such insurance which is neither more restrictive nor more broad than that listed in the aforementioned Schedule of **Underlying Insurance**.

Underlying insurer means the insurer providing the **underlying insurance**. It does not include any insurer whose policies were purchased specifically to be in excess of this policy.

Underlying limits means the limits of insurance as set forth in the Schedule of **Underlying Insurance**.

Volunteer worker means a person who is not an **employee** and who donates his or her work and acts at the direction of or within the scope of duties determined by the **Named Insured** and is not paid a fee, salary or other compensation by the **Named Insured** or anyone else for their work performed for the **Insured**.

Your product means:

- A. means:
 - 1. any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - a. the **Named Insured**;
 - b. others trading under the **Named Insured's** name; or
 - c. a person or organization whose business or assets the **Named Insured** has acquired; and
 - 2. containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.



B. includes:

1. warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of **your product**; and
2. The providing of or failure to provide warnings or instructions.

C. does not include vending machines or other property rented to or located for the use of others but not sold.

Your work:

A. means:

1. work or operations performed by the **Named Insured** or on its behalf; and
2. materials, parts or equipment furnished in connection with such work or operations.

B. Includes:

1. warranties or representations made with respect to the fitness, quality, durability, performance or use of **your work**, and
2. the providing of or failure to provide warnings or instructions.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by the Insurer's Chairman and Secretary, but this Policy shall not be binding upon the Insurer unless completed by the attachment of the Declarations of this Policy and signed by the Insurer's duly authorized representative if required.

Chairman of the Board

Secretary

Carrier no: 20001

Endorsement no: WC000313

SAIF policy: 785189 Bremik Construction Inc

Waiver of Our Right to Recover from Others Endorsement

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule.

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

Schedule

Description: ALL OPERATIONS

Contractor name: Persons and/or organizations with whom the insured-employer is required by written contract to waive subrogation rights.

This endorsement does not alter the rights of an injured worker to pursue recovery from another party or SAIF to receive a statutory share of recoveries by an injured worker, even from the party listed in the schedule.

The premium charge for this endorsement is based on one (1) percent of your manual premium.

Effective date: October 01, 2019

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

Countersigned September 19, 2019 at Salem, Oregon



Kerry Barnett
President and Chief Executive Officer

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 **AIA** Document A312™ – 2010

Performance Bond

Bond No. 107192650

CONTRACTOR:

(Name, legal status and address)

Bremik Construction, Inc
1026 SE Stark St
Portland, OR, OR 97214

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
4000 Kruse Way Pl. Building 1 Suite 125
Lake Oswego, OR 97035

OWNER:

(Name, legal status and address)

City of Tualatin
18880 SW Martinazzi
Tualatin, OR 97062

CONSTRUCTION CONTRACT

Date: 3/9/2020

Amount: Five Million Eight Hundred Eighty-two Thousand Fifty-eight And No/100 (\$5,882,058.00)

Description:

(Name and location)

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

Tualatin

BOND

Date: 3/3/2020

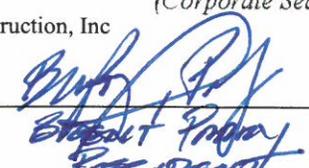
(Not earlier than Construction Contract Date)

Amount: Five Million Eight Hundred Eighty-two Thousand Fifty-eight And No/100 (\$5,882,058.00)

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*
Bremik Construction, Inc

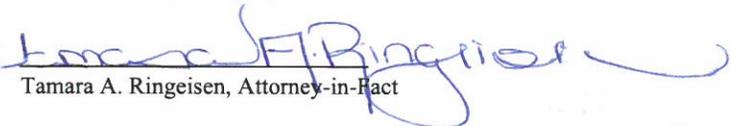
Signature: 

Name
and Title:

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

Company: *(Corporate Seal)*
Travelers Casualty and Surety Company of America

Signature: 

Name
and Title:

Tamara A. Ringeisen, Attorney-in-Fact

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Propel Insurance
PO Box 2940
Tacoma, WA 98401
(253) 759-2200

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owner's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Section 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 Balance of the Contract Price. The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 Contractor Default. Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company: _____
(Corporate Seal)

Company: _____
(Corporate Seal)

Signature: N/A

Name and Title: _____

Address _____

Signature: N/A

Name and Title: _____

Address _____

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

Bond No. 107192650

Payment Bond

CONTRACTOR:

(Name, legal status and address)

Bremik Construction, Inc
1026 SE Stark St
Portland, OR, OR 97214

SURETY:

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America
4000 Kruse Way Pl. Building 1 Suite 125
Lake Oswego, OR 97035

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

AIA Document A312–2010 combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

City of Tualatin
18880 SW Martinazzi
Tualatin, OR 97062

CONSTRUCTION CONTRACT

Date: 3/9/2020

Amount: Five Million Eight Hundred Eighty-two Thousand Fifty-eight And No/100 (\$5,882,058.00)

Description:

(Name and location)

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

Tualatin

BOND

Date: 3/3/2020

(Not earlier than Construction Contract Date)

Amount: Five Million Eight Hundred Eighty-two Thousand Fifty-eight And No/100 (\$5,882,058.00)

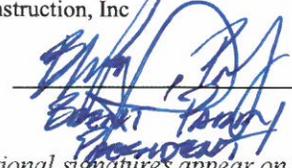
Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: *(Corporate Seal)*
Bremik Construction, Inc

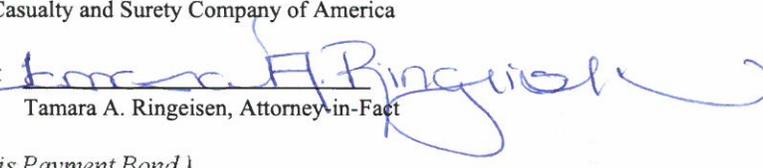
SURETY

Company: *(Corporate Seal)*
Travelers Casualty and Surety Company of America

Signature: 

Name and Title:

(Any additional signature/s appear on the last page of this Payment Bond.)

Signature: 

Name Title Tamara A. Ringeisen, Attorney-in-Fact and Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

Propel Insurance
PO Box 2940
Tacoma, WA 98401
(253) 759-2200

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

SURETY

Company:

(Corporate Seal)

Company:

(Corporate Seal)

Signature: N/A

Signature: N/A

Name and Title:

Name and Title:

Address

Address

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



**Travelers Casualty and Surety Company of America
Travelers Casualty and Surety Company
St. Paul Fire and Marine Insurance Company**

POWER OF ATTORNEY

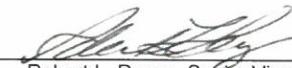
KNOW ALL MEN BY THESE PRESENTS: That Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company are corporations duly organized under the laws of the State of Connecticut (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint **Tamara A. Ringeisen**, of **Portland, Oregon**, their true and lawful Attorney-in-Fact to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed, and their corporate seals to be hereto affixed, this **3rd** day of **February**, 2017.



State of Connecticut

City of Hartford ss.

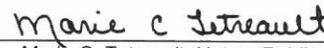
By: 
Robert L. Raney, Senior Vice President

On this the **3rd** day of **February**, 2017, before me personally appeared **Robert L. Raney**, who acknowledged himself to be the Senior Vice President of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.

My Commission expires the **30th** day of **June**, 2021




Marie C. Tetreault, Notary Public

This Power of Attorney is granted under and by the authority of the following resolutions adopted by the Boards of Directors of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, which resolutions are now in full force and effect, reading as follows:

RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President, any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary may appoint Attorneys-in-Fact and Agents to act for and on behalf of the Company and may give such appointee such authority as his or her certificate of authority may prescribe to sign with the Company's name and seal with the Company's seal bonds, recognizances, contracts of indemnity, and other writings obligatory in the nature of a bond, recognizance, or conditional undertaking, and any of said officers or the Board of Directors at any time may remove any such appointee and revoke the power given him or her; and it is

FURTHER RESOLVED, that the Chairman, the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President may delegate all or any part of the foregoing authority to one or more officers or employees of this Company, provided that each such delegation is in writing and a copy thereof is filed in the office of the Secretary; and it is

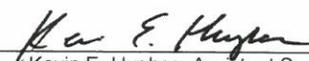
FURTHER RESOLVED, that any bond, recognizance, contract of indemnity, or writing obligatory in the nature of a bond, recognizance, or conditional undertaking shall be valid and binding upon the Company when (a) signed by the President, any Vice Chairman, any Executive Vice President, any Senior Vice President or any Vice President, any Second Vice President, the Treasurer, any Assistant Treasurer, the Corporate Secretary or any Assistant Secretary and duly attested and sealed with the Company's seal by a Secretary or Assistant Secretary; or (b) duly executed (under seal, if required) by one or more Attorneys-in-Fact and Agents pursuant to the power prescribed in his or her certificate or their certificates of authority or by one or more Company officers pursuant to a written delegation of authority; and it is

FURTHER RESOLVED, that the signature of each of the following officers: President, any Executive Vice President, any Senior Vice President, any Vice President, any Assistant Vice President, any Secretary, any Assistant Secretary, and the seal of the Company may be affixed by facsimile to any Power of Attorney or to any certificate relating thereto appointing Resident Vice Presidents, Resident Assistant Secretaries or Attorneys-in-Fact for purposes only of executing and attesting bonds and undertakings and other writings obligatory in the nature thereof, and any such Power of Attorney or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Company and any such power so executed and certified by such facsimile signature and facsimile seal shall be valid and binding on the Company in the future with respect to any bond or understanding to which it is attached.

