

DRAFT AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

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

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

Columbia Gorge Community College
400 E. Scenic Drive
The Dalles, Oregon 97058

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

«[TBD] »
«»
« »
« »

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

«Renovation of Chenoweth Middle School to Columbia Gorge Early Learning Center
«West Loop Road
«The Dalles, OR 97058

The Project consists of interior renovations to approximately 34,000 sq. ft. of the existing building previously used for the Chenoweth Middle School. Project components include programing, schematic design, design development, contract documents, permitting and construction administration services. Expected scope is renovating building elements, and systems to function as a new state of the art Early Learning Center with administrative offices for the Columbia Gorge Educational Service District. »

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1.0 The Project will be divided into two phases. Phase 1 will include all services of Architect up to and including Architect's completion of the Schematic Design Phase described in Section 3.2. Owner will use the Schematic Design Documents to as part of its fundraising efforts to raise funds for Phase 2 of the Project. Phase 2 will consist of Architect's completion of the Design Development Phase, the Construction Documents Phase, and the Construction Phase services as further described in this Agreement. Phase 2 is dependent on Owner obtaining funding for Phase 2; Phase 2 will not occur if Owner does not obtain funding. Architect will not commence Phase 2 services unless authorized by Owner in writing. Even if Owner obtains funding, Owner is under no obligation to authorize Phase 2 services or to carry out Phase 2 under this Agreement. Furthermore, Owner is under no obligation to authorize Phase 2 services within any particular amount of time after Phase 1 ends and before this Agreement expires as set forth in Section 9.8 of this Agreement. In the event that Owner affirmatively chooses not to authorize Phase 2 services under this Agreement before this Agreement expires, Owner may terminate this Agreement as set forth in Section 9.5 below.

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:

(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

The project goal is to renovate the existing building and create capacity for 200 early learning slots in the facility. Project components include renovations to approximately 34,000 sq. ft. of the 1954 Chenoweth Middle School on the West end of The Dalles. The building is owned and will continue to be owned by North Wasco School District-21 (the "District"). The facility has been mothballed for the last 15 years, current uses are limited to the Gym

structure attached to the main building. The new use intends to utilize the full structure less the gymnasium that will continue to be utilized in the current configuration as The District's practice facility. Architect will work with Owner to verify detail project programming needs in the Initial Phase of the work the current working assumptions are:

CG-Early Learning: based on the ratio and probable group size:

32 Full Time Infants

40 Full Time Toddler

60 Full Time Preschool

40 Part Time Preschool

30 After School School-age

202 slots estimated min.

Columbia Gorge-ESD: Administrative space for approximately 75 staff with various areas of focus, workspace needs and schedules.

Owner: Early Childhood Education program will place students in practicum associated with the Owner's Early Childhood Education program. With the varied uses and schedules, planning of the layout to easily control access to different parts of the building at different times for different users will be an important component of success. Commercial Kitchen and cafeteria for support of the early learning programs as well as anticipated community uses.

§ 1.1.2 The Project's physical characteristics:

(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

1954 era Middle school. Building is on two levels with some mechanical distribution tunnels. Exterior building envelope will need upgrades for condition and energy code including building glazing systems. Full roof replacement is anticipated. Electrical and HVAC systems will need to be addressed to support a modern building, uses and full year occupation.

Site exists within the Columbia Gorge National Scenic Area. Modifications to the exterior of the building will need to be carefully considered or may trigger CGNSA reviews.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

(Provide total and, if known, a line item breakdown.)

Construction budget: TBD, but tentatively not to exceed \$13 million

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates:

Phase 1:

Programming Phase: January 2024

Completion of Schematic Design Phase, including estimate of Cost of Work: April 2024

Completion of graphics fund raising package, April 2024

Phase 2:

Plans and Specifications sufficient for soliciting bids: TBD as set forth in Section 1.0; currently assumed to be summer 2025 based on fundraising efforts. Second portion of the design effort will be negotiated as fund raising information is available.

State and local approvals secured: TBD, contingent on funding as set forth in Section 1.0.

.2 Anticipated construction commencement date: TBD, contingent on funding as set forth in Section 1.0.

.3 Anticipated construction substantial completion: TBD, contingent on funding as set forth in Section 1.0

.4 Authorized award end date: TBD, contingent on funding as set forth in Section 1.0.

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.) Design-bid-build using a competitive invitation to bid process under the Oregon Public Contracting Code and applicable federal requirements. The Owner intends to enter a construction contract with the selected Contractor that is based on AIA Document A101-2017, Standard Form of Agreement between Owner and Contractor where the basis of payment is a Stipulated Sum, as modified by Owner and Contractor.

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™-2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204-2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204-2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

Eric Wilson
Sled Shed Consulting
PO Box 2544
White Salmon, WA 98672
eric@sledshedconsulting.com
(503) 310-1477

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

«[TBD] »

§ 1.1.9 The Owner shall retain the following consultants and contractors known as of the date of this Agreement:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

« [TBD] »« »
« »
« »
« »
« »

.2 Civil Engineer:

« [TBD] »« »

« »

« »

« »

« »

- .3 Other, if any:
(List any other consultants and contractors retained by the Owner.)

« [TBD] »

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

« [TBD] »

« »

« »

« »

« »

« »

§ 1.1.11 The Architect shall retain the consultants identified in Sections 1.1.11.1 and 1.1.11.2:
(List name, legal status, address, and other contact information.)

§ 1.1.11.1 Consultants retained under Basic Services:

- .1 Structural Engineer:

« [TBD] »« »

« »

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« »

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- .2 Mechanical Engineer:

« [TBD] »« »

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- .3 Electrical Engineer:

« [TBD] »« »

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§ 1.1.11.2 Consultants retained under Supplemental Services:

« [TBD] »

§ 1.1.12 Other Initial Information on which the Agreement is based:

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner may adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.3.1 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 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.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect will be bound by and will perform its work in compliance with Modified AIA Document A201-2017 General Conditions of the Contract for Construction, as amended (the "General Conditions"), but only to the extent that the General Conditions relate to the services of the Architect. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Consistent with this Section 2.2 and Section 3.1.3, the Architect will perform this Agreement and render decisions in a timely manner to avoid delay in the progress of the Project and the Work of the Contractor. Architect will be responsible for any damages arising from Architect's failure to provide its services in accordance with the requirements of this Agreement.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project (the "Architect's Designated Representative"). The Architect's Designated Representative and its principal architects (collectively, "Supervisory Personnel"), and any persons nominated to replace them, must be reasonably satisfactory to the Owner and the Owner may require the removal and replacement of any or all of them upon ten (10) days' notice to the Architect. So long as the Supervisory Personnel remain employed by the Architect, the Architect may not remove or replace its Supervisory Personnel from any Project without 45 calendar days' advance written notice to the Owner. Except for emergencies, the Architect will consult with the Owner and obtain the Owner's approval of any new or replacement Supervisory Personnel for the Project. New or replacement Supervisory Personnel must be qualified and must have adequate experience with similar projects, and the Architect shall deliver to the Owner résumés of proposed new or replacement Supervisory Personnel.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest, or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect, at its sole cost, shall procure and maintain at all times while performing services under this Agreement the following insurance issued by responsible carriers rated A VII or better by A.M. Best's rating service (unless otherwise approved by the Owner), and in a form and substance reasonably satisfactory to the Owner, that affords at least the minimum coverage limits listed in this Section 2.5.

