

Knappa School District No. 4 • Astoria, Oregon 97103

*The Knappa School District will Inspire all learners to Achieve  
academically and Thrive as independent and Productive citizens.*

**Board of Directors' Regular Board Meeting**

Wednesday, October 19, 2022

6:30 p.m.

1. **Call to Order** – Chair Ed Johnson-6:30 p.m.
  - 1.1 Flag Salute-6:30 p.m.
2. **Consent Agenda- (Motion for approval needed)**
  - 2.1 Minutes from the September 21, 2022 Regular Board Meeting.
  - 2.2 Personnel Update
  - 2.3 Bond Committee Member
3. **Communications and Hearing of Interested Parties**

*The Board welcomes visitors to our meetings, and values comments from district patrons that improve the quality of education for students. The Board, at their discretion, will recognize comments from the audience. We must require, however, that complaints be directed through the administration for resolution. Comments made during this session must be free of abusive language, personal attacks on district personnel, and not directed towards any department which, due to its low staffing, would amount to an attack by in affect naming district personnel. We also ask that presentations be limited to (3) minutes.*

SIA Grant Community Comments-**P.8-9**
4. **Superintendent Report-Dr. Fritz**
5. **New Business**
  - 5.1 SIA Annual Report- (presentation and discussion)-**P.10**
  - 5.2 OSBA Policy Update-(1<sup>st</sup> read and review-see attached list)-**P.11-91**
  - 5.3 2023 Blue Bird Propane Bus- (motion for approval needed)-**P.92-93**
  - 5.4 Division 22 Standards- (motion and approval needed)-**P.94-103**
  - 5.5 Fortis Construction/Pivot Architecture Contract- (motion for approval)-**P.104-165**
6. **District Reports-P.166-173**
  - 6.1 **Financial Report- (motion needed)**
    - Hilda Lahti Elementary/Middle School
    - Knappa High School
7. **Board Member Reports and Future Agenda Items**

**Next Meetings** • November 2, 2022 Board Work Session 6:30 p.m., and November 16, 2022 Regular School Board Meeting, 6:30 p.m., Knappa High School Library.

# Knappa School District No. 4 • Astoria, Oregon 97103

*The Knappa School District will Inspire all learners to Achieve academically and Thrive as independent and Productive citizens.*

## **Board of Directors' Regular Board Meeting**

**Wednesday, September 21, 2022**

**6:30 p.m.**

### **Present**

Ed Johnson-Chair  
Cullen Bangs-Vice Chair  
Will Isom-Director  
Michelle Finn-Director  
Christa Jasper-Director

### **Absent**

William Fritz-Superintendent  
Diane Barendse-Business Manager  
Jennifer Morgan-Board Secretary  
Tammy McMullen-HLE/HLMS Principal  
Laurel Smalley-KHS Principal

- 1. Call to Order** – Chair Ed Johnson-6:32 pm
  - 1.1 Flag Salute
- 2. Consent Agenda- (Motion for approval needed)**
  - 2.1 Minutes from the August 24, 2022 Regular Board Meeting and September 7, 2022 Work Session.
  - 2.2 Personnel Update

Finn moved to approve the consent agenda as presented, Jasper seconded, move to vote, approved unanimously.

### **Communications and Hearing of Interested Parties**

*The Board welcomes visitors to our meetings, and values comments from district patrons that improve the quality of education for students. The Board, at their discretion, will recognize comments from the audience. We must require, however, that complaints be directed through the administration for resolution. Comments made during this session must be free of abusive language, personal attacks on district personnel, and not directed towards any department which, due to its low staffing, would amount to an attack by in affect naming district personnel. We also ask that presentations be limited to (3) minutes.*

Nothing at this time.

**Superintendent Report-Dr. Fritz-**Fritz stated that 2022 SBAC scores will be released tomorrow, and he will bring back more information to the board after the release of those scores. He reviewed his board report with the board.

The growth report won't be published until October. Johnson asked if there are roofing projects at HLE, Fritz stated yes, it will be replaced as part of the bond process.

Isom asked what should the board roles be regarding test scores, he stated having knowledge about the test scores, discussion followed on student test scores, data and the boards role in that process. Isom asked about students opting out and how that compares to other schools in the district, Fritz stated we had about 12% of students opted out, and we don't get credit for those students. He will get the board the data from the local school districts. No further discussion.