I, **Kevin E. Hughes**, the undersigned, Assistant Secretary of Travelers Casualty and Surety Company of America, Travelers Casualty and Surety Company, and St. Paul Fire and Marine Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which remains in full force and effect.

Dated this **3rd** day of **March**, 2020




Kevin E. Hughes, Assistant Secretary

**To verify the authenticity of this Power of Attorney, please call us at 1-800-421-3880.
Please refer to the above-named Attorney-in-Fact and the details of the bond to which the power is attached.**

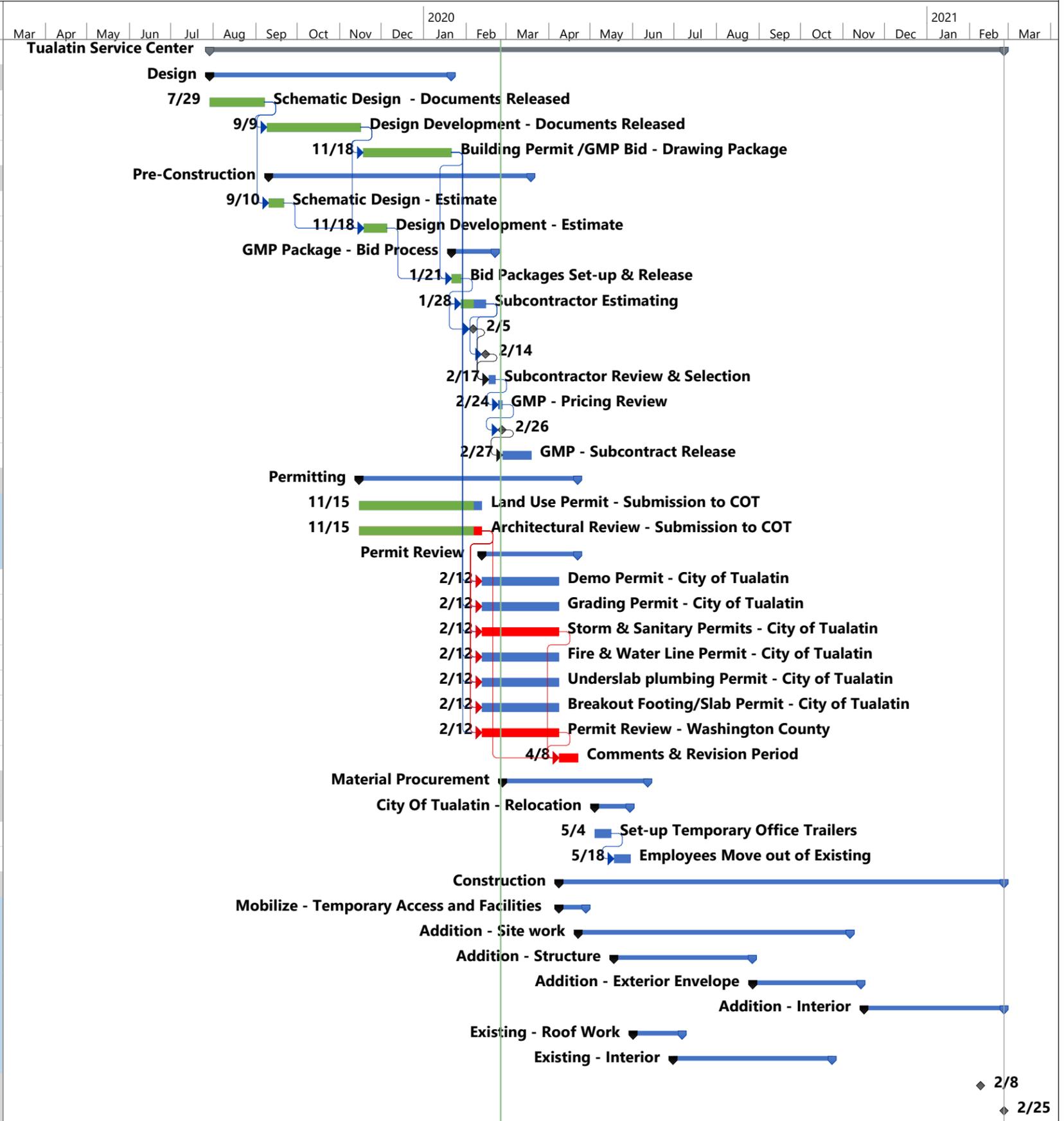
City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit I – Project Construction Schedule

ID	Task Name	Duration	Start	Finish	Resource Names
0	Tualatin Service Center	410 days	Mon 7/29/19	Thu 2/25/21	
1	Design	122 days	Mon 7/29/19	Mon 1/20/20	
2	Schematic Design - Documents Released	29 days	Mon 7/29/19	Fri 9/6/19	Scott Edwards
3	Design Development - Documents Released	50 days	Mon 9/9/19	Fri 11/15/19	Scott Edwards
4	Building Permit /GMP Bid - Drawing Package	43 days	Mon 11/18/19	Mon 1/20/20	Scott Edwards
5	Pre-Construction	134 days	Tue 9/10/19	Wed 3/18/20	
6	Schematic Design - Estimate	9 days	Tue 9/10/19	Fri 9/20/19	Bremik
7	Design Development - Estimate	11 days	Mon 11/18/19	Wed 12/4/19	Bremik
8	GMP Package - Bid Process	24 days	Tue 1/21/20	Fri 2/21/20	Bremik
9	Bid Packages Set-up & Release	5 days	Tue 1/21/20	Mon 1/27/20	Bremik
10	Subcontractor Estimating	14 days	Tue 1/28/20	Fri 2/14/20	Bremik
11	Subcontractor Questions Due	0 days	Wed 2/5/20	Wed 2/5/20	Bremik
12	Subcontractor Proposals Due	0 days	Fri 2/14/20	Fri 2/14/20	Bremik
13	Subcontractor Review & Selection	5 days	Mon 2/17/20	Fri 2/21/20	Bremik
14	GMP - Pricing Review	3 days	Mon 2/24/20	Wed 2/26/20	Bremik
15	GMP - Contract Review and Signature	0 days	Wed 2/26/20	Wed 2/26/20	Bremik
16	GMP - Subcontract Release	15 days	Thu 2/27/20	Wed 3/18/20	Bremik
17	Permitting	110 days	Fri 11/15/19	Tue 4/21/20	
18	Land Use Permit - Submission to COT	60 days	Fri 11/15/19	Tue 2/11/20	City of Tualatin
19	Architectural Review - Submission to COT	60 days	Fri 11/15/19	Tue 2/11/20	City of Tualatin
20	Permit Review	50 days	Wed 2/12/20	Tue 4/21/20	
21	Demo Permit - City of Tualatin	40 days	Wed 2/12/20	Tue 4/7/20	City of Tualatin
22	Grading Permit - City of Tualatin	40 days	Wed 2/12/20	Tue 4/7/20	City of Tualatin
23	Storm & Sanitary Permits - City of Tualatin	40 days	Wed 2/12/20	Tue 4/7/20	City of Tualatin
24	Fire & Water Line Permit - City of Tualatin	40 days	Wed 2/12/20	Tue 4/7/20	City of Tualatin
25	Underslab plumbing Permit - City of Tualatin	40 days	Wed 2/12/20	Tue 4/7/20	City of Tualatin
26	Breakout Footing/Slab Permit - City of Tualatin	40 days	Wed 2/12/20	Tue 4/7/20	Washington County
27	Permit Review - Washington County	40 days	Wed 2/12/20	Tue 4/7/20	Washington County
28	Comments & Revision Period	10 days	Wed 4/8/20	Tue 4/21/20	Washington County
29	Material Procurement	76 days	Thu 2/27/20	Thu 6/11/20	
225	City Of Tualatin - Relocation	20 days	Mon 5/4/20	Fri 5/29/20	
226	Set-up Temporary Office Trailers	10 days	Mon 5/4/20	Fri 5/15/20	City of Tualatin
227	Employees Move out of Existing	10 days	Mon 5/18/20	Fri 5/29/20	City of Tualatin
228	Construction	232 days	Wed 4/8/20	Thu 2/25/21	
229	Mobilize - Temporary Access and Facilities	14 days	Wed 4/8/20	Mon 4/27/20	
237	Addition - Site work	142 days	Wed 4/22/20	Thu 11/5/20	
315	Addition - Structure	73 days	Mon 5/18/20	Wed 8/26/20	
347	Addition - Exterior Envelope	57 days	Thu 8/27/20	Fri 11/13/20	
361	Addition - Interior	74 days	Mon 11/16/20	Thu 2/25/21	
424	Existing - Roof Work	26 days	Mon 6/1/20	Mon 7/6/20	
432	Existing - Interior	84 days	Tue 6/30/20	Fri 10/23/20	
465	Substantial Completion	0 days	Mon 2/8/21	Mon 2/8/21	
466	Final Completion	0 days	Thu 2/25/21	Thu 2/25/21	