§ 2.5.1 Commercial General Liability with policy limits of not less than «Two Million Dollars» (\$«2,000,00») for each occurrence and «Four Million Dollars» (\$«4,000,000») in the aggregate for bodily injury and property damage. The commercial general liability insurance shall be issued on an occurrence basis, written on ISO form CG 00 01 (or an equivalent form approved in advance by Owner). The CGL coverage shall include all major coverage categories,

including without limitation bodily injury, advertising injury, property damage, premises/operations, products and completed operations, independent contractors, blanket broad form contractual liability, and X, C, U hazards, and it shall have no limitation of coverage to designated premises, project, or operation.

§ 2.5.2 Automobile Liability issued on an occurrence basis, and covering all hired, owned and non-owned vehicles used by the Architect with policy limits of not less than «Two Million Dollars» (\$«2,000,000») per claim and «Two Million Dollars» (\$«2,000,000») in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 2.5.3 The Architect may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 2.5.1 and 2.5.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. Commercial umbrella/excess liability coverage must include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 2.5.4 Workers' Compensation at statutory limits.

§ 2.5.5 Employers' Liability with policy limits not less than «One Million Dollars» (\$«1,000,000») each accident, «One Million Dollars» (\$«1,000,000») each employee, and «One Million Dollars» (\$«1,000,000») policy limit.

§ 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services by the Architect or its officers, employees, agents, representatives or consultants, with policy limits of not less than «Two Million Dollars» (\$«2,000,000») per claim and «Two Million Dollars» (\$«2,000,000») in the aggregate.

§ 2.5.6 Umbrella insurance coverage with policy limits of not less than Two Million (\$2,000,000) that applies over all liability policies, without exception, including but not limited to Commercial General Liability, Automobile Liability, and Employers' Liability coverage.

§ 2.5.7 Additional Insured Obligations. To the fullest extent permitted by law, the Architect shall cause the primary and excess or umbrella policies for Commercial General Liability, Employer's Liability, and Automobile Liability to include the Owner, the State of Oregon, and their respective officers, directors, employees, agents, volunteers, and consultants as an additional insured for claims caused in whole or in part by the Architect's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations. The additional insured endorsement for the Commercial General Liability must be written on ISO Form CG 2010 (11/85), a CG 2037 (07/04) together with CG 2033 (07/04), or the equivalent; but shall not use the following forms: CG 20 10 (10 93) or CG 20 10 (03 94). The additional insured endorsement with respect to liability arising out of ongoing operations must be on ISO Form CG 20 07 04 or equivalent, and the additional insured endorsement with respect to completed operations must be on ISO form CG 20 37 07 04 or equivalent.

§ 2.5.8 Certificates of Insurance. The Architect shall file with the Owner certificates of insurance in forms acceptable to or provided by the Owner before it commences its services under this Agreement and annually thereafter. Each certificate of insurance must (a) demonstrate the coverage dates, amount, and type of insurance required by this Section 2.5 or by law, (b) provide all endorsements and declarations applicable to the coverage, and (c) identify the insurer(s) providing each set of coverage.

- .1 The Architect must notify the Owner in writing at least thirty (30) days before cancellation, lapse, or expiration of any insurance required by this Section 2.5.

- .2 Consistent with Section 2.5.7, all insurance policies, certificates, and binders of insurance for Commercial General Liability and Automobile Liability shall show the Owner, the State of Oregon, and their respective officers, directors, employees, agents, volunteers, and consultants as additional insureds.
- .3 Upon the Owner's request, the Architect will deliver to the Owner copies of any policy (together with all endorsements, schedules, and other attachments), or a certified abstract of the policy, for any coverage provided under this Agreement.
- .4 If the Architect has any self-insured retention or deductibles for any of the required coverages, the Architect shall identify on the certificate of insurance the nature and amount of the self-insured retention or deductibles and provide satisfactory evidence of financial responsibility for those obligations. The Architect is solely responsible for satisfying all self-insured retentions or deductibles. No self-insured retention or deductible is a reimbursable expense.
- .5 The Owner has the right, but not the obligation, to prohibit the Architect from entering the Project Site until the required certificates, in complete compliance with this Section 2.5, are received and approved by the Owner.

§ 2.5.9 Responsibility for Architect Consultants The Architect shall be responsible to the Owner for acts and omissions of (1) the Architect's principals and employees, (2) the Architect's consultants and subcontractors, (3) the respective principals, agents, and employees of the consultants and subcontractors, and (4) other persons or entities for whom the Architect is responsible, for their respective performance of the Architect's services.

§ 2.5.10 Consultant Insurance. The Architect shall cause all its consultants to carry and maintain workers' compensation coverage required by law and general and professional liability insurance coverage with limits mutually agreed upon by the Owner and the Architect. In the absence of any such agreement, the limits shall be the same as those required of the Architect.

§ 2.5.11 Maintaining Insurance. The Architect must maintain the same or better insurance coverage throughout the Project and the applicable tail-out period. The tail-out period for Architect's professional liability coverage described in Section 2.5.6 may not be less than 4 years from the date of Substantial Completion of the Project. The tail-out period for all other insurance coverage may not be less than two years from the date of Substantial Completion of the Project. Except as otherwise set forth in this Section 2.5.11, if any of Architect's required liability insurance is on a claims-made basis and does not include an extended reporting period of at least 24 months, then Architect shall maintain continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Agreement, for a minimum of 24 months following the later of (a) Architect's completion and Owner's acceptance of all services required under this Agreement, (b) termination of this Agreement, or (c) the expiration of all warranty periods provided under this Agreement.

§ 2.5.12 Failure to Maintain Insurance. The Architect's maintenance of its and its consultants' insurance coverage in full force and effect for the Project is a condition precedent to the Architect's right to exercise or enforce any right or remedy for money damages against the Owner. Failure by the Architect to procure and maintain the insurance policies required above in full force and effect during the performance of services under this Agreement, and during any extensions or additional services hereunder, shall constitute a breach of this Agreement, in which case the Owner shall have the right, in addition to and without prejudice to any other rights, to purchase such insurance on behalf of the Architect, and the Architect shall reimburse the Owner upon demand and shall furnish such information needed by the Owner to obtain such insurance or, alternatively, the Owner may immediately terminate this Agreement for cause pursuant to Section 9.4 of this Agreement.

§ 2.5.13 Limitations on coverages:

- .1 No insurance provided by the Architect under this Section 2.5 shall be required to indemnify the Owner or its agents, representatives, or employees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or part by their negligence, but will

require indemnity to the extent of the negligence of the Architect or its agents, representatives, or employees.