### **3. New Business**

- 3.1 **Kaden Gremar and Madison VanGundy-** (Presentation on Leadership through Nelson Mandela Example)-Smalley introduced the students that attended the study abroad, a leadership course through community service. They studied Nelson Mandela and what he did for the country, took language classes and they were there for 20 days with a group of 16 other students from Oregon. They met and shared experiences with other student from South Africa. Discussion followed about their experiences.
- 3.2 **Clatsop Works Presentation-Kevin Leahy** Executive Director of Cedar, reviewed the Clatsop Works program with the board. He stated that the program runs from June 15<sup>th</sup>-August 15<sup>th</sup> each year and varies by employer, students must be 16 or older, he reviewed the handout with the board. The employer makes the decision on hiring. They will start actively recruiting soon for next summer's program. Discussion followed.
- 3.3 **Design Build Award- (discussion and motion)**-Fritz stated that he is recommending Fortis Construction and Pivot Architecture for the district design build team. He stated we received three design/build applications, and based off of the scores from the committee they chose two companies to interview. Bangs stated he had the opportunity to be on the committee that reviewed the applications, and he thanked everyone for their hard work. Finn moved to approve Fortis Construction and Pivot Architecture for our design build team, Isom seconded, moved to vote, approved unanimously.
- 3.4 **22-23 Board Goals- (motion for approval)**-Bangs moved to approve, Jasper seconded, Isom asked about item 3, looks like we have implemented all of the bullets, Fritz stated yes, but we still want to meet those each year, moved to vote, approved unanimously.
- 3.5 **22-23 Superintendent Goals- (discussion and motion for approval)**-Fritz stated he has narrowed his goals down to 3 items instead of 5 this year, due to the focus on the bond project. Bangs moved to approve the goals as presented, Finn seconded, move to vote, approved unanimously.

#### **4. District Reports**

- 4.1 **Financial Report- (motion needed)**-Barendse reviewed the financial report that was included in the board packet, she stated we did receive bids for our surplus buses and they will be leaving soon. Isom moved to approve as presented, Bangs seconded, moved to vote, approved unanimously.
- Hilda Lahti Elementary/Middle School
  - Knappa High School

#### **Board Member Reports and Future Agenda Items**

**Isom**-stated he appreciated the updates to the enrollment metrics from previous years. Discussion followed on enrollment.

**Finn-nothing at this time.**

**Jasper**-nothing at this time.

**Bangs**-is 6<sup>th</sup> grade participating in the forestry days, McMullen stated yes, over half of our middle school is attending.

**Johnson**-nothing at this time.

Johnson moved to adjourn-7:59 pm.

**Meeting •** ~~Wednesday, October 5, 2022 Work Session~~ Knappa High School, Wednesday, October 19, 2022 Regular Board Meeting, Knappa High School Library.

Knappa School District # 4

**Changes of Employee Status  
October 19, 2022**

**The Superintendent recommends accepting the following:**

The hiring of Dave Ramsey as the MS Science/SPED Teacher.

The hiring of Becky Graham as a Program Assistant.

The hiring of Christina Knapp as a District Cook.

The resignation of Haili Pishion as a PA at HLE.

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**Knappa School District #4**  
**Board Meeting Background Information**

☐ Policy  
☐ Financial  
☐ Discussion

☐ Vision & Goals  
☐ Information  
☐ Resolution

☐ Capital Projects  
☒ Bond

**Item Title: Naming of Bond Citizen Review Committee Member**

**Presenter: Dr. Fritz, Superintendent**

**Background Information Related to this Issue:**

Because the community deserves accountability related to handling of the Bond proceeds, and because of our commitment to the community in the Bond campaign, we are forming a Citizen's Review Committee. The purposes of the committee are to monitor bond capital project progress and to verify that the district is honoring its commitment to the community.

Last spring, the Board approved six people to serve on this committee. Recently, one of the members, Lacey Hoyer, indicated that she would like to resign from the committee. In a community letter, the superintendent requested citizens who would be interested in serving in the vacated seat. Marc Gendelman has volunteered. He is a registered voter in the Knappa area and is a parent of a student in our school.

I am recommending Mr. Gendelman to serve.

**Background (con't)**

**Financial Impact:** Provides oversight related to bond funding. No actual cost for operation of the committee other than incidental staff time.

**Recommended Action:** It is the recommendation of the Superintendent that the School Board approve Ms. Hoyer's resignation from the Citizen's Committee and that they approve Mr. Gendelman as the replacement member.

## **Superintendent Report**

### **October 19, 2022**

#### **Bond Activity**

The contract for the design/build firm is on the agenda this evening. At our meeting two weeks ago, we determined the strategy for input on the design of the facilities. Teachers nominated middle schoolers to participate in the design process and they submitted their letters of interest last week. The Citizen Review Committee met on October 5, 2022, and elected officers. The design team will be meeting several times per month between now and December when the plan should be mostly finalized.

#### **District Improvement Plan**

On October 27th, we will be holding the first of multiple community input sessions for our District Improvement Plan, tied to the state's Integrated Guidance process.

In addition to this session, we will be conducting student surveys/interviews and we will be hosting a community event later in the winter prior to a basketball game, tentatively on December 2.

#### **Campus Projects**

The field drainage is finished. They have been doing some additional grading on the field and it is scheduled for hydro seeding on October 20. We are awaiting delivery of the new HVAC units for the high school. Temporary heating has been installed in the meantime. In January, we will be seeking quotes for the next roofing phase at KHS which will commence this summer. The fencing is complete. We are in receipt of the dugout quotes and will choose a vendor shortly.