City of Tualatin

Tualatin Services Center

AIA 102 – 2017 Standard Form of Agreement Between Owner and Contractor

Exhibit J – Report and Studies

BREMIK

CONSTRUCTION

1026 SE STARK ST. | PORTLAND, OR 97214 | P 503.688.1000 | F 503.688.1005 | WWW.BREMIK.COM

TUALATIN SERVICE CENTER

EXHIBIT J – CITY OF TUALATIN PROVIDED REPORTS AND STUDIES

SHEET NUMBER & TITLE	DATE	ADDENDUM
3457-11 Geotechnical Memo (complete)	2/7/2020	1
Hazardous Material Survey Report	2/21/200	



AIA[®] Document A201[™] – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

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

THE OWNER:

(Name, legal status and address)

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

THE CONTRACTOR:

Bremik Construction, Inc.
1026 SE Stark Street
Portland, OR 97214

THE ARCHITECT:

(Name, legal status and address)

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

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ADMINISTRATION OF THE CONTRACT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
- 8 TIME
- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503[™], Guide for Supplementary Conditions.

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14	TERMINATION OR SUSPENSION OF THE CONTRACT
15	CLAIMS AND DISPUTES



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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 Instruments of Service

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 1.2 Correlation and Intent of the Contract Documents

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

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binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents as being necessary to produce the indicated results. Dimensions shall be computed, rather than determined by scale or rule.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

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

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

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

§ 1.3 Capitalization

Terms capitalized in these General Conditions 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.

§ 1.4 Interpretation

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

§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of Owner's, Architect's, or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Execution of the Contract Documents

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

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

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by 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. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by 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 only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require;

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(2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

(Paragraph deleted)

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for the plan check and building permit fees, systems development charges, necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities and all permits, and fees as excluded in exhibit G of the Agreement.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

(Paragraph deleted)

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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,

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correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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 current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

§ 3.1.3 The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

- (i) become familiar with the site and review City of Tualatin provided reports and studies for the new Work that is furnished to the Contractor found in the Exhibit J concerning the conditions of the site;
- (ii) inspected the location of the Work and satisfy itself as to the condition, including, structural , surface conditions; and
- (iii) determined that the Contract Price is reasonable compensation for all Work, including all foreseen and foreseeable construction risks, hazards, and difficulties in connection with the Work, and that the Contract Time is adequate for the performance of the Work.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner and Architect.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of

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Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall rely on these specific instructions for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give notice to the Owner and Architect in writing and the Architect shall revise the Contract Documents.

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

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

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

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

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that materials and equipment selected by the Contractor or its subcontractors will be suitable for the purposes intended by the Contract Documents, that the Work will be performed in a workmanlike manner, and that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Nothing in Section 3.5.1 shall make the Contractor or its Subcontractors responsible for the suitability of materials or equipment specifically designated in the Contract Documents or specifically selected by the Owner or Architect, unless Contractor has participated in such designations or selections and/or unless contractor, in exercise of reasonable care, would have objected or raised concerns regarding the suitability of such materials or equipment.

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

§ 3.5.3 All material, equipment, or other special 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 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and the Owner shall pay for the building permit. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded, unless specifically excluded in Exhibit G of the Agreement.

§ 3.7.2 The Contractor 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.

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

§ 3.7.4 If the Contractor and/or any of its Subcontractors performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract 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 Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor 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 15.

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§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; 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 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. 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 completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's review shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect time to review submittals.

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor 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 Contract Documents.

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

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

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

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§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.13 Use of Site

The Contractor 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 Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

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

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

- .1 remove temporary protections;
- .2 remove marks, stains, fingerprints and other soil or dirt from painted, decorated

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and natural-finished woodwork and other Work;

- .3 remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
- .4 clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition;
- .5 clean aluminum in accordance with recommendations of the manufacturer;
- .6 clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to a sheen; and
- .7 remove spots and other foreign material from carpeted areas using cleaning methods in accordance with the carpet manufacturer's recommendations, and vacuum all areas, and mechanically clean any areas which have been subjected to high traffic during completion of construction activities.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

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

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 Architect

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Owner and Architect will jointly provide administration of the Contract as described in the Contract Documents. The Owner has designated a Project Manager (Owner's Project Manager, which is Plan B) to be the Owner's representative. The Architect generally shall assist the Owner and Owner's Project Manager in fulfilling the responsibility to administer the Contract. The Architect will be a representative of the Owner during construction and until final payment. If so requested by the Owner, the Owner's Project Manager, and/or Owner's lender, if any, the Architect shall interpret and advise the Owner and Owner's Project Manager with respect to matters set forth in the Drawings and Specifications. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications

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

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require

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inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and recommend to the Owner approval or other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 In each instance, upon request of the Owner, the Architect will prepare documentation for Change Orders and Construction Change Directives for issuance by the Owner's Project Manager, and may authorize, with the Owner's prior approval, minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 Upon request of the Owner, the Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 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.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor or Subcontractor to perform a portion of the Work at the site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor"

does not include a Separate Contractor or the subcontractors of a Separate Contractor, but does include Subcontractors, Suppliers and Consultants of the Contractors at all tiers.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

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

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

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

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

§ 5.3 Subcontractual Relations

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

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

- .1 require that such Work be performed in accordance with the requirements of the Contract Documents;
- .2 waive all rights the Contractor or Owner may have against one another or

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that the Subcontractor may have against the Contractor or Owner for damages caused by fire or other perils covered by the insurance described in Article 11;

- .3 require each major Subcontractor ("major" meaning a contract in the amount of \$20,000 or greater) carry and maintain insurance coverage in accordance with the Contract Documents which shall be endorsed as primary insurance and non-contributory with the Owner's insurance naming the Owner, Owner's Project Manager, and the Architect, and without limitation, their respective partners, officers, commissioners, directors, agents and employees as additional insureds, and to file certificates of such coverage with the Contractor:
- .4 require the Subcontractor to submit certificates and waivers of liens for work completed by it and by its Sub-subcontractors as a condition to the disbursement of the progress payment next due and owing;
- .5 require submission to Contractor or Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Contractor is a party;
- .6 report, so far as practicable, unit prices and any other feasible formula for use in the determination of costs of changes in the Work;
- .7 require each Subcontractor to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein;
- .8 require that each Subcontractor continue to perform under its subcontract in the event the Contract is terminated and the Owner shall take an assignment of said subcontract and request such Subcontractor to continue such performance; and
- .9 require each Subcontractor to remove all debris created by its activities.

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; 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 a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Contractor acknowledges the Owner's option and/or intent to cause the installation of tenant finish and other work to be performed by others and that a portion of such work may take place before Substantial Completion by the Contractor. The Contractor shall afford such parties ample access to the site and all areas of the Work as may be reasonably necessary for the performance of such work including, without limitation, storage of materials and equipment, vertical transportation, and connection to utilities and services.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12. The Owner or its Separate Contractors shall abide by all OSHA safety rules or Contractor safety protocols and procedures, whichever are the most restrictive.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner and Architect of 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 Contractor's Work. Failure of the Contractor to notify the Owner and Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

- .1 An order for minor changes in the Work including, but not limited to, a Supplemental Induction, response to a Request for Information (RFI), clarification drawing and/or detail, field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time and the Contractor shall have no claim therefore unless it shall, prior to complying with same and in no event no later than seven (7) calendar days from the date such direction or order was given, submit to the Owner a written request for a change in the Contract Sum and/or Contract Time.
- .2 A Change Proposal, Proposal Request or similar notice with detailed supporting data shall be delivered to the Owner no later than fourteen (14) calendar days from the date such direction or order was given. When submitting its Change Proposal, the Contractor shall include and set forth in clear and precise detail breakdowns of labor and materials for all trades involved and the estimated impact on the construction schedule. The Contractor shall furnish spread sheets from which the breakdowns were prepared, plus spread sheets if requested of any Subcontractors.

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

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

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect 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; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, or if time requirements dictate (in the Owner's reasonable opinion), the Architect shall make all required certifications with respect to such Work, and the cost of such Work shall then be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee increase or General Contractor's fee deduction for overhead and profit not to exceed 4.45% of such Work's actual cost to Contractor and 15% of such Work's actual cost to be apportioned by Contractor between any and all Subcontractors and Sub-subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed 4.45%. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and Architect may prescribe, an itemized accounting of actual costs together with appropriate supporting data. For the purposes of this Section 7.3.4 actual costs shall be defined and limited to the cost of the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

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

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 Minor Changes in the Work

§ 7.4.1 The Architect will have authority, subject to the approval of the Owner, to 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect in writing and shall provide a cost for the change.