- .2 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Architect. Insurance in effect or procured by the Architect will not reduce or limit the Architect's contractual obligations to indemnify the Owner for claims or suits that result from or are connected with the services provided under this Agreement.

§ 2.5.14 The Architect's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Architect's insurance shall not include any cross-suit exclusion or preclude the Owner from asserting a claim. The Architect waives all rights of subrogation against the Owner, the State of Oregon, and coverage that the Owner or the State of Oregon maintains.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary structural, civil, fire protection, landscaping, lighting, acoustical, mechanical, plumbing, security system, interior design consulting, electrical engineering services, and other basic services as defined in this Agreement. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, review payment applications in a timely manner, promptly issue and revise punch list documentation, and report progress to the Owner. During the design and construction phase, the Architect shall organize and conduct Project meetings and prepare and disseminate minutes and other meeting documentation.

§ 3.1.1.1 The Architect shall coordinate the designs and other services provided by Architect's consultants and correlate the design documents to be consistent with each other.

§ 3.1.2 The Architect shall coordinate its services and the services of its consultants with those services provided by the Owner and the Owner's consultants. The Architect shall review information provided by the Owner, including information derived pursuant to Section 3.1.9, for completeness necessary to the performance of the Basic Services, and thereafter, the Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time is of the essence of this Agreement.

§ 3.1.4 The Architect shall submit information to the Owner and participate in developing and revising the Project schedule as it relates to the Architect's services. The Architect shall review and approve, or take other appropriate action upon, the portion of the Project schedule relating to the performance of the Architect's services.

§ 3.1.5 Once the Owner and Architect agree to the time limits established by the Project schedule, the Owner and Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, contact certification agencies and governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to and comply with applicable design requirements imposed by those agencies, authorities and entities.

§ 3.1.8 The Architect shall assist in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect will cooperate with and assist Owner in any appeal or challenge to code or inspection requirements.

§ 3.1.9 The Architect:

- .1 Shall advise the Owner of any surveys; tests; inspections; geotechnical or hydrological services; air, water, and soil pollution testing; ground corrosion tests; resistivity tests; test borings or pits; percolation tests; Hazardous Materials testing; or other tests or reports required for the Architect's services, by law, or by the Contract Documents;
- .2 Shall recommend and assist the Owner in arranging for the services of engineers or consultants for those tests and services when they are reasonably necessary or required, but shall not itself contract with those engineers or consultants;
- .3 Shall assist the Owner in arranging for and coordinating those tests or services that are approved and contracted for by the Owner;
- .4 Shall supervise any tests and reports identified in Section 3.1.9.1, review all inspections and reports, advise the Owner of their results and recommendations, provide the Owner with copies of those reports or results, if necessary, and report to the Owner and the provider of the inspections or reports any errors or inconsistencies discovered;
- .5 Shall obtain from the Owner's consultants or engineers the soil bearing, percolation, elevation, and other values necessary to prepare the Architect's designs and Construction Documents; and
- .6 Shall request verification of this information as necessary to perform its services.

To the extent that the Owner agrees with the Architect's recommendations, the Owner shall contract with consultants and engineers as identified in this Section 3.1.9, and pay in advance for their services.

§ 3.1.10 The Architect shall review and comply with all laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities applicable to the Architect's services, including without limitation all requirements identified in Section 3.4.2 and Article 14. If a conflict arises between any of these requirements, the Architect will so notify the Owner and will review and recommend proposals to resolve the conflict, and assist the Owner in obtaining approval for any such resolution, as necessary.

§ 3.1.11 The Architect shall submit a report, not less than quarterly, to Owner describing the general progress of the Project, progress since the last update including Project outputs and achieved outcomes, any problems or factors contributing to risks or delays, and actions taken to mitigate risks or delays. Additionally, the Architect shall report to Owner any information as required by the Oregon Department of Administrative Services or any other state or federal agency.

§ 3.1.12 Before Project construction commences, the Architect shall prepare an Inadvertent Discovery Plan ("IDP") for the Project. Architect shall compile inadvertent discoveries associated with the Project and present a Plan for resolving them, in compliance with state and federal requirements.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the existing program and other information furnished by the Owner, including but not limited to a systems assessment addressing reuse and integration of new systems, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall promptly notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating sustainable design approaches, and consideration of the implementation of the Owner's sustainable objective, if any. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present to the Owner, for the Owner's approval, a detailed program that addresses functional needs to serve and support the planned uses of the Project and preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents as needed to clearly describe the work to be constructed, including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials including but not limited to MEP systems, low-voltage system, finishes, and any other pertinent information to represent the program and basic design intent, shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, implications of sustainable code requirements enacted in the relevant jurisdiction, if any, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other sustainable design services under Article 4.

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

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 [Deleted].

§ 3.2.8 During the Schematic Design Phase, the following design and building components will be analyzed for recommendations or for identification of alternate materials, systems, equipment, and development of conceptual design solutions, as applicable:

- .1 Demolition plans
- .2 Alternate structural systems
- .3 Energy sources
- .4 Energy conservation
- .5 Heating and ventilating
- .6 Air conditioning
- .7 Plumbing
- .8 Fire protection
- .9 General space requirements
- .10 Conveying systems
- .11 Power service and distribution
- .12 Lighting
- .13 Telecommunications
- .14 Fire detection and alarms

- .15 Security systems/access control
- .16 Electronic communications
- .17 Acoustical systems
- .18 Special electrical systems
- .19 Landscaping
- .20 On-site utility systems
- .21 Fire protection feeders
- .22 Drainage systems
- .23 Paving, drives, and walkways
- .24 Off-site utilities
- .25 Fixture and equipment layouts, including M/E/P and architectural requirements
- .26 Identification of potential architectural materials, systems, equipment, and their criteria and quality standards consistent with the conceptual design

§ 3.2.9 The Schematic Design Phase shall include a thorough code search identifying all applicable building codes and ordinances and certification requirements.

§ 3.2.10 The Schematic Design Documents shall include, at a minimum, typical structural bay plan, and outline specifications.

§ 3.2.11 Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services upon which proper development of design and construction documents is dependent.

§ 3.2.12 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.13 The Architect shall submit the Schematic Design Documents to the Owner.