#### **Health Curriculum Review**

Supplemental materials for the health curriculum are available at HLE for public viewing and feedback this week.

## **Other Curriculum Information**

Our language arts curriculum is newly adopted. Teachers have participated in professional development and are using the materials with students now. Next on the docket is mathematics. The state is expected to release their list in a few months. At that time, we will begin our internal review process. Our teachers continue to participate in professional development provided by the Developing Mathematical Thinking Institute out of Idaho.

## **SBAC Growth Data**

Last week, school report card information was released. Compared with the state of Oregon, Hilda Lahti Elementary (HLE) is in the 90<sup>th</sup> percentile for language arts growth for all students. In mathematics, the school is one point below the 75<sup>th</sup> percentile in mathematics growth for all students. HLE also performed well above state averages for growth for economically disadvantaged students (>90<sup>th</sup> percentile in language arts and >75<sup>th</sup> percentile for mathematics). These analyses look at growth (or decline) among the same students over time.

The high school report card does not have an indicator for growth (because we are looking at a three-year gap since the last time students took the SBAC. That said, four-year cohort graduation measures are at Level 4, as are five-year graduation rates. The percentage of juniors who met standard on the mathematics SBAC in 2022 increased 7.1% over the students in 2019.

Unfortunately, KHS posted a decline in ELA attainment. Recognize, in both cases for the high school, we are looking at *different cohorts*.

**Knappa School District**  
**Student Investment Act (SIA) End of Year Summary**

<b><u>Activity</u></b>	<b><u>Status</u></b>
Music Program	Fully function music program is in place. New teacher this year. 31 students in middle school band. High school percussion, choir, instrumental, K-5 general music
Accelerated and Dual Credit options	District has offered through other means and has not needed SIA funds
Kindergarten Readiness	Materials Purchased to Support Literacy, Principal McMullen is the Kindergarten Readiness Supervisor
Campus/Classroom Coordinator	This position was filled with a contractor last year. We have transitioned to a district staff position with enhanced success. The position supports school-wide behavior support, creates individual plans and support for students, and facilitates restorative practices.
Educational Assistance at Lower Grade Levels	SIA funding has been utilized to support small class sizes, specifically at primary levels.

## October 2022-Policy Update

**BBBA** – Board Member Qualifications, Optional-**update with new language.**

**CB** – Superintendent, Highly Recommended-**new language**

**CBC** – Superintendent’s Contract, **Optional**

**CPA** - Layoff and Recall for Administrators, **Highly Recommended**

**CPA-AR** – Layoff and Recall for Administrators, **Highly Recommended**

**DBEA** – Budget Committee, **Highly Recommended,**

**EFA** – Local Wellness, **Required**

**EFA-AR** - Local Wellness Program, **Recommend Delete**

**GBEA** – Workplace Harassment \*, **Required**

**GCAA** – Standards for Competent and Ethical Performance of Oregon Educators, **Optional**

**GCBDB/GDBDB** – Early Return to Work, **Highly Recommended**

**GCD/AR** – Criminal Records Checks and Fingerprinting, **Required**

**GCQB** – Research, **Optional**

**GDA** – Instructional Assistants, **Optional**

**IGAC** – Religion and Schools, Optional –**update, new legal reference.**

**IGAI** – Human Sexuality, AIDS/HIV, Sexually Transmitted Diseases, Health Education\*\*, **Highly Recommended**

**IGBAF** – Special Education – Individualized Education Program (IEP), **Required-new OAR**

**IGBAF-AR** – Special Education - Individualized Education Program (IEP), **Required**

**IGBB** – Talented and Gifted Program and/or Services, **Required**

**IGBBA** – Talented and Gifted Students - Identification, **Required**

**IGBBC** - Talented and Gifted – Programs and Services, **Recommend DELETE in lieu of other revisions**

**IGBHE** – Expanded Options Program\*\*, **Highly Recommended**

**IGDJ** – Interscholastic Activities\*\*, **Required**

**IK** – Academic Achievement, **Required**

**IKF** – Graduation Requirements\*\*, **Conditionally Required**

**JEA** – Compulsory Attendance\*\*, **Highly Recommended**

**JEA-AR** – Compulsory Attendance Notices and Citations\*\*, Highly Recommended  
**JGAB** – Use of Restraint or Seclusion\*\*, **Required**

**JGAB-Use of Restraint or Seclusion\*\*-Required**

**JHC** – Student Health Services\*\*, **Highly Recommended**

**KBA** – Public Records Request, **Highly Recommended**

**KBA-AR** – Public Records Request, **Highly Recommended**

# OSBA Model Sample Policy

Code: BBBA  
Adopted:

Optional  
2012  
Last updated

## Board Member Qualifications

A person is eligible to serve as a Board member if ~~he/she~~ the person is an qualified elector<sup>1</sup> of the district. ~~An "elector" means an individual qualified to vote under Section 2, Article II of the Oregon Constitution. The individual must be 18 years of age or older, registered to vote at least 20 calendar days immediately preceding any election in the manner provided by law and must have~~ and has been a resident within the district for one year immediately preceding the election or appointment. ~~Additionally, if the district and the position sought is one elected or nominated by is zoned, the individual person must meet the requirements of Oregon Revised Statute (ORS) 332.124 to 332.126~~ also reside in the zone from which the person is nominated except as authorized by law.