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

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work as reflected in Change Orders approved by the Owner that provide for the Contract Time to be extended, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or by occurrences beyond the control and without the fault or negligence of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including labor disputes (other than disputes limited to the work force of, or provided by, the Contractor or its Subcontractors), fire, unusual delay in deliveries not reasonably anticipatable, unavoidable casualties, adverse weather conditions documented or other causes beyond the Contractor's control, then, provided

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that the Contractor is in compliance with Subparagraph 15.1.2 hereof, the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time actually and directly caused by such occurrence; provided, however, that such extension of Contract Time shall be net of any delays caused by or due to fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. When a delay impact's the project's critical path, the Contractor is entitled to increased payments to the Contractor for overhead, extended overhead, contract acceleration or for any other amounts of any nature. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and Owner to minimize and mitigate the impact of any such occurrence.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A copy of any claim for extension shall be delivered to the Owner and the Architect, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay on Owner.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least five days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and reflecting retainage if provided for in the Contract Documents. Such Application for Payment shall be certified as correct by Contractor and shall be accompanied by waivers of liens and other documentation from the Contractor, Subcontractors and Sub-subcontractors as may be required by the Owner and /or Owner's lender, if any, under its loan agreement with Owner or title insurer. Upon request by Owner, copies of all Applications for Payment shall be submitted by Contractor directly to Owner's lender for the Project.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

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

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

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

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

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or 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 or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 failure of the Contractor to submit required Progress Schedule or Progress Schedule update information.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, 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 and the Contractor shall reflect such payment on its next Application for Payment.

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

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. All payments by the Owner shall not constitute approval or acceptance of any item of cost in an Application for Payment. No partial payment made hereunder shall be, or be construed to be, final acceptance or approval of that portion of the Work to which such partial payment relates or relieve the Contractor of any of its obligations hereunder with respect thereto.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and

suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, 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 Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding the preceding sentence, the Contractor shall not stop the Work during the pendency of a bona fide dispute between the Owner and the Contractor, provided any sums in dispute claimed by the Contractor either are placed in escrow or are withheld by Owner's lender and it agrees to pay said disputed sum in accordance with the resolution of the dispute.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed. In general, the only remaining work shall be minor in nature, so that the Owner or Owner's tenants could occupy the building on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's or Owner's tenants' (or those claiming by, through or under Owner) occupancy or normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. The Contractor is responsible for the warranty of all Work, whether performed by it, or by its Subcontractors, at any tier during the twelve (12) month period following Substantial Completion.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so

that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

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

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

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer 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 Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect 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 Contract Documents.

§ 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement satisfactory to the Owner that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security

interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner and the Owner's lender. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all substantiated payments that the Owner has made in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

In addition to the above, evidence of compliance with all requirements of the Contract Documents (notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents) including but not limited to:

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

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

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

§ 9.10.4 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 Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a 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.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take reasonable precautions for 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 Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall 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 Contractor 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 notifying the owners and users of adjacent sites and utilities of the safeguards.

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

§ 10.2.5 The Contractor shall promptly remedy at its sole cost and expense damage and loss (other than damage or loss insured under property insurance required by the Contract Documents as described in Article 11, subject to Contractor's liability to pay any deductible amount) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not 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 either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, 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.

§ 10.3 Hazardous Materials and Substances

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

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

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

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor 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 Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents 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 hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor 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 Contractor, the Contractor 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 Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 **Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In

the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no

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other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work

§ 11.5 Performance, Payment, Prevailing Wage; Public Works Bond.

§ 11.5.1 Performance Bond. Before starting Work, Contractor must promptly provide a performance bond in the amount of not less than the full Contract Price of the Work, pursuant to ORS 279C.380.

§ 11.5.2 Payment Bond. Before starting Work, Contractor must promptly provide a payment bond in the amount of not less than the full Contract Price of the Work, pursuant to ORS 279C.380 .

§ 11.5.3 Prevailing Wage. Contractor must comply fully with the provisions of ORS 279C.800 through 279C.870. The Contractor must pay workers at not less than the specified minimum hourly rate of wage as provided in the Oregon Bureau of Labor and Industries (BOLI) publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon, which is incorporated herein by reference (wage rates may be found at the following website: http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml) Every subcontract must contain a provision requiring payment of prevailing wage pursuant to the provisions of ORS 279C.800 through 279C.870. Contractor and all subcontractors must file or cause to be filed the certified statements with the BOLI, as provided in ORS 279C.845.

§ 11.5.4 Public Works Bond. Before starting Work, Contractor, and every subcontractor, must file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Contractor or subcontractor is exempt under ORS 279.836. Before permitting a subcontractor to start Work on a public works project, Contractor must verify that the subcontractor has filed a public works bond as required by ORS 279.836 or is exempt. Contractor shall also include in each subcontract entered into by the Contractor a clause obligating each subcontractor at all tiers to comply with the requirements of this paragraph.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect, the Owner or any government authority has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect, the Owner or any government authority or failing to conform to the requirements of the Contract Documents, discovered before 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 the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a

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written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. The Architect or Owner may at any time request and receive from Contractor satisfactory evidence that material, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve the Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for the respective periods set forth below through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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, a period of one hundred twenty (120) days;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped, a period of one hundred twenty (120) days; or

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, a period of thirty (30) days; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, 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.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 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 or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instruction of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws; or
- .6 otherwise does not fully comply with the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, 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' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor 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 subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the 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 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated 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.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.3 shall be given. Said notice shall include detailed documentation of the cause or event resulting in the need for an extension of time, and a schedule analysis, based upon the approved Contractor's construction schedule and periodic updates thereof, showing the impact of the cause or event on the critical path of the approved Contractor's construction schedule. No such claim shall be valid unless so made. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be valid only (i) to the extent documented by data substantiating that weather conditions were abnormal for the period of time, and had an adverse effect on the critical path of the scheduled construction and (ii) if Contractor submits the notice required by Section 15.1.2 within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of 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.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

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

§ 15.2.8 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 notice or filing deadlines.

§ 15.3 Mediation

§ 15.3.1 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 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 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 is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the

other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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.

§ 15.4.1.1 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. For statute of limitations 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.

§ 15.4.2 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 thereof.

§ 15.4.3 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.

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

16. State Law Requirements and Other Conditions

§16.1 Public Contracting Requirements. Contractor must comply with provisions of ORS 279A.110; ORS 279C.505; ORS 279C.510; ORS 279C.515; ORS 279C.520; ORS 279C.530; and ORS 279C.540, which are incorporated by reference herein. City's performance under the Contract is conditioned upon Contractor's compliance.

§16.2 Certification of Compliance with Tax Laws. As required by ORS 279B.110(2)(e), Contractor represents and warrants that Contractor has complied with the tax laws of this state, the City, and applicable political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, hereafter ("Tax Laws"). Contractor further covenants to continue to comply with the Tax Laws during the term of this Agreement and Contractor covenants and acknowledges that the failure to comply with the Tax Laws is a default for which City may terminate this Agreement and seek damages.

§16.3 Registered in Oregon and City of Tualatin. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor must promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor must demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract. Contractor must have or acquire a City business license prior to executing this Contract.

§16.4 Nondiscrimination; Compliance with Applicable Law. Contractor agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Contract. Contractor must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Contractor will not discriminate against minority-owned, women-owned, or emerging small businesses. Contractor must include a provision in each subcontract requiring subcontractors to comply with the requirement of this provision.

§16.5 Use of Recycled Products. Contractor shall, endeavor to use in the performance of this Contract, recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

§16.6 Independent Contractor. Contractor will perform all Work as an independent Contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.

§16.7 Federal and State Taxes. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Contract. Contractor is not entitled to, and expressly waives all claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.

§16.8 Anti-Kick Back. Contractor must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR part 3).

Additions and Deletions Report for AIA® Document A201™ – 2017

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

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PAGE 1

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

...

(Name, legal status and address)

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

THE CONTRACTOR:
Bremik Construction, Inc.
1026 SE Stark Street
Portland, OR 97214

...

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

...

4 ARCHITECT ADMINISTRATION OF THE CONTRACT

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

...

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

Dimensions shall be computed, rather than determined by scale or rule.

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§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, interpretations by the

Architect will be based on the following priorities in descending order:

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

...

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's Owner's, Architect's, or Architect's consultants' reserved rights.

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§ 1.9 Execution of the Contract Documents

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

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

...

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

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

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~~§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

...

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for the plan check and building permit fees, systems development charges, necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities, facilities and all permits, and fees as excluded in exhibit G of the Agreement.

...

~~§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.~~

...

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

PAGE 14

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

- (i) become familiar with the site and review City of Tualatin provided reports and studies for the new Work that is furnished to the Contractor found in the Exhibit J concerning the conditions of the site;
- (ii) inspected the location of the Work and satisfy itself as to the condition, including, structural , surface conditions; and
- (iii) determined that the Contract Price is reasonable compensation for all Work, including all foreseen and foreseeable construction risks, hazards, and difficulties in connection with the Work, and that the Contract Time is adequate for the performance of the Work.