§ 3.2.14 Upon receipt of review comments and cost estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.5, identify agreed upon adjustments to the Project's size, quality, or budget, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

§ 3.2.15 Following the approval of the Owner, the Architect shall seek and secure review of Schematic Design Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 3.2.15 The Architect shall, in consultation with the Owner, assist Owner with preparing graphics packages to be used for Project fundraising efforts and community outreach. Architect's efforts will include preparing the graphics for use in the graphics packages. It is anticipated that the graphics package will include elements of the Schematic Design Documents as well as aspirational design images.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, pursuant to Section 5.4, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, major mechanical and electrical equipment sizes and riser diagrams, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 During the Design Development Phase, the scope of services will consist of continued development and expansion of all aspects of the Schematic Design Phase and development of outline specifications, details, and material lists to establish the following:

- .1 Demolition and site preparation
- .2 Basic structural system dimensions
- .3 Final structural design criteria
- .4 Foundation design criteria
- .5 Preliminary sizing of major structural components
- .6 Critical coordination clearances
- .7 Outline specifications or material lists for all Construction Specifications Institute divisions
- .8 Existing building coordination
- .9 Approximate equipment sizes and capacities
- .10 Preliminary equipment layouts
- .11 Required space for equipment
- .12 Acoustical and vibration control
- .13 Visual impacts
- .14 Energy conservation measures
- .15 Criteria for lighting, electrical, and communications systems
- .16 Approximate sizes and capacities of major components
- .17 Landscaping
- .18 Required chases and clearances
- .19 Continued development and expansion of civil Schematic Design Documents
- .20 Continued development and expansion of landscape Schematic Design Documents
- .21 Interior construction of the Project
- .22 Special interior design features

§ 3.3.3 Consistent with Section 3.1.9, the Architect shall advise the Owner promptly and in writing of the necessity or advisability for the Owner to procure any tests, studies, analyses, reports, or consultant's services on which proper development of design and construction documents is dependent.

§ 3.3.4 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.5 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents and cost estimate to the Owner and request the Owner's approval of the Design Development Documents.

§ 3.3.6 Following the approval of the Owner, the Architect shall seek and secure review of Design Development Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 3.4 Construction Documents Phase Services

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels and performance criteria of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that, in order to perform the Work, the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate the design requirements of governmental authorities having jurisdiction over the Project into the Construction Documents.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) procurement information that describes the time, place, and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications, and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work prepared in accordance with Section 6.3.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.4.6 Following the approval of the Owner, the Architect shall seek and secure review of Construction Documents by all regulatory and certification agencies as may be necessary or appropriate, and obtain approval by those agencies. The Architect shall participate in public hearings or presentations, if required, in order to receive approval of the regulatory agencies.

§ 3.4.7 The Architect will make available for reproduction two (2) sets of Construction Documents to the Owner and up to ten (10) additional sets of Construction Documents for use by the Contractor, its subcontractors, and others who must approve the Project. These sets will be provided without additional charge to the Owner. The Architect will furnish additional sets of the Construction Documents as required to authorized recipients at the recipient's expense.

§ 3.4.8 The Architect will include on each page of the Instruments of Service and bid sets all notices as may be required pursuant to ORS 701.625. The language for such notices will be provided by the Owner.

§ 3.5 Procurement Phase Services

§ 3.5.1 General

The Architect may assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) reviewing proof of each bidder's qualifications and recommending approval or disapproval; (4) determining the successful bid or proposal, if any; and, (5) awarding and preparing contracts for construction.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

- .1 facilitating the distribution of Bidding Documents in excess of the documents supplied by the Architect under Section 3.4.7 to prospective bidders;
- .2 organizing and conducting a pre-bid conference for prospective bidders;
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,
- .4 organizing and conducting the opening of the bids, subsequently documenting and distributing the bidding results including preparing and submitting tabulation of bids, and making a recommendation to Owner as to contract award as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 Negotiated Proposals

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by:

- .1 facilitating the distribution of Proposal Documents in excess of the documents supplied by the Architect under Section 3.4.7 for distribution to prospective contractors and requesting their return upon completion of the negotiation process;
- .2 organizing and participating in selection interviews with prospective contractors;
- .3 preparing responses to questions from prospective contractors and providing clarifications and interpretations of the Proposal Documents to the prospective contractors in the form of addenda; and,
- .4 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 If the Proposal Documents permit substitutions, upon the Owner's written authorization, the Architect shall, as an Additional Service, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 Construction Phase Services

§ 3.6.1 General

§ 3.6.1.1 The Architect shall provide administration of the construction contract between the Owner and the Contractor as set forth below and in the General Conditions.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall report to the Owner all observed deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.2 and except as provided in Section 3.6.6.5, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates at the expiration of the period of correction of the Work described in the General Conditions. The Architect will furnish architectural services and consultations necessary to correct minor construction defects encountered during the correction period.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, as a representative of the Owner, and the Architect's consultants, shall visit the site before commencement of the Work and at regular intervals appropriate to the stage of construction, or as otherwise required in the Contract Documents (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine 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 shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall 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 and substitutions to 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.

§ 3.6.2.2 The Architect has the authority, with notice to the Owner, to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, 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, material and equipment suppliers, their agents or

employees, or other persons or entities performing portions of the Work. The Architect shall inform the Owner contemporaneously of any rejection of Work or documents.

§ 3.6.2.3 The Architect shall 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 shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 3.6.2.5 The Architect shall assist with the resolution of Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.2.6 The Architect will consistently attend weekly construction progress and scheduling meetings at the Project Site, review and approve or reject the Contractor's critical path method construction schedule, and address all matters within the scope of the Architect's services for the Project. The Architect shall review and correct minutes and other meeting documentation prepared by others, and preserve copies of appropriate minutes and Project documentation.

§ 3.6.2.7 The Architect will require its consultants and engineers to perform periodic visual inspections necessary to determine whether materials and equipment delivered to the Project Site to be installed or incorporated in the Work conform to the requirements of the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's 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, Contractor has submitted all conditional lien releases, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.3.4 The Architect must complete its review of each Application for Payment from the Contractor and deliver the Certificate for Payment (or rejection of the Application for Payment) to the Owner within 7 days from the date of the Architect's receipt of the Application for Payment. The Architect will be liable to the Owner for all damages incurred as a result of the Architect's untimely review of the Applications for Payment, including without limitation damages owed to the Contractor, interest charges, attorney fees, indemnification expenses, construction lien costs or losses, suspension of work, and other direct or consequential damages.

§ 3.6.3.5 The Architect or the Owner may withhold approval for payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or the Owner's opinion the representations to the Owner required by Section 3.6.3.1 cannot be made. If the Architect is unable to certify payment equal to the amount requested in the Contractor's Application for Payment, the Architect will notify the Contractor and Owner as

provided in Section 9.4.1 of the General Conditions. If the Contractor, the Owner, and the Architect cannot agree on a revised amount, the Architect will promptly approve payment of the amount for which the Architect is able to make such representations to the Owner.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness to not cause delay in the Work while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect shall review and approve, or take 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. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or 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.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 The Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness to not cause delay in the Work, but in all events no later than 7 days after receipt of the request. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information. The Architect will maintain a log of requests for information throughout the Project.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect, with approval by the Owner, 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. Subject to the Contract Documents, the Architect or the Contractor shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents. If necessary, the Architect shall prepare, reproduce, and distribute Drawings and Specifications to describe Work to be added, deleted, or modified, as appropriate. The Architect's compensation may be equitably adjusted as appropriate for the preparation, reproduction, and distribution of Drawings and Specifications required by Owner-initiated changes.