~~No~~ A person who is an employee of the district ~~is~~ is not eligible to serve as a Board member while so employed. A person who is an employee of a public charter school may not serve as a member of the Board of the district in which the public charter school that employs the person is located. ~~[A district or public charter school substitute bus driver in a district with an average daily membership of 50 or less may serve as a Board member.]~~

END OF POLICY

### Legal Reference(s):

[ORS 247.002](#)  
[ORS 247.035](#)  
[ORS 249.013](#)

[ORS 332.016](#)  
[ORS 332.018](#)  
[ORS 332.030](#)

[ORS 332.124](#)  
[ORS 332.126](#)

OREGON CONSTITUTION, ARTICLE II, Section 2.

<sup>1</sup> "Elector" means an individual qualified to vote under Article II, section 2, [Oregon Constitution](#).

## OSBA Model Sample Policy

Code: CB

Adopted:

### Superintendent

OK

The superintendent<sup>1</sup> is designated as the district's chief executive officer. Under the Board's direction, the superintendent exercises general supervision of all district schools, personnel and departments. The superintendent is responsible for managing the schools under the Board's policies and is accountable to the Board for that management. The Board may not direct the superintendent to take any action that conflicts with a local, state or federal law<sup>2</sup> that applies to school districts<sup>3</sup>.

The superintendent may delegate to other district personnel any powers and duties imposed upon the superintendent by Board policies or by vote of the Board. Delegation of power or duty will not relieve the superintendent of responsibility for action taken under such delegation.

END OF POLICY

#### Legal Reference(s):

[ORS 332.505](#)

[ORS 332.515](#)

[OAR 581-022-2405](#)

[OAR 584-005-0005\(51\)](#)

[Senate Bill 1521 \(2022\)](#)

<sup>1</sup> The term "superintendent" includes an interim superintendent.

<sup>2</sup> "Local, state or federal law" means a local, state or federal directive having the force of law, including an ordinance, a city or county resolution, a statute, a court decision, an administrative rule or regulation, an order issued in compliance with ORS Chapter 183, an executive order or any other directive, declaration or statement that is issued in compliance with the law as having the force of law and that is issued by a local government as defined in ORS 174.116, the state government as defined in ORS 174.111 or the federal government.

<sup>3</sup> Also includes taking any action that conflicts with law that applies to education service districts.

# OSBA Model Sample Policy

Code: CBC  
Adopted:

2012  
00  
update

## Superintendent's Contract

The superintendent, upon appointment by the Board, will receive a written contract which will state the terms of employment such as compensation, benefits and other conditions. The Board may not issue a contract that includes terms which direct the superintendent<sup>1</sup> to take any action that conflicts with a local, state or federal law<sup>2</sup> that applies to the district<sup>3</sup>, or which allows the Board to take an adverse employment action against the superintendent for complying with such laws. Contracts shall not be issued for more than three years in duration. The contract shall automatically expire at the end of its term. The Board may elect to issue a subsequent contract at any time for up to three years.

The compensation and benefits for the position of superintendent will be fixed by the Board and based upon the responsibilities required of the superintendent in performing ~~his/her~~ their duties. The Board may not enter into an employment contract that contains provisions that expressly obligate the district to compensate the superintendent for work that is not performed.

Provisions for termination of the superintendent's employment, either by the Board or the superintendent, will also be set forth in the superintendent's employment contract. The employment contract, if it includes a mutually agreed to termination-without-cause provision by the Board, will include a 12-month notice of termination for such provision.

[The district may provide health benefits for a superintendent that is no longer employed by the district until the superintendent:

1. Reaches 65 years of age; or
2. Finds new employment that provides health benefits.]

For a period of one year after termination of the contract, the superintendent may not:

1. Purchase property or surplus property owned by the district or public charter school; or
2. Use property owned by the district or public charter school in a manner other than the manner permitted for the general public.

END OF POLICY

<sup>1</sup> The term "superintendent" includes an interim superintendent.

<sup>2</sup> "Local, state or federal law" means a local, state or federal directive having the force of law, including an ordinance, a city or county resolution, a statute, a court decision, an administrative rule or regulation, an order issued in compliance with ORS Chapter 183, an executive order or any other directive, declaration or statement that is issued in compliance with the law as having the force of law and that is issued by a local government as defined in ORS 174.116, the state government as defined in ORS 174.111 or the federal government.

<sup>3</sup> Also includes taking any action that conflicts with law that applies to education services districts.