...

~~§ 3.2.3 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Owner and Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.~~ shall be reported promptly to the Owner and Architect.

PAGE 15

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give

specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall ~~evaluate the jobsite safety thereof and shall be solely responsible~~ rely on these specific instructions for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give ~~timely notice to the Owner and Architect~~, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. ~~Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.~~ notice to the Owner and Architect in writing and the Architect shall revise the Contract Documents.

...

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

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

...

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that materials and equipment selected by the Contractor or its subcontractors will be suitable for the purposes intended by the Contract Documents, that the Work will be performed in a workmanlike manner, and that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work that the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

Nothing in Section 3.5.1 shall make the Contractor or its Subcontractors responsible for the suitability of materials or equipment specifically designated in the Contract Documents or specifically selected by the Owner or Architect, unless Contractor has participated in such designations or selections and/or unless contractor, in exercise of reasonable care, would have objected or raised concerns regarding the suitability of such materials or equipment.

§ 3.5.2 ~~All material, equipment, or other special 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 9.8.4.~~ Effective upon the written demand of the Owner or upon the insolvency, bankruptcy, dissolution or other incapacity of the Contractor, the Contractor assigns to the Owner all Subcontractors' warranties in materials and equipment and other portions or components of the Work.

§ 3.5.3 All material, equipment, or other special 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 9.8.4.

PAGE 16

§ 3.7.1 ~~Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as the Owner shall pay for the building permit.~~ Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations ~~concluded.~~ concluded, unless specifically excluded in Exhibit G of the Agreement.

...

~~§ 3.7.3 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 appropriate responsibility for such Work and shall bear the costs attributable to correction. It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.~~

~~§ 3.7.4 If the Contractor and/or any of its Subcontractors performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.~~

...

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract 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 Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14-21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

...

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

...

~~§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval review shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~

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~~The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate record field changes and selections made during construction, and the one record copy of approved Shop Drawings, Product Data, Samples, Samples and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. the Work. These documents, when delivered to the Architect, shall be~~

accompanied by a transmittal listing the documents, signed and dated by the Contractor, and including the following statement: "The Contractor certifies that these record documents, to the best of the Contractor's knowledge, show complete and exact "as-built" conditions".

...

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

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor 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 Contract Documents.

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

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

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

- .1 remove temporary protections;
- .2 remove marks, stains, fingerprints and other soil or dirt from painted, decorated and natural-finished woodwork and other Work;
- .3 remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
- .4 clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition;
- .5 clean aluminum in accordance with recommendations of the manufacturer;
- .6 clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to a sheen; and
- .7 remove spots and other foreign material from carpeted areas using cleaning methods in accordance with the carpet manufacturer's recommendations, and vacuum all areas, and mechanically clean any areas which have been subjected to high traffic during completion of construction activities.

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

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ARTICLE 4 ARCHITECT

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

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 General Architect

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement, lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

...

§ 4.2.1 The Owner and Architect will jointly provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have Documents. The Owner has designated a Project Manager (Owner's Project Manager, which is Plan B) to be the Owner's representative. The Architect generally shall assist the Owner and Owner's Project Manager in fulfilling the responsibility to administer the Contract. The Architect will be a representative of the Owner during construction and until final payment. If so requested by the Owner, the Owner's Project Manager, and/or Owner's lender, if any, the Architect shall interpret and advise the Owner and Owner's Project Manager with respect to matters set forth in the Drawings and Specifications. The Architect will have the authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 The Architect Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents. Documents, except as provided in Section 3.3.1.

...

~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications With the exception of routine communications, the Architect and the Contractor shall endeavor to communicate with each other through the Owner's Project Manager. Routine communications between the Architect and Contractor may occur, provided the Owner's Project Manager is appraised through copies of appropriate correspondence, meeting minutes or other records of such communications. All instructions and other communications to the Contractor prepared by the Architect will be issued through the Owner's Project Manager. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers-subcontractors and material suppliers of the Contractor shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Owner's separate contractors shall be through the Owner's Project Manager.~~

...

§ 4.2.6 The Architect has authority to advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and ~~approve, or take~~ recommend to the Owner approval or other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 ~~The Architect will prepare Change Orders and Construction Change Directives, and may order~~ In each instance, upon request of the Owner, the Architect will prepare documentation for Change Orders and Construction Change Directives for issuance by the Owner's Project Manager, and may authorize, with the Owner's prior approval, minor changes in the Work as provided in ~~Section 7.4.~~ Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 ~~The~~ Upon request of the Owner, the Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the ~~site~~-site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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§ 5.2.1 The Contractor shall advertise publicly and shall endeavor to procure a minimum of three (3) competitive bids for each subcontract and supply agreement for which the cost of the subcontracted work will exceed \$50,000. Unless otherwise stated in the Contract Documents, Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall ~~notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) design) that bid on each work scope defined by the Contractor's bid packages , the amount of the bids, and the Contractor's recommendation of the person or entity proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14 day period~~entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

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

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

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

- 1 require that such Work be performed in accordance with the requirements of the Contract Documents;

- .2 waive all rights the Contractor or Owner may have against one another or that the Subcontractor may have against the Contractor or Owner for damages caused by fire or other perils covered by the insurance described in Article 11;
- .3 require each major Subcontractor ("major" meaning a contract in the amount of \$20,000 or greater) carry and maintain insurance coverage in accordance with the Contract Documents which shall be endorsed as primary insurance and non-contributory with the Owner's insurance naming the Owner, Owner's Project Manager, and the Architect, and without limitation, their respective partners, officers, commissioners, directors, agents and employees as additional insureds, and to file certificates of such coverage with the Contractor;
- .4 require the Subcontractor to submit certificates and waivers of liens for work completed by it and by its Sub-subcontractors as a condition to the disbursement of the progress payment next due and owing;
- .5 require submission to Contractor or Subcontractor, as the case may be, of applications for payment in a form approved by the Owner, together with clearly defined invoices and billings supporting all such applications under each subcontract to which the Contractor is a party;
- .6 report, so far as practicable, unit prices and any other feasible formula for use in the determination of costs of changes in the Work;
- .7 require each Subcontractor to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required herein;
- .8 require that each Subcontractor continue to perform under its subcontract in the event the Contract is terminated and the Owner shall take an assignment of said subcontract and request such Subcontractor to continue such performance; and
- .9 require each Subcontractor to remove all debris created by its activities.

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

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Contractor acknowledges the Owner's option and/or intent to cause the installation of tenant finish and other work to be performed by others and that a portion of such work may take place before Substantial Completion by the Contractor. The Contractor shall afford such parties ample access to the site and all areas of the Work as may be reasonably necessary for the performance of such work including, without limitation, storage of materials and equipment, vertical transportation, and connection to utilities and services.

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§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction ~~schedules~~ schedules when directed to do so. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual ~~agreement~~ agreement with the Owner. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12. The Owner or its Separate Contractors shall abide by all OSHA safety rules or Contractor safety protocols and procedures, whichever are the most restrictive.

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner and Architect of 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 Contractor's Work. Failure of the Contractor to notify the Owner and Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

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- .1 An order for minor changes in the Work including, but not limited to, a Supplemental Induction, response to a Request for Information (RFI), clarification drawing and/or detail, field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time and the Contractor shall have no claim therefore unless it shall, prior to complying with same and in no event no later than seven (7) calendar days from the date such direction or order was given, submit to the Owner a written request for a change in the Contract Sum and/or Contract Time.
- .2 A Change Proposal, Proposal Request or similar notice with detailed supporting data shall be delivered to the Owner no later than fourteen (14) calendar days from the date such direction or order was given. When submitting its Change Proposal, the Contractor shall include and set forth in clear and precise detail breakdowns of labor and materials for all trades involved and the estimated impact on the construction schedule. The Contractor shall furnish spread sheets from which the breakdowns were prepared, plus spread sheets if requested of any Subcontractors.

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

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§ 7.3.1 A Construction Change Directive is a written order prepared by the ~~Architect~~ Architect, issued by the Owner's Project Manager, submitted to the Contractor and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by

Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, ~~the Architect shall determine the adjustment or if time requirements dictate (in the Owner's reasonable opinion), the Architect shall make all required certifications with respect to such Work, and the cost of such Work shall then be determined by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, 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.~~ increase or General Contractor's fee deduction for overhead and profit not to exceed 4.45% of such Work's actual cost to Contractor and 15% of such Work's actual cost to be apportioned by Contractor between any and all Subcontractors and Sub-subcontractors. For Work performed by Contractor's own forces, Contractor's mark-up shall be limited to actual cost plus a percentage fee for overhead and profit not to exceed 4.45%. In such case, and also under Section 7.3.3.3, Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner and Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following: of actual costs together with appropriate supporting data. For the purposes of this Section 7.3.4 actual costs shall be defined and limited to the cost of the following:

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~~The Architect may 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.~~ § 7.4.1 The Architect will have authority, subject to the approval of the Owner, to 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. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect in writing and shall provide a cost for the change.