§ 3.6.5.2 The Architect shall maintain a Change Order log for and document changes in the Work.

§ 3.6.5.3 The Architect shall review requests by the Owner or Contractor for changes in the Work, including adjustments to the Contract Sum or Contract Time. A request for a change in the Work shall be accompanied by

sufficient supporting information to permit the Architect and the Owner to make a reasonable determination without extensive investigation. If the Architect determines that requested changes in the Work are not materially different from the requirements of the Contract Documents, the Architect may issue an order for a minor change in the Work or recommend to the Owner that the requested change be denied.

§ 3.6.5.4 If the Architect determines that implementation of the requested changes would result in an adjustment in the Contract Time or Contract Sum, the Architect shall make a recommendation to the Owner, who may authorize further investigation of such change. With the Owner's approval, the Architect shall incorporate those costs or estimates into a Change Order or other appropriate documentation for the Owner's execution or negotiation with the Contractor.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect, in consultation with the Owner, shall:

- .1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;
- .2 establish responsibilities of the Owner and the Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance;
- .3 fix the time within which the Contractor shall finish all items on the list of items to be corrected prepared under Section 9.8 of the General Conditions;
- .4 inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work;
- .5 issue Certificates of Substantial Completion;
- .6 receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and,
- .7 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with its consultants, the Contractor, and the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 [Deleted, See Section 3.6.6.1.4].

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor:

- (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment;
- (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner and the Contractor to review the facility and prepare a "punch list" of required corrective actions by the Contractor, distribute the written documents to the Contractor, and make appropriate recommendations to the Owner.

§ 3.6.6.6 The Architect with its consultants will review and comment on the draft Record Construction Documents submitted by the Contractor at the time of Substantial Completion. The Architect will promptly return the draft Record Construction Documents with its comments to the Contractor so that the Contractor can prepare final documents and submit them to the Owner within 60 days following Substantial Completion. The Architect will provide electronic and other forms of its Construction Documents for the Contractor's use in preparing Record Construction Documents.

§ 3.6.6.7 The Architect shall provide Project as-built drawings.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 Except as otherwise set forth below or in the Contract Documents, the services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.1 Programming	Architect
§ 4.1.1.2 Multiple preliminary designs	Architect
§ 4.1.1.3 Measured drawings	Architect
§ 4.1.1.4 Existing facilities surveys	Owner
§ 4.1.1.5 Site evaluation and planning	N/A
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	Basic Services
§ 4.1.1.9 Landscape design	Basic Services
§ 4.1.1.10 Architectural interior design	Basic Services
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	N/A
§ 4.1.1.13 On-site project representation	Basic services
§ 4.1.1.14 Conformed documents for construction	Architect
§ 4.1.1.15 As-designed record drawings	Basic Services
§ 4.1.1.16 As-constructed record drawings	Basic Services, See Section 3.6.6.6
§ 4.1.1.17 Post-occupancy evaluation	Architect
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	Architect
§ 4.1.1.21 Telecommunications/data design	Basic Services
§ 4.1.1.22 Security evaluation and planning	Basic Services
§ 4.1.1.23 Commissioning	N/A
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	N/A
§ 4.1.1.25 Fast-track design services	N/A
§ 4.1.1.26 Multiple bid packages	N/A
§ 4.1.1.27 Historic preservation	N/A
§ 4.1.1.28 Furniture, furnishings, and equipment design	Owner

Supplemental Services	Responsibility <i>(Architect, Owner, or not provided)</i>
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

§ 4.1.3 [Deleted].

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's prior written authorization:

- .1 Services necessitated by a material and unanticipated change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;
- .2 Services necessitated by the unanticipated enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;
- .3 Changing or editing previously prepared Instruments of Service necessitated by unanticipated official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other material failure of performance on the part of the Owner or the Owner's consultants or contractors for which the Architect can demonstrate an impact to the schedule or Cost of the Work or Project;
- .5 Preparing digital models or other design documentation for transmission to the Owner's consultants and contractors, or to other Owner-authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner, except as otherwise indicated elsewhere in this Agreement;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing (a) that could not reasonably have been anticipated, or (b) that was not needed to obtain approval for the Project or its design elements;
- .8 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding to which the Architect is not a party, but the Owner has no duty to pay for the Architect's services at proceedings to the extent that those services arise from the Architect's negligence;
- .9 [Deleted];

- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction;
or,
.11 [Deleted].

§ 4.2.2 [Deleted].

§ 4.2.3 [Deleted].

§ 4.2.4 [Deleted].

§ 4.2.5 [Deleted].

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information necessary and relevant for the Architect to perform in a timely manner regarding requirements for and limitations on the Project

§ 5.2 The Owner will notify the Architect of material changes in budget or resources, and the Architect will advise the Owner concerning the resulting effects on the Project's scope and quality .

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner or the Owner's representative shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services. Professors, administrators, and other personnel of the Owner, other than the Owner's representatives, do not have such authority. Specifically, the Architect and its consultants cannot rely on statements, requests, or purported authorizations made by persons or entities other than the Owner's representatives for any purpose relating to the Work, the Contract Documents, changes, or payment.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information may include, if reasonably available to the Owner and as applicable to the Project, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 [Deleted, see Section 1.1.9.]

§ 5.6 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information may include, if reasonably available to the Owner , grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope

of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 Subject to Section 3.1.9, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.12 The Owner shall endeavor to include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any material direct communications between the Owner and the Contractor otherwise relating to the Project. The Owner shall generally endeavor to communicate with the Architect's consultants through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall endeavor to coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Architect may request that the Owner provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect reasonable access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect, which estimate and design have been previously approved by the Owner, and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, contingencies for changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as stated in Sections 5.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase with proposed contractors has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work may be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner may

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate this Agreement in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 Instruments of Service are representations, drawings, specifications, and other documents, including those in electronic form of the tangible creative work performed by the Architect and the Architect's consultants for the Project under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Architect must also provide printed and physically stamped Instruments of Service for this Project. The Architect will be bound by the printed and stamped Instruments of Service and the electronic versions after their delivery to the Owner. The Architect will not be responsible for any change made in electronic forms of its Instruments of Service, whether intentional or unintentional, after the Instruments of Service leave the Architect's control.

§ 7.2 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 shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner and, as required under 2 CFR 200.315, the federal government, a royalty-free, irrevocable, and nonexclusive license to reproduce, publish, or to otherwise use (including producing public copies and publicly displaying) the Architect's Instruments of Service and other data produced under this Agreement for federal purposes and for purposes of constructing, using, maintaining, altering, and adding to the Project. For Instruments of Service and other data required under this Agreement, but that the Architect does not first produce in the performance of this Agreement, the Architect will grant a license of the same scope to the Owner and the federal government. The Architect shall obtain similar royalty-free, irrevocable, and nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service for use in performing services or construction for the Project.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service:

- .1 The foregoing license shall be supplemented by a second, royalty-free, irrevocable nonexclusive license, similar in scope to the license described in Section 7.3, that permits the Owner to authorize other similarly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections

or additions to the Instruments of Service solely for purposes of completing, using, and maintaining the Project.