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**Legal Reference(s):**

[ORS 332.432](#)

[ORS 332.505](#)

[ORS 342.549](#)

[ORS 342.815](#)

[OAR 584-005-0005\(51\)](#)

[Senate Bill 1521 \(2022\)](#)

# OSBA Model Sample Policy

Code: CPA  
Adopted:

OK

2012

## Layoff and Recall for Administrative Personnel

This policy applies to all licensed administrators below the rank of assistant superintendent who are not considered teachers under ORS 342.934.<sup>1</sup>

The Board retains the right to determine when a layoff is necessary. Layoffs shall be by position. A reduction in hours does not constitute a layoff.

The factors considered in the layoff process will be license, seniority, qualifications, merit and/or competence. ~~Competence includes recent experience, additional training and educational attainments. Merit includes the measurement of one administrator's ability and effectiveness against the ability and effectiveness of another administrator.~~

*evidence contained within performance evals*

The Board desires/expects administration to retain, consistent with state law, the most capable and productive of the licensed and qualified employees needed to carry out the approved programs of the district's schools.

Prior to initial development of a recall procedure for administrators, the Board will consult with the employees or a designated representative of the employees covered by this policy.

The district will develop administrative regulations to implement this policy.

END OF POLICY

### Legal Reference(s):

[ORS 332.107](#)

[ORS 342.934](#)

<sup>1</sup> Prior to laying off any administrators, the district will work with legal counsel to determine if the cultural or linguistic expertise criteria apply to any impacted employees.

# OSBA Model Sample Policy

Code: CPA-AR  
Revised/Reviewed:

## Layoff and Recall for Administrative Personnel

### General

This administrative regulation applies to all licensed administrators below the rank of assistant superintendent who are not considered teachers under ORS 342.934.<sup>1</sup>

The Board retains the right to determine when a layoff is necessary. Layoffs ~~will occur~~ shall be by position. A reduction in hours does not constitute a layoff.

The superintendent or designee shall offer recommendations to the Board regarding transfers, both voluntary and involuntary, and the position(s) which will be eliminated. The factors considered in the layoff process will be license, seniority, qualifications, merit and/or competence. ~~Competence includes recent experience, additional training and educational attainments. Merit includes the measure of one's administrative ability and effectiveness against the ability and effectiveness of another administrator.~~

The Board desires/expects administration to retain, consistent with state law, the most capable and productive of the licensed and qualified employees needed to carry out the approved programs of the district's schools.

~~When~~ The district determines that ~~when~~ a layoff of licensed administrators is necessary, the superintendent or designee will use the procedures described in Section II of this regulation. The superintendent or designee will make every reasonable effort to transfer a licensed and qualified administrator who will be laid off to a vacant administrative position for which the administrator is licensed and qualified, in accordance with the procedures described in Section III. The superintendent or designee may combine remaining positions, if it meets district curriculum needs, so that administrators continue to be licensed and qualified to perform available jobs.

### Section I - Definitions

1. "Competence" means the ability to perform the essential functions of a job or assignment based on recent experience, additional training or educational attainments, ~~or both~~, but not based solely on type of license and endorsements of an employee. The superintendent or designee may interpret "recent experience" as having performed the essential functions of the job or assignment within the last five school years. ~~The superintendent or designee, as a guideline, may consider whether a person has held a position "directly above" or a position "directly below" the eliminated position. "Directly above" means a supervisory position. "Directly below" means a direct or indirect reporting relationship to the superintendent.~~

<sup>1</sup> Prior to laying off any administrators, the district will work with legal counsel to determine if the procedures in ORS 339.934, including cultural or linguistic expertise criteria, apply to any impacted employees.

2. "Merit" means the measurement of one administrator's ability and effectiveness against the ability and effectiveness of another administrator.
3. "Seniority" is calculated from the first day of actual ~~continuous~~ service as an administrator in the district inclusive of approved leaves of absence. If necessary, ties in length of service shall be broken by drawing lots.
4. "License" means a document or documents issued by Teacher Standards and Practices Commission permitting an individual to perform certain duties within a public school district.
5. "Qualifications" mean training, experience, skill and other attributes in addition to the individual's license.

## Section II - Layoff Procedures

1. Administrative positions will be grouped by positions or assignments which the superintendent or designee determines are sufficiently comparable to use in the layoff process.
2. [The superintendent or designee may use the following job groups as a guideline:
  - a. School Administrators
    - Group 1: ~~P~~~~High school/Middle school/Elementary~~ principals
    - Group 2: Assistant principals
  - b. Central Office Administrators
    - Group 3: Directors (e.g., ~~t~~ransportation, maintenance,~~]~~ special education, etc.)
    - Group 4: Coordinators (e.g., talented and gifted (TAG), special education, curriculum, etc.)
    - Group 5: Others]
3. If a new administrative position is created, it will be placed in one of the existing job groupings or in a new job grouping, as determined by the superintendent or designee.
4. Upon recommendation by the superintendent or designee, the Board may eliminate one or more administrative positions within a job group or groups.
5. The superintendent or designee may recommend layoffs within job groups based on license, seniority, qualifications, merit and/or competence.
6. After identification of the administrator(s) to be laid off from a particular job group, the superintendent or designee will reassign the remaining administrators in that group to the remaining positions as necessary.
7. The superintendent or designee will determine whether the administrators identified for layoff will be transferred to a vacant administrative position under the procedures of Section III below or as provided for in state law given the option of a classroom teaching assignment provided the administrator is licensed and determined by the district to be qualified based on merit and/or competence for the assignment.