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

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

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§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~(1) an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor;~~ ~~(2) by changes ordered in the Work;~~ ~~(3) separate contractor employed by the Owner, or by changes ordered in the Work as reflected in Change Orders approved by the Owner that provide for the Contract Time to be extended, by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control;~~ ~~(4) by delay authorized by the Owner pending mediation and binding dispute resolution;~~ or ~~(5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.~~ by occurrences beyond the control and without the fault or negligence of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including labor disputes (other than disputes limited to the work force of, or provided by, the Contractor or its Subcontractors), fire, unusual delay in deliveries not reasonably anticipatable, unavoidable casualties, adverse weather conditions documented or other causes beyond the Contractor's control, then, provided that the Contractor is in compliance with Subparagraph 15.1.2 hereof, the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time actually and directly caused by such occurrence; provided, however, that such extension of Contract Time shall be net of any delays caused by or due to fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. When a delay impact's the project's critical path, the Contractor is entitled to increased payments to the Contractor for overhead, extended overhead, contract acceleration or for any other amounts of any nature. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and Owner to minimize and mitigate the impact of any such occurrence.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. A copy of any claim for extension shall be delivered to the Owner and the Architect, and the Contractor shall immediately take all steps reasonably possible to lessen the adverse impact of such delay on Owner.

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used Before the first Application for Payment, the Contractor shall submit to the Architect and Owner a schedule of values allocated to various portions of the Work, which in aggregate equals the total Contract Sum, divided so as to facilitate payments to Subcontractors, supported by such evidence of correctness as the Architect may direct or as required by the Owner. This schedule, when approved by the Architect and Owner, shall be used to monitor the progress of the Work and as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. All items with entered values will be transferred by the Contractor to the "Application and Certificate for Payment," and shall include the latest approved Change Orders and Construction Change Directives. Change Order values and Construction Change Directive values shall be broken down to show the various subcontracts. The Application for Payment shall be on a form as provided by the Architect and approved by the Owner and Owner's lender. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed and value yet to be completed. All blanks and columns must be filled in, including every percentage complete figure.~~

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§ 9.3.1 ~~At least ten-five days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect reflecting retainage if provided for in the Contract Documents. Such Application for Payment shall be certified as correct by Contractor and shall be accompanied by waivers of liens and other documentation from the Contractor, Subcontractors and Sub-subcontractors as may be required by the Owner and /or Owner's lender, if any, under its loan agreement with Owner or title insurer. Upon request by Owner, copies of all Applications for Payment shall be submitted by Contractor directly to Owner's lender for the Project.~~

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

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

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

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.8 failure of the Contractor to submit required Progress Schedule or Progress Schedule update information.

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

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

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. All payments by the Owner shall not constitute approval or acceptance of any item of cost in an Application for Payment. No partial payment made hereunder shall be, or be construed to be, final acceptance or approval of that portion of the Work to which such partial payment relates or relieve the Contractor of any of its obligations hereunder with respect thereto.

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If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, 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 Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding the preceding sentence, the Contractor shall not stop the Work during the pendency of a bona fide dispute between the Owner and the Contractor, provided any sums in dispute claimed by the Contractor either are placed in escrow or are withheld by Owner's lender and it agrees to pay said disputed sum in accordance with the resolution of the dispute.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which the Owner agrees to accept separately) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational as designed. In general, the only remaining work shall be minor in nature, so that the Owner or Owner's tenants could occupy the building on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner's or Owner's tenants' (or those claiming by, through or under Owner) occupancy or normal business operations. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining Work will be completed within thirty (30) consecutive calendar days or as agreed upon following the Date of Substantial Completion. The Contractor is responsible for the warranty of all Work, whether performed by it, or by its Subcontractors, at any tier during the twelve (12) month period following Substantial Completion.

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, ~~(3) a written statement effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner,~~ (3) a written statement satisfactory to the Owner that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and 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~~ Owner and the Owner's lender. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all substantiated payments that the Owner has made in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

In addition to the above, evidence of compliance with all requirements of the Contract Documents (notices, certificates, affidavits, other requirements to complete obligations under the Contract Documents) including but not limited to:

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

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

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

...

§ 10.2.5 The Contractor shall promptly remedy at its sole cost and expense damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) Documents as described in Article 11, subject to Contractor's liability to pay any deductible amount) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract 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 Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. Unless otherwise provided in the Contract Documents, in the event the Contractor encounters at the Project site any of the following:~~

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

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

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

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§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.~~Work~~

§ 11.5 Performance, Payment, Prevailing Wage; Public Works Bond.

§ 11.5.1 Performance Bond. Before starting Work, Contractor must promptly provide a performance bond in the amount of not less than the full Contract Price of the Work, pursuant to ORS 279C.380.

§ 11.5.2 Payment Bond. Before starting Work, Contractor must promptly provide a payment bond in the amount of not less than the full Contract Price of the Work, pursuant to ORS 279C.380.

§ 11.5.3 Prevailing Wage. Contractor must comply fully with the provisions of ORS 279C.800 through 279C.870. The Contractor must pay workers at not less than the specified minimum hourly rate of wage as provided in the Oregon Bureau of Labor and Industries (BOLI) publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon, which is incorporated herein by reference (wage rates may be found at the following website:

http://www.oregon.gov/BOLI/WHD/PWR/pwr_book.shtml) Every subcontract must contain a provision requiring payment of prevailing wage pursuant to the provisions of ORS 279C.800 through 279C.870. Contractor and all subcontractors must file or cause to be filed the certified statements with the BOLI, as provided in ORS 279C.845.

§ 11.5.4 Public Works Bond. Before starting Work, Contractor, and every subcontractor, must file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Contractor or subcontractor is exempt under ORS 279.836. Before permitting a subcontractor to start Work on a public works project, Contractor must verify that the subcontractor has filed a public works bond as required by ORS 279.836 or is exempt. Contractor shall also include in each subcontract entered into by the Contractor a clause obligating each subcontractor at all tiers to comply with the requirements of this paragraph.

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

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect~~ Architect, the Owner or any government authority has not specifically requested to examine prior to its being covered, the Architect or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

...

The Contractor shall promptly correct Work rejected by the ~~Architect~~ Architect, the Owner or any government authority or failing to conform to the requirements of the Contract Documents, discovered before 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 the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

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§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so that the Architect and Owner may be present for such procedures. The Architect, Owner and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. The Architect or Owner may at any time request and receive from Contractor satisfactory evidence that material, supplies, or equipment are in conformance with the Contract Documents. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve the Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. In no event shall any interest be due and payable by the Owner to the Contractor, any Subcontractor or any other party on any of the sums payable by the Owner or sums which the Owner is authorized to retain pursuant to the Contract Documents, unless under the terms of the Agreement sums are due and unpaid.~~

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days the respective periods set forth below through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work, Work under direct or indirect contract with the Contractor, 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; stopped, a period of one hundred twenty (120) days;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; stopped, a period of one hundred twenty (120) days; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; Documents, a period of thirty (30) days; or

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- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 disregards the instruction of Architect or Owner (when such instructions are based on the requirements of the Contract Documents);
- .4 otherwise is guilty of substantial breach of a provision of .5 is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of Contractor's creditors or a trustee or receiver is appointed for Contractor or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar laws; or
- .6 otherwise does not fully comply with the Contract Documents.

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If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Architect. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

...

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided in Section 15.1.3 shall be given. Said notice shall include detailed documentation of the cause or event resulting in the need for an extension of time, and a schedule analysis, based upon the approved Contractor's construction schedule and periodic updates thereof, showing the impact of the cause or event on the critical path of the approved Contractor's construction schedule. No such claim shall be valid unless so made. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be valid only (i) to the extent documented by data substantiating that weather conditions were abnormal for the period of time, ~~could not have been reasonably anticipated,~~ and had an adverse effect on the ~~scheduled construction.~~ the critical path of the scheduled construction and (ii) if Contractor submits the notice required by Section 15.1.2 within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later.

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§ 15.4.4 Consolidation or Joinder Should any arbitration, suit or action be commenced in connection with any claims, disputes or other matters in question arising out of or relating to the Contract or the breach thereof, to obtain a construction of or enforce any provision of the Contract or rescind the Contract, or to enforce or collect any award obtained during arbitration or any judgment or decree of any court related to the Contract, the prevailing party shall be entitled to recover its attorneys' and expert witnesses' fees and related costs, disbursements and expenses incurred

prior to and during the arbitration or trial, on review for appeal, on appeal, on review for reconsideration or on reconsideration, regardless of when such reconsideration should be sought or granted, as the arbitrator(s) or court shall adjudge reasonable.

§ 15.4.4 Consolidation or Joinder

...

16. State Law Requirements and Other Conditions

§16.1 Public Contracting Requirements. Contractor must comply with provisions of ORS 279A.110; ORS 279C.505; ORS 279C.510; ORS 279C.515; ORS 279C.520; ORS 279C.530; and ORS 279C.540, which are incorporated by reference herein. City's performance under the Contract is conditioned upon Contractor's compliance.