.2 The Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The terms of this Section 7.3.1.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.3.2 Notwithstanding any other provision of Section 7.3, Instruments of Service may be continuously used for construction of the Project during the pendency of any dispute between the Owner and the Architect, including without limitation any dispute for payment.

§ 7.4 Unless otherwise provided by law, the rights to any invention made by Architect under this Agreement are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified at 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail at 37 CFR part 401 and, in particular, in the standard patent rights clause at 37 CFR § 401.14, which is hereby incorporated into this Agreement.

§ 7.5 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 DEFINITION OF CLAIMS A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money or other relief with respect to the terms of this Agreement. The term "Claim" also includes other disputes and matters in question between the Owner and the Architect arising out of or relating to this Agreement. The responsibility to substantiate a Claim shall rest with the party making the Claim.

§ 8.1.2 NOTICE OF CLAIMS A claim by either the Owner or the Architect must be made by written notice to the other party. Claims by either party must be initiated within twenty-one (21) working days after occurrence of the event giving rise to such Claim or within twenty-one (21) working days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner or the Architect must identify known bases for each Claim and the nature and amount of relief sought.

§ 8.1.3 CONTINUING CONTRACT PERFORMANCE Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 9, the Architect shall proceed diligently with performance of its services under this Agreement and the Owner shall continue to make payments in accordance with the Contract Documents.

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

- .1 All reasonable efforts will be made by the Owner's Designated Representatives and the Architect's Designated Representative to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Architect's senior executive responsible for the Project.

- .2 The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in this Agreement.
- .3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation or to binding dispute resolution under Section 8.2.

§ 8.2 Mediation

§ 8.2.1 The parties may endeavor to resolve disputes by mediation at any time and as they may agree.

§ 8.2.2 [Deleted].

§ 8.2.3 [Deleted].

§ 8.2.4 The method of binding dispute resolution shall be the following:
(Check the appropriate box.)

☐ Arbitration pursuant to Section 8.3 of this Agreement

☐ Litigation in a court of competent jurisdiction

☒ Other: (Specify)

« For claims and disputes arising out of this Agreement that also involve or relate to any contract between the Owner and the State of Oregon, acting through its Department of Administrative Services, Owner in its sole discretion may elect litigation in the Circuit Court of the State of Oregon for Marion County (unless Oregon Law requires that it be brought and conducted in another county). Notwithstanding the foregoing, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for the District of Oregon.

If the Owner does not elect litigation as set forth in the paragraph above, and for all other claims and disputes arising out of this Agreement, the method of binding dispute resolution will be arbitration pursuant to Section 8.3 of this Agreement.»

§ 8.3 Arbitration

§ 8.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration, which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc. in accordance with its rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration. Exclusive venue for arbitration shall be Multnomah County, Oregon.

§ 8.3.1.1 A notice of the demand for arbitration shall identify the known bases for each claim and the nature and amount of the relief sought and shall be made by written notice to the other party to this Agreement within a reasonable time, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question 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, dispute or other matter in question.

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

§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 8.3.4 Consolidation or Joinder

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

§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration pursuant to this Section 8.3. Before allowing any consultant or other person or entity retained by the Architect to commence services for the Project, the Architect shall require such third party to consent in writing to arbitration under this Section 8.3, if named by the Owner or the Architect.

§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect have under this Agreement.

§ 8.4 The provisions of this Article 8 shall survive the termination of this Agreement.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect when due in accordance with this Agreement for more than 70 calendar days, such failure may be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due for this Project prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project for more than 30 consecutive days (not related to phasing of the Project), the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for reasonable expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 consecutive days for reasons other than the fault of the Architect (unless related to phasing of the Project), the Architect may terminate this Agreement by giving not less than seven days' written notice.

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

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and, unless terminated because Owner will not be authorizing Phase 2 of the Project, costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements.

§ 9.7 For purposes of this Agreement, any time lapse between Phase 1 and Phase 2 does not constitute a suspension of the Project. Project suspensions occur when the Project is suspended during Phase 1 or Phase 2.

§ 9.8 This Agreement will expire 5 years from its effective date, unless (a) the Owner and Architect agree in writing to extend it or (b) terminated earlier under this Article 9.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by and construed in accordance with the law of the place where the Project is located.

§ 10.2 Terms in this Agreement shall have the same meaning as those in the General Conditions identified in Section 2.1. The term "day" as used in the Agreement shall mean calendar day unless otherwise specifically defined.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. The Architect shall not assign this Agreement without the written consent of the Owner. The Owner expects that a different entity will complete the Project and assume this Agreement during or after the completion of Phase 1. Owner, therefore, may assign this Agreement, in its sole discretion and without Architect's consent.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect, except for persons or entities indemnified under the terms of this Agreement.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site. Notwithstanding the foregoing sentence:

- .1 To the extent that the Architect's duties include examination of existing conditions at the Project site where hazardous materials are used or are present, the Architect is responsible, with respect to its or its consultants' actions, to use proper precautions to avoid dissemination of hazardous materials and maintain a safe working environment; and
- .2 To the extent that the Architect's duties include (a) specification of the use of hazardous materials in construction work or (b) the design of systems to carry hazardous materials for use in the Owner's operations, the Architect is responsible to incorporate into its services proper precautions and design elements to contain or abate (as appropriate) hazardous materials and to maximize the safe use and transmission of hazardous materials as part of the continuation or planned use of the Owner's operations.

§ 10.7 The Architect may, subject to the Owner's prior review and approval (which shall not be unreasonably withheld) include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. Prior to entering onto Owner's property to make such representations, the Architect shall notify the Owner and the Owner and the Architect shall agree on a schedule for such access. The Architect shall provide the Owner with copies of all photographic or artistic representations of the completed Project. However, the Architect's materials shall not include the Owner's confidential or proprietary information, except as may be

approved by the Owner. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information that is "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1 or as may be required under the Oregon Public Records Law (ORS 192.410 to 505). This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

§ 10.10 Compliance with Public Contacting Code. The Architect will comply with all federal, state, and local laws applicable to the Work under this Agreement, including without limitation the following requirements of the Oregon Public Contracting Code and the following federal requirements.

§ 10.10.1 Payment of Laborers (ORS 279B.220 and 279C.505): The Architect shall:

- .1 Make payment promptly, as due, to all persons supplying to such Architect labor or material for the prosecution of the work provided for this contract.
- .2 Pay all contributions or amounts due the Industrial Accident Fund by the Architect or subcontractors, if permitted, incurred in the performance of this contract.
- .3 Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished by Architect.
- .4 Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
- .5 If Architect neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Agreement as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Architect. Owner's payment of such a claim shall not relieve Architect or Architect's surety, if any, from its obligation to any unpaid claims.