### Section III - Reassignments and Transfers

1. The superintendent or designee will review an administrator's personnel file, and from consultation with the administrator's supervisors, shall determine if an administrator who will be laid off under Section II can be transferred to a vacant administrative position. Each transfer may be based on license, seniority, qualifications, merit, and/or competence ~~and previous administrative positions held as determined by the superintendent or designee.~~
2. An administrator may voluntarily accept a classroom teaching assignment in lieu of a layoff.
  - a. The administrator may accept a classroom teaching assignment which is currently vacant.
  - b. If the administrator previously taught and was a contract teacher in the district, the administrator may displace ("bump") a probationary or contract teacher with less seniority.
  - c. If the administrator never taught in the district, the administrator may displace ("bump") a probationary teacher with less seniority.
3. While an administrator retains ~~his/her~~ rights to recall to a vacant administrative position in accordance with Section IV below, an administrator who voluntarily accepts a classroom teacher assignment will also be covered by the layoff/recall and other provisions of the collective bargaining agreement governing regularly employed teachers for purposes of their rights as teachers.

### Section IV - Recall

1. An administrator who is laid off under this procedure shall be placed in a recall pool. An administrator who resigns rather than accept layoff or reassignment under this procedure forfeits rights to be placed in the recall pool.
2. An administrator will be maintained in the recall pool for a period of not more than 27 calendar months from the effective date of layoff.
3. A laid-off administrator who rejects recall to a position offered by the district for which the administrator is licensed and qualified to perform and which is similar to the workday or work year of the person's previous position, thereby waives any further recall rights, and the administrator's employment terminates effective the date of rejection of the job offer.
4. Licensed and qualified administrators will be considered for recall based on proper licensure and qualifications to perform the essential functions of the job. The district retains the right to recall a less senior administrator to the position if that individual has more merit and/or competence.
5. Administrators will be recalled based on license, seniority, qualifications, merit, and/or competence ~~and other relevant factors.~~ *and other relevant factors*
6. Notification of recall will be delivered in person or deposited as certified mail, postage prepaid and addressed to the last known address of the laid-off employee. It is the responsibility of the administrator to ensure up-to-date mailing information is provided to the district. The individual shall be allowed [740] calendar days from the date of personal delivery or postmark to accept the position in writing. If the individual declines the recall or fails to accept within the [740]-day period

or fails to report for duty on the date specified in the recall notice, the individual's name will be removed from the recall pool. The individual will be considered to have resigned employment with the district and waived any further right of recall.

7. An administrator who wishes to remain eligible for recall to a position requiring a license must maintain a valid license.
8. Individuals who wish to waive recall rights prior to 27 months subsequent to the effective date of a layoff may do so by written notification to the district. Such notice will be considered a voluntary resignation and the individuals shall forfeit all employment rights with the district.
9. Employees returning from layoff shall be credited with all seniority and sick leave the employee earned prior to the effective date of the layoff, but the employee shall not accrue leave, benefits or seniority during the period of the layoff. If applicable, the district will apply any sick leave accrued from another school district employment during the recall time as allowed by state law.
10. An employee who has been laid off has the option of continuing the employee's health insurance program at the employee's expense for up to 18 months, subject to the approval and rules of the insurance carrier(s).
11. [An employee must have completed at least 135 contract days during **one**+ school year in order to be eligible for **one**+ vertical step advancement for the succeeding school year. If, because of layoff, an employee does not complete at least 135 contract days that school year, the employee will be placed on the same salary schedule step as the employee was on prior to layoff.]
12. Nothing in this regulation shall be construed so as to interfere with the district's right to dismiss an administrator, not extend the contract of an administrator or dismiss or nonrenew the contract of a probationary administrator pursuant to state law.
13. [An individual who is no longer employed as an administrator in the district due to resignation, assignment to a nonadministrative position, expiration of the recall period or rejection of a position offered by the district shall receive salary for all unused vacation time following the termination of employment as an administrator.]

## **Section V - Announcements of Decisions**

Public announcements of layoff decisions should occur only after prior notice to affected administrators. Certain circumstances may, in some cases, prevent prior notice and employees will be notified as soon as is practical.

## **Section VI - Appeal Procedure**

An appeal from a layoff decision shall be by arbitration pursuant to the employee's individual employment contract, administrator group contract ("employment agreements or meet and confer agreements") or rules of the Employment Relations Board.

## **Section VII - Future Changes in Procedure**

The district reserves the right to amend, revise or repeal all or any part of this procedure at any future time and no employee shall have any vested right in the continuation of this procedure or any amendment

thereof, provided, however, that no amendment or repeal of this procedure shall prejudice the reinstatement rights of any individual who is in the “recall pool” at the time these procedures are amended, revised or repealed. The district will also consult with employees covered by this administrative regulation prior to making any decisions regarding changes to this procedure.