§16.2 Certification of Compliance with Tax Laws. As required by ORS 279B.110(2)(e), Contractor represents and warrants that Contractor has complied with the tax laws of this state, the City, and applicable political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, hereafter ("Tax Laws"). Contractor further covenants to continue to comply with the Tax Laws during the term of this Agreement and Contractor covenants and acknowledges that the failure to comply with the Tax Laws is a default for which City may terminate this Agreement and seek damages.

§16.3 Registered in Oregon and City of Tualatin. If Contractor is not domiciled in or registered to do business in the State of Oregon, Contractor must promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. Contractor must demonstrate its legal capacity to perform the Work under this Contract in the State of Oregon prior to entering into this Contract. Contractor must have or acquire a City business license prior to executing this Contract.

§16.4 Nondiscrimination; Compliance with Applicable Law. Contractor agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Contract. Contractor must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Contract. Contractor will not discriminate against minority-owned, women-owned, or emerging small businesses. Contractor must include a provision in each subcontract requiring subcontractors to comply with the requirement of this provision.

§16.5 Use of Recycled Products. Contractor shall, endeavor to use in the performance of this Contract, recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

§16.6 Independent Contractor. Contractor will perform all Work as an independent Contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Work. Contractor is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.

§16.7 Federal and State Taxes. Contractor is responsible for all federal or state taxes applicable to compensation or payments paid to Contractor under this Contract and, unless Contractor is subject to backup withholding, City will not withhold from such compensation or payments any amount(s) to cover Contractor's federal or state tax obligations. Contractor is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Contract. Contractor is not entitled to, and expressly waives all claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.

§16.8 Anti-Kick Back. Contractor must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented in Department of Labor regulations (29 CFR part 3).



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 19:19:12 ET on 03/02/2020 under Order No. 4835673839 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



Tualatin City Services

City Council
March 9, 2019

Tonight

- **Project Concept**
- **Progress**
- **Timeline**
- **Design**
- **Guaranteed Maximum Price (GMP) Contract**



CITY OF

TUALATIN OREGON

Tualatin City Services

Concept

- **Expansion of Public Works Operations Complex at Herman Rd and SW 108th**
- **Completes next phase of Operations Master Plan**
- **Co-locates like departments on one site:**
 - **Public Works**
 - **Maintenance & Operations**
 - **Development Services & Planning**
 - **Permitting**
 - **Municipal Court**



Benefits

- **One-stop-shop for permitting**
- **Easy access for the development community**
- **Increase in staff efficiency by being co-located**
- **Enables Finance & Administration to move back to City-owned buildings**
- **Eliminates rented office space**
- **Addresses current space needs and requirements**

Budget

- **\$8 million total funds available**
- **Funded through existing funds and financing**



CITY OF

TUALATIN OREGON

Ready to Break

Ground - Progress

- **Land Use and Plan Text Amendments Completed**
- **Architect (Scott Edwards Architecture), Contractor (Bremik Construction), and Owners Rep (Plan B) Hired**
- **Employee Advisory Group Established**