§ 10.10.2 Payment for Medical Care and Workers' Compensation (ORS 279B.230 and 279C.530):

- .1 Architect shall promptly, as due, make payment to any person, co-partnership, association, or corporation, furnishing medical, surgical and hospital care or other needed care and attention, incident to sickness or injury, to the employees of Architect, of all sums that Architect agrees to pay for such services and all moneys and sums that Architect collected or deducted from the wages of employees under any law, contract, or agreement for the purpose of providing or paying for such service.
- .2 All subject employers working under the Agreement are either employers who will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

§ 10.10.3 Hours of Labor (ORS 279B.020(5), 279B.235(3), 279C.520(3), and 279C.540(6)):

- .1** Maximum Hours: Architect shall pay its employees at least time and a half for all overtime worked in excess of 40 hours in any one week and for work performed on Saturdays, Sundays, New Year's Day (Jan. 1), Memorial Day (last Monday in May), Independence Day (July 4), Thanksgiving Day (fourth Thursday in November), and Christmas Day (December 25).
- .2** Exemption: The requirements of 1.4.2.4.3.1 do not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 USC. 201 to 209 from receiving overtime.
- .3** Discrimination Prohibition. The Contractor shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause.
- .4** Salary Discussion. The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.
- .5** Notice to Employees: Architect must give notice in writing to its employees who perform work on this Contract, either at the time of hire or before commencement of work on this Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 10.10.4 Time Limitation on Claim for Overtime (ORS 279C.545): Any worker employed by Architect shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with Architect within 90 days from the completion of this Contract, providing Architect has

- .1** Posted circular: Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to workers employed on the work, and
- .2** Maintaining posted circular: Maintained such circular continuously posted from the inception to the completion of this Agreement on which workers are or have been employed.

§ 10.10.5 Clean Air Act: The Architect agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The Architect agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The Architect agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

§ 10.10.6 Federal Water Pollution Control Act. The Architect agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., as amended. The Architect agrees to report each violation to the Owner and understands and agrees that the Owner will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office. The Architect agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance.

§ 10.10.7 Debarment and Suspension.

- .1** This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Architect certifies that none of the contractor's principals (defined at 2 C.F.R. § 180.995)

or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

- .2 The Architect must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- .3 This certification is a material representation of fact relied upon by Owner. If it is later determined that the Architect did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Owner, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

§ 10.10.8 Byrd Anti-Lobbying Certification. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

§ 10.10.9 National Environmental Policy Act. Architect acknowledges and understands that the Project must comply with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) ("NEPA") and Section 6002 of the Solid Waste Disposal Act (42 U.S.C. 6962), as amended by the Resource Conservation and Recovery Act related to the procurement of recovered materials (the "Solid Waste Disposal Act"). Architect's services under this Agreement will be consistent with, and will comply with, NEPA and the Solid Waste Disposal Act.

§ 10.10.10 American Iron and Steel, Buy America: Architect understands that Owner must comply with 2 CFR 200.322. Architect acknowledges and understands that the Project may only use iron and steel products produced in the United States and must comply with all applicable guidance. Architect also understands that to the greatest extent practicable, the Contractor will be encouraged to purchase American-made equipment and products with funding provided under federal financial assistance awards.

§ 10.10.11 Equal Employment Opportunity: During the performance of this Agreement:

- .1 The Architect will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Architect will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Architect agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- .2 The Architect will, in all solicitations or advertisements for employees placed by or on behalf of the Architect, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- .3 The Architect will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action including an

investigation conducted by the employer, or is consistent with the Architect's legal duty to furnish information.

- .4 The Architect will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Architect's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- .5 The Architect will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- .6 The Architect will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- .7 In the event of the Architect's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Architect may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- .8 The Architect will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Architect will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Architect becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Architect may request the United States to enter into such litigation to protect the interests of the United States.

The recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The recipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the recipient agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the recipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such recipient; and refer the case to the Department of Justice for appropriate legal proceedings.

§ 10.10.12 The Architect understands and acknowledges that the Project comply with all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201). Such standards and policies are incorporated by reference into this Agreement.

§ 10.10.13 The Architect understands and acknowledges that the Owner must comply with 2 CFR 200.216 to the extent applicable to the Project. The Architect's services under this Agreement will be consistent with, and will comply with, 2 CFR 200.216.

§ 10.10.14 The Architect shall comply, and ensure compliance by its consultants, with 41 USC 4712, Program for Enhancement of Employee Whistleblower Protection. Architect must inform its consultants and employees, in writing, in the predominant language of the workforce, of the employee whistleblower rights and protections under 41 USC 4712.

§ 10.10.14 The Architect will follow the affirmative steps listed in 2 CFR 200.321 when letting any subcontracts under this Agreement.

§ 10.11 When Work Is Performed on Owner's property (including College buildings) Architect Shall Comply With the Following:

- .1 Identification. Architect performing work on Owner's property or for Owner shall carry photo identification and will present such, to anyone on request. Contractors that do not have specific uniforms for employees, shall provide identification tags as described above, and or any other mechanism, the Owner in its sole discretion determines is required to easily identify Contractors.
- .2 Sign-in Required. As required by schools and other Owner facilities, each day of work Architect employees shall sign into the Main Office to receive an in-school identification/visitors tag to be displayed on the person at all times they are in the school or other location.
- .3 No Smoking. Smoking or other use of tobacco is prohibited on the Owner property.
- .4 No Weapons or Firearms. Except as provided by Oregon Statutes and Owner policy, weapons and firearms are prohibited on Owner property.

§ 10.12 When Work Is Performed in or on the College's campus, Architect Shall Comply With the Following:

- .1 **No Unsupervised Contact with Students.** Unsupervised contact with students means contact with students that provide the person opportunity and probability for personal communication or touch when not under direct supervision. Architect will ensure that Architect, any consultants, and their officers, agents and employees will have no direct unsupervised contact with students while on Owner's property. Architect will work with the Owner to ensure compliance with this requirement. If Architect is unable to ensure through a security plan that none of its officers, agents or employees will have direct, unsupervised, contact with students in a particular circumstance or circumstances, Architect shall so notify the Owner before performing any services that could result in such contact. Architect authorizes Owner to obtain information about Architect and Architect's history and to conduct a criminal background check, including fingerprinting, of any officer, agent or employee of Architect that will have unsupervised contact with students. Architect also agrees to cause Architect's employees and/or subcontractors, if any, to authorize Owner to conduct such background checks. Architect shall pay all fees assessed by Oregon Department of Education for processing the background check. Owner may deduct the cost of such fees from a progress or final payment to the Architect under this contract, unless the Architect elects to pay such fees directly.
- .2 **Confidentiality.** The Parties recognize that the Federal Education Privacy Rights Act (FERPA) imposes strict penalties for improper disclosure or re-disclosure of confidential student

information including but not limited to denial of access to personally identifiable information from education records for at least five years (34 CFR 99.33(e)). Therefore, consistent with the requirements of FERPA, personally identifiable information obtained by the Architect or its consultants in the performance of this Agreement may not be re-disclosed to third parties without written consent of the students' parents/guardians; and must be used only for the purposes identified in this Agreement.