# OSBA Model Sample Policy

Code: DBEA  
Adopted:

2013  
Closed  
to current  
policy

## Budget Committee (Version 1)

By law, the budget committee is charged with making recommendations concerning financial priorities.

The budget committee will have the responsibility for reviewing the financial programs of the district, reviewing the proposed district budget as presented by the superintendent, and recommending an annual or biennial district budget in keeping with the provisions of applicable state laws.

Educational policy decisions are the responsibility of the Board, not the budget committee. The committee does not have the authority to add programs or to approve additional personnel or increase salaries. While the committee may, in effect, delete programs because of a fund decrease, the committee is charged primarily with a fiscal evaluation of programs. The committee may, alternatively, set an amount that changes the recommended budget and may request the administration make such changes in accordance with priorities set by the Board.

The following will govern the make-up and process of establishing the district's budget committee:

1. The budget committee consists of [seven] members appointed by the Board plus the elected Board members of the district. To be eligible for appointment, the appointive member must:
  - a. Live and be registered to vote in the district;
  - b. Not be an officer, agent or employee of the district.
2. At least one member of the budget committee must be a member of the district's educational equity advisory committee.<sup>1</sup>
3. No budget committee member may receive any type of compensation from the district;
4. At its first meeting in [July], the Board will identify vacant budget committee positions which must be filled by appointment of the Board. The Board will announce the vacancies and receive applications from interested persons during the month of [July]. Such applications will include a signed statement that the applicant is willing to serve as a member of the budget committee and to adhere to the policies of the district. The Board may appoint budget committee members to as many consecutive terms as deemed appropriate;
5. At the first regular Board meeting in [August], the Board will review the names of persons filing applications and names of those persons who have served previously and are willing to be

<sup>1</sup> Districts with ADM over 10,000 must convene an educational equity advisory committee no later than September 15, 2022. Districts with ADM of 10,000 or under are not required to convene an educational equity advisory committee until September 15, 2025.

reappointed. At the first regular meeting in [September], the Board will appoint persons to fill the vacant positions;

6. [The appointive committee members of a budget committee in a district that prepares an annual budget will be appointed for three-year terms. The terms will be staggered so that, as near as practicable, one-third of the appointive members' terms end each year.][The appointive members of a budget committee in a district that prepares a biennial budget shall be appointed to four-year terms. The terms shall be staggered so that as near as practicable, one-fourth of the terms of the appointive members expire each year;]
7. If any appointive member is unable to complete the term for which ~~he/she~~ the member was appointed, the Board will announce the vacancy at the first regular Board meeting following the committee member's resignation or removal. An appointment to fill the position for its unexpired term will be made at the next regular Board meeting.

### **Budget Committee Responsibilities**

The following items explain the budget committee responsibilities:

1. At its first meeting after appointment, the budget committee will elect a presiding officer from among its members. It may also establish other ground rules as necessary for successful operation of the committee;
2. A majority of the constituted committee is required for passing an action item. Majority for a [14-member budget committee is 8] [10-member budget committee is 6]. Therefore, if only [8] [6] members are present, a unanimous vote is needed for passing an action;
3. The budget committee shall hold one or more meetings to receive the budget message, receive the budget document and to provide members of the public with an opportunity to ask questions about and comment on the budget document. The budget officer shall announce the time and place for all meetings, as provided by law. All meetings of the budget committee are open to the public;
4. The budget committee may request any information used in the preparation of or for revising the budget document from the superintendent or business manager. The committee may request the attendance of any district employee at its meetings. The budget committee will approve the budget document as submitted by the superintendent or as subsequently revised by the committee;
5. After approval of the original or revised budget document, the budget committee's duties cease. The hearing on the approved budget is held by the Board.

END OF POLICY

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#### **Legal Reference(s):**

[ORS 174.130](#)

[ORS 192.610](#) to -192.695

[ORS 294.305](#) to -294.565

[ORS 329.711](#)

[ORS 433.835](#) to -433.875

# OSBA Model Sample Policy

Code: EFA  
Adopted:

## Local Wellness

*{Title 7 C.F.R. 210.31(a) requires local education agencies to “establish a local school wellness policy for all schools participating in the National School Lunch Program and/or School Breakfast Program...”. The law describes the policy as “a written plan that includes” various components intended to improve student wellness. This policy is designed to meet the requirements for a wellness policy and provide the framework for the district’s plan. Previously these requirements were split between the policy and an administrative regulation (AR). All required and/or related content is now included in the model policy, therefore OSBA recommends deleting the AR if the district previously included it in the board’s policy manual. Districts should consult with stakeholders in the process of adoption and incorporate language that meets the unique needs of the district.}*

The district is committed to the optimal development of every student and believes that a positive, safe and health-promoting learning environment is necessary for students to have the opportunity to achieve personal, academic, developmental and social success.