Design Completed

TUALATIN OREGON

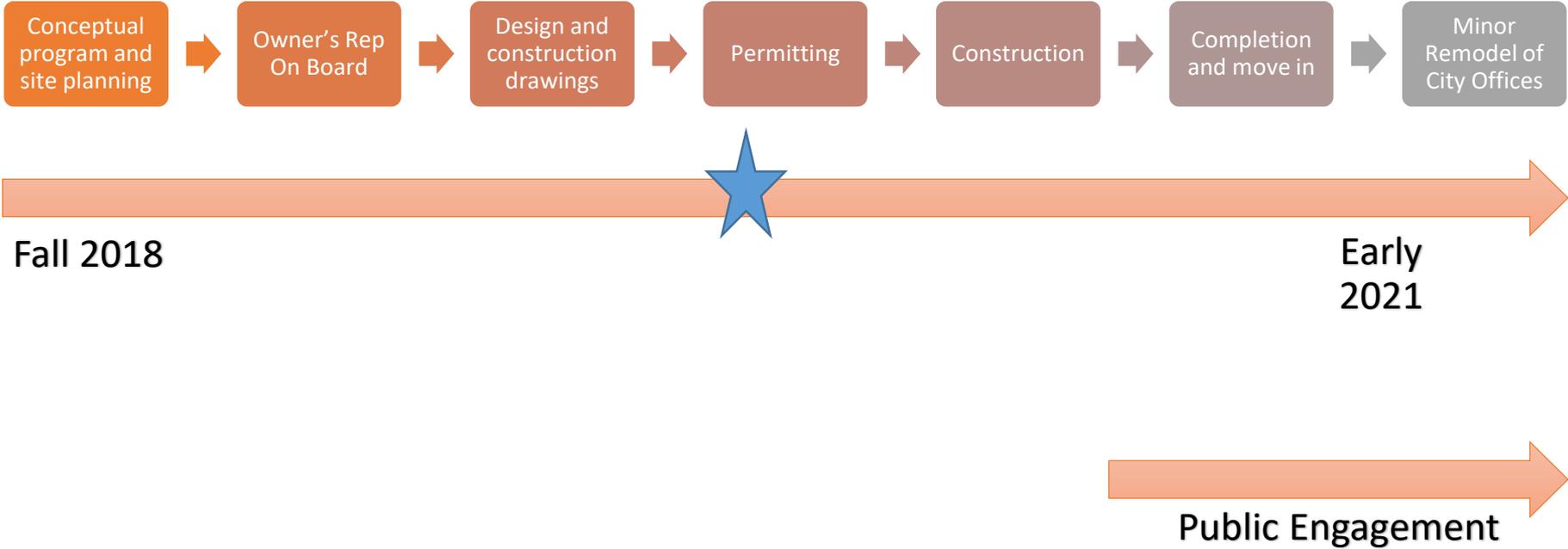
Architectural Review Approved

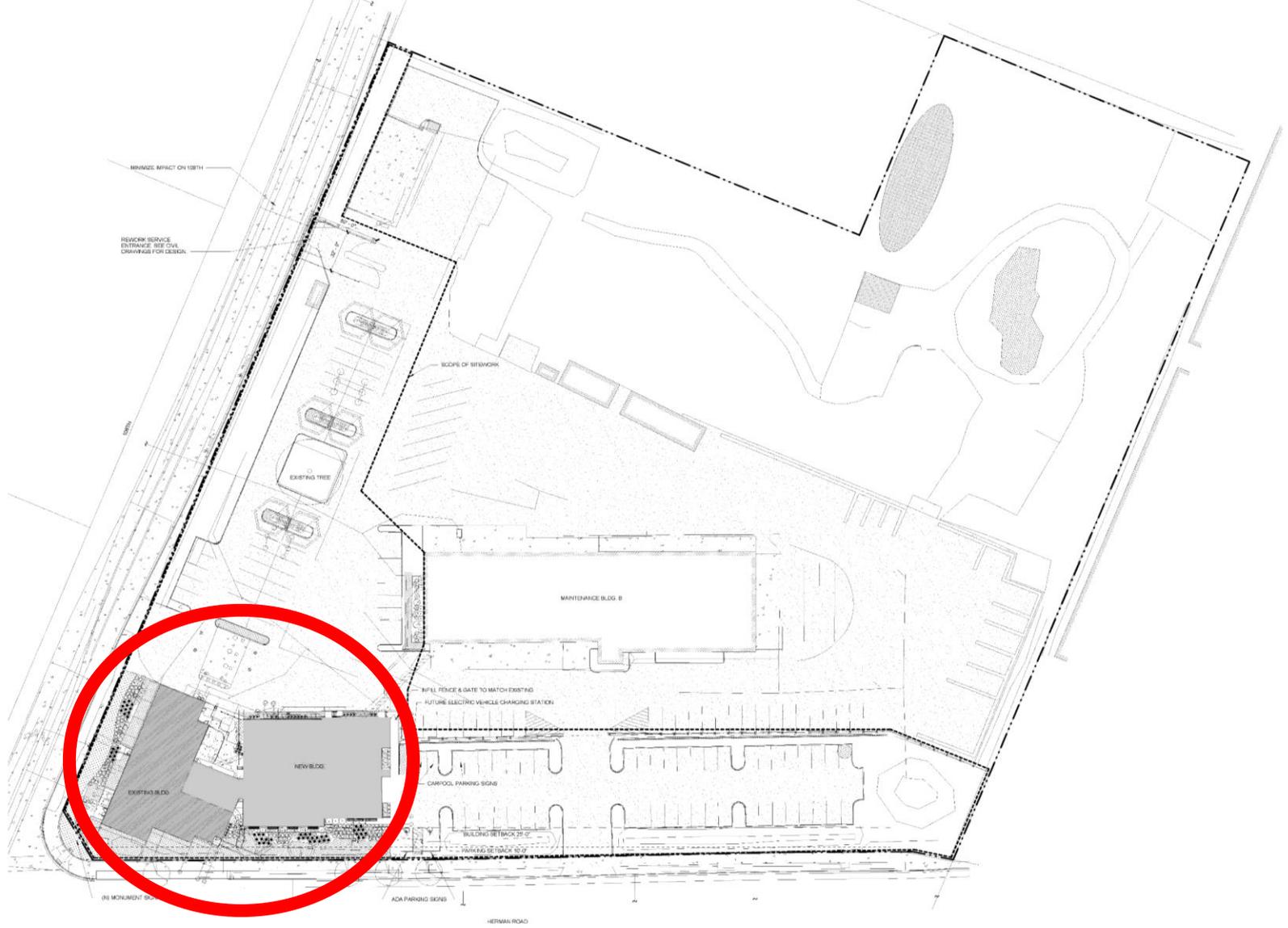
Employee Advisory Group

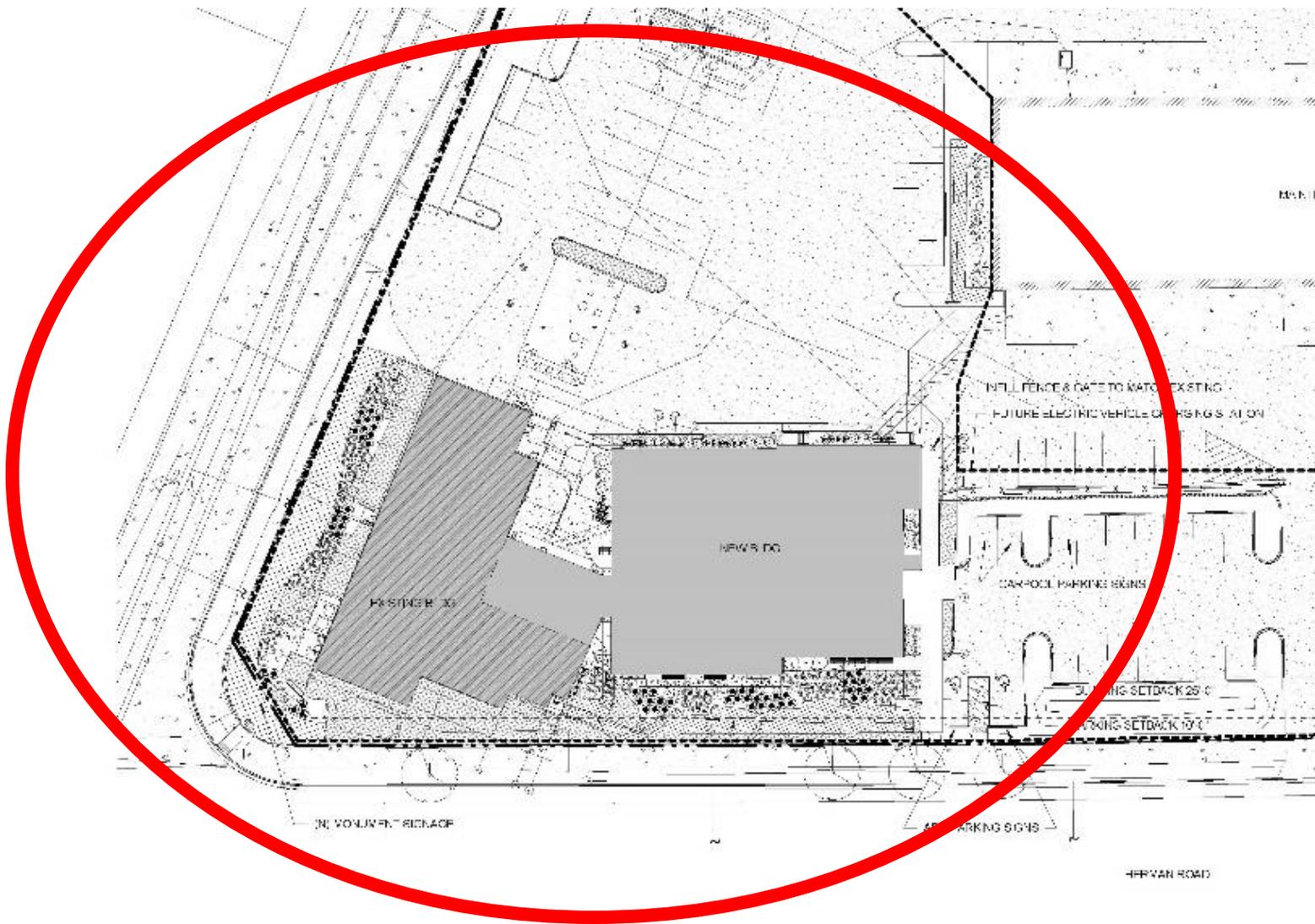
- **Departmental representation on group**
- **Two-way communication between staff and decision-makers**
- **Provided input at strategic decision-points**



Timeline







Renderings





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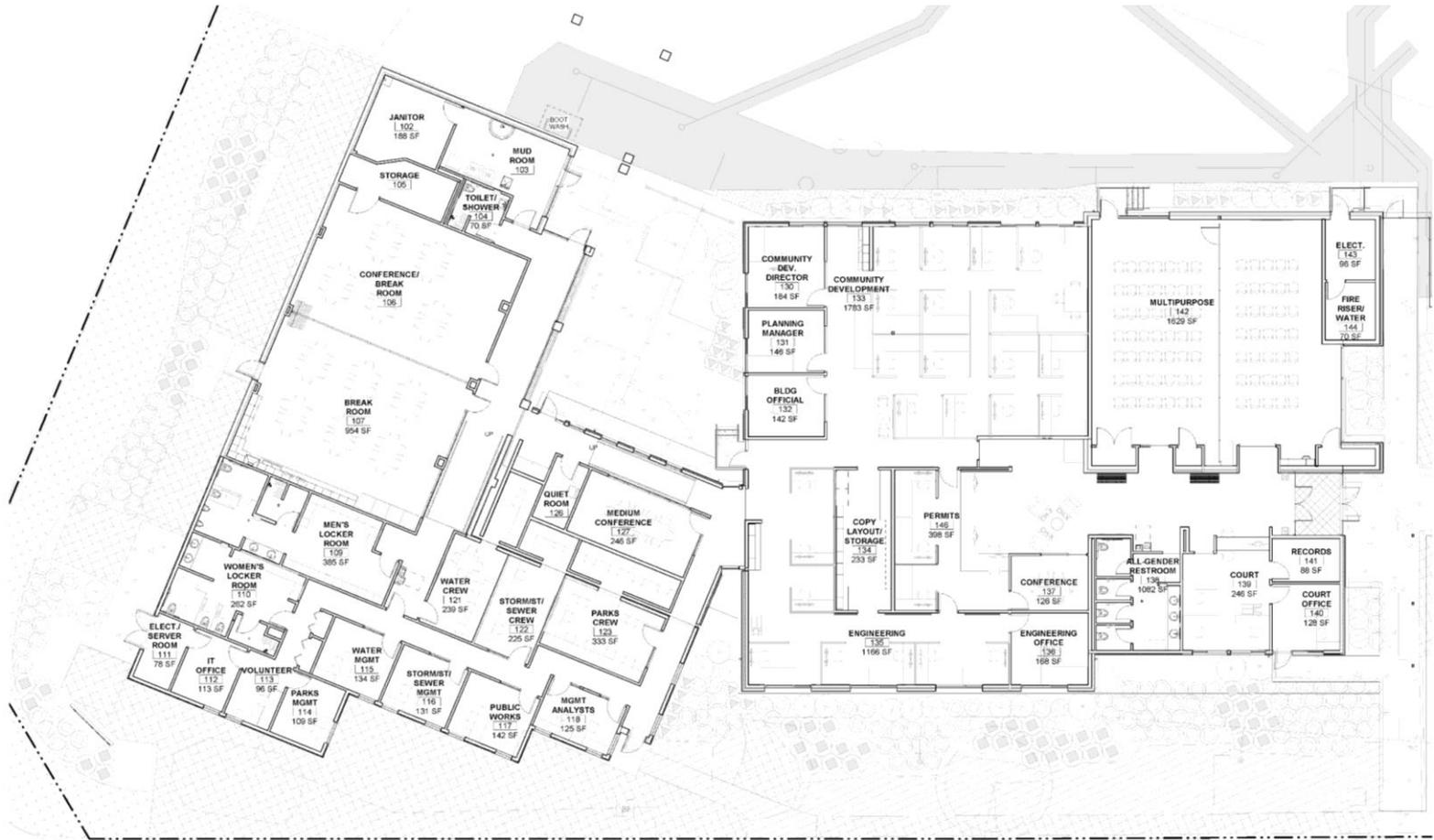


CITY OF
TUALATIN OREGON









Today's Step: GMP Contract

- **Guaranteed Maximum Price: Contractor is compensated for actual costs incurred plus a fixed fee subject to a ceiling price.**
- **Bremik Construction was selected as the project's contractor via a competitive bid process.**
- **Bremik Construction publically bid for materials and labor.**
- **Today, the Council is directing staff to contract with Bremik Construction for a guaranteed maximum price of \$5,876,120.**



Questions & Discussion