§ 10.13 Examination and Retention of Records

- .1 The Owner, the federal government, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this Agreement, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this Agreement, including but not limited to payrolls, personnel records invoices of materials, and relevant data and records (the "Documents") for the purpose of making audit, inspection, examination, excerpts, and transcriptions. The Architect shall store and maintain the Documents for at least three years after final payment under this Agreement.
- .2 The Architect agrees to include in first-tier subcontracts under this Agreement a clause substantially the same as Section 10.13.1 above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.
- .3 The periods of access and examination in Section 10.13.1 above for records relating to (1) appeals under the disputes clause of this Agreement, (2) litigation or settlement of claims arising from the performance of this Agreement, or (3) costs and expenses of this Agreement to which the Owner, the federal government, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.
- .4 Architect acknowledges that Owner is subject to certain audit requirements under 2 CFR 200, subpart F. Architect will cooperate with Owner in its efforts to comply with the requirements of 2 CFR 200, subpart F, to the extent that the requirements relate to Architect's services under this Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

- .1 Stipulated Sum
(Insert amount)
« »

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:

«See Section 11.3 below.»

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

«If the Owner and the Architect do not agree to a lump sum amount, compensation for Additional services shall be calculated according to the hourly rates set forth in Section 11.7. The Owner and the Architect will endeavor to reach a not-to-exceed amount for each Additional Service. »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect.

(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows: **[TBD]**

Schematic Design Phase	« »	percent (« »	%)
Design Development Phase	« »	percent (« »	%)
Construction Documents Phase	« »	percent (« »	%)
Procurement Phase		percent (%)
Construction Phase	« »	percent (« »	%)
Total Basic Compensation	one hundred	percent (100	%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5.

§ 11.6.1 [Deleted].

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices, which may occur no more than once each year and which may not occur until 12 months following the Effective Date.

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

« **[TBD]** »

Employee or Category

Rate (\$0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses reasonably and necessarily incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation in connection with the Project and pre-authorized out-of-town travel and subsistence subject to the following:
 - (a) Expenses of commuting to and from the Project site are excluded from reimbursable expenses.
 - (b) Routine fax, cellular telephone, e-mail, and postage charges are not reimbursable, and
 - (c) Reimbursement for transportation and commuting will not exceed the Internal Revenue Service's rate per mile for reimbursement of business transportation in effect at the time of travel.
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, and standard form documents;
- .5 Extraordinary postage, handling, and delivery such as Fed ex, UPS, overnight, or other expedited delivery;
- .6 Expense of overtime work requiring higher than regular rates, only if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and non-typical presentation materials requested by the Owner or required for the Project;
- .8 [Deleted];

- .9 [Deleted];
- .10 [Deleted];
- .11 Registration fees and any other fees charged by the Certifying Authority or by other entities as necessary to achieve the Sustainable Objective; and,
- .12 Other similar Project-related expenditures as preapproved by the Owner pursuant to Section 11.8.3.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants without markup. Notwithstanding the foregoing sentence, the Architect may include a markup of up to 10 percent of the actual fees assessed by government agencies for Project permits that the Architect pays on the Owner's behalf, conditioned upon submission of the receipt of payment for the fees assessed. The Architect shall not issue a bill to the Owner for payment of Reimbursable Expenses unless the aggregate Reimbursable Expenses exceed \$100.00. Costs for Reimbursable Expenses are included in the Architect's compensation as set forth in Section 11.1.

§ 11.8.3 The Architect has provided and the Owner has approved a detailed estimate of anticipated Reimbursable Expenses of \$(TBD) based upon the rates outlined in the Fee Proposal incorporated under Section 13.2 of this Agreement. Costs may not be incurred for Reimbursable Expenses in excess of this amount without prior written approval of the Owner. If, subject to Section 4.2, Additional Services are required during the course of the Project that were not previously identified and anticipated, the Architect shall prepare a detailed estimate of the cost of reimbursable expenses arising from such Additional Services and submit it to the Owner for approval before the services are rendered. Thereafter, costs may not be incurred in excess of the approved written estimate without prior written approval of the Owner. Compliance with this Section 11.8.3 is a condition precedent to payment for Reimbursable Expenses.

§ 11.9 [Deleted].

§ 11.10 Payments to the Architect

§ 11.10.1 [Deleted].

§ 11.10.1.1 [Deleted].

§ 11.10.1.2 [Deleted].

§ 11.10.2 Progress Payments

§ 11.10.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable within 30 days of Owner's acceptance of the Architect's invoice. Amounts unpaid «ninety» («90») days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect. *(Insert rate of monthly or annual interest agreed upon.)*

Interest will accrue at an annual rate of one percent over the prime lending rate published by The Wall Street Journal on the date on which interest begins to accrue.

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or is liable for the amounts.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

§ 12.1 INDEMNIFICATION

§ 12.1.1 Indemnity

§ 12.1.1.1 To the fullest extent permitted by law, the Architect shall defend, indemnify and hold harmless the Owner, Owner's consultants, the State of Oregon, and the respective officers, directors, employees, agents, volunteers, and consultants of any of them (the "Indemnitees") for, from, and against claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, resulting from our arising out of the activities of the Architect or its consultants, agents or employees under this Agreement, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder, including without limitation (a) the Architect's breach of this Agreement; (b) death, personal injury (including bodily injury), property damage, or violation of law, regulation, or orders caused in whole or in part by the Architect's performance under this Agreement; (c) any alleged violation or infringement of third-party trade rights arising out of services provided by the Architect; (d) any negligent or willful acts or omissions by the Architect or persons for whom the Architect is responsible; and (e) claims asserted by employees of the Architect or of any entity for whom the Architect is responsible (including wage or benefit claims) or for any violation of federal, state, or local wage and labor laws and regulations thereunder by the Architect or other persons acting on behalf of the Architect. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 12.1.

§ 12.1.1.2 No indemnification or insurance provided by the Architect under this Section 12.1.1 will be required to indemnify the Indemnitees to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but will require indemnity to the extent of the fault of the Architect or those entities or persons for whom the Architect is responsible.

§ 12.1.2 In claims against any person or entity indemnified under this Section 12.1 by an employee of the Architect or of any entity for whom the Architect is responsible, the indemnification obligation under Section 12.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable under workers' compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

- .1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect, as amended
- .2 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

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

« ☐ »

[☐ »] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

« Exhibit A: RFP
Exhibit B: Anti-Lobbying Certification »

- .3 Other documents:
(List other documents, if any, forming part of the Agreement.)

« ☐ »

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

COLUMBIA GORGE COMMUNITY COLLEGE

[TBD]

OWNER (Signature)

« »« »

(Printed name and title)

ARCHITECT (Signature)

« »« »

(Printed name, title, and license number, if required)