To help ensure students possess the knowledge and skills necessary to make healthy choices for a lifetime, the superintendent shall prepare and implement a comprehensive district nutrition program consistent with state and federal requirements for districts sponsoring the National School Lunch Program (NSLP) and/or the School Breakfast Program (SBP). The program shall reflect the Board’s commitment to providing adequate time for instruction that fosters healthy eating through nutrition education and promotion, serving healthy and appealing foods at district schools, developing food-use guidelines for staff and establishing liaisons with nutrition service providers, as appropriate.

[The district superintendent or designee shall establish a Wellness Advisory Committee to advise the district in the development, review and update of the local wellness policy.]

## POLICY IMPLEMENTATION, MONITORING, ACCOUNTABILITY AND COMMUNITY ENGAGEMENT

### Implementation

The district shall manage and coordinate the implementation of this local wellness policy.

Implementation will consist of, but not be limited to, the following:

1. Delineating roles, responsibilities, actions and timelines specific to each school;
2. Generating and disseminating information about who will be responsible to make what change, by how much, where and when;
3. Establishing standards for all foods and beverages provided (but not sold) to students during the school day on participating school campuses;

4. Establishing standards and nutrition guidelines for all foods and beverages sold to students during the school day on participating school campuses that meet state and federal nutrition standards for NSLP and SBP, competitive foods, permit marketing of same that meets the competitive food nutrition standards, and promotes student health and reduces child obesity; and
5. Establishing specific goals for nutrition promotion and education, physical activity[, physical education] and other school-based activities that promote student wellness.

The Board designates the [superintendent] [principal(s)] to be responsible for ensuring each school meets the goals outlined and complies with this policy.

### **[Record Keeping]**

The district will retain the following records to document compliance with the local wellness policy requirements at the district's administrative offices:

1. The written local wellness policy;
2. Documentation to demonstrate the policy has been made available to the public;
3. Documentation of efforts to review and update the local wellness policy, including an indication of who participates in the update and the methods the district uses to make stakeholders aware of their ability to participate;
4. Documentation to demonstrate compliance with the annual public notification requirements;
5. Documentation of the district's most recent assessment on the implementation of the local wellness policy;
6. Documentation to demonstrate the most recent assessment on the implementation of the local wellness policy has been made available to the public.]

### **Notification of Policy**

The district will inform the public about the content and implementation of the local wellness policy, and post the policy and any updates to the policy on the district website annually. Included will be, if available, the most recent assessment of the implementation, and a description of the progress being made in attaining the goals of the policy.

The district will publicize the name and contact information of the district or school official(s) leading and coordinating the policy and information on how the public can get involved with the local wellness policy. This information will be published on the district's website and in district communications.

### **Triennial Progress Assessments**

At least once every three years, the district will evaluate the implementation of this policy and its progress with a triennial assessment and produce a progress report that will include:

1. The extent to which schools under the jurisdiction of the district are in compliance with the policy;

2. The extent to which the district's policy compares to model local school wellness policy<sup>{1}</sup>; and
3. A description of the progress made in attaining the goals of the district's policy.

The district will publish the triennial progress report on the district website when available. The district will update or modify the policy based on results of the triennial assessment.

### **Community Involvement, Outreach and Communications (Review of, and Updating Policy)<sup>{2}</sup>**

The district will actively communicate ways in which the community can participate in the development, implementation and periodic review and update of the local wellness policy. The district will communicate information about opportunities [in community news, on the district's website, on school websites, and/or in district or school communications]. The district will ensure that communications are culturally and linguistically appropriate to the community.

Parents, students, representatives of the school food authority, teachers of physical education, school health professionals, the Board, school administrators, and the general public will be solicited to participate in the periodic review and update of the local school wellness policy.

### **[Wellness Advisory Committee]<sup>{3}</sup>**

The district supports a wellness advisory committee to assist the development, implementation, and periodic review and update of the local wellness policy. The superintendent or designee will be a member of this committee.

The district will publicize information about the wellness advisory committee [in community news, in communications to parents, and/or on websites operated by the district] to communicate to parents, students and the community at large to explain the committee's purpose, process and an invitation to volunteer.

1. The wellness advisory committee membership will include, to the extent possible, but not be limited to:
  - a. Parents, caregivers and students;
  - b. Representatives of the school nutrition program (e.g., school nutrition director);
  - c. Physical education and/or health education teachers;
  - d. School health professionals (e.g., school nurses, physicians, dentists, health educators and other allied health personnel who provide school health services);
  - e. Mental health and social services staff (e.g., school counselors, psychologists, social workers, or psychiatrists);
  - f. School administrators (e.g., superintendent, assistant superintendent, principal, vice principal);

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<sup>1</sup> {Model Wellness Policy resource published by the [Alliance for a Healthier Generation](#). OSBA makes no representation of its compliance by providing this resource.}

<sup>2</sup> {USDA Local school wellness policy [resource](#); CDC [resource](#); CDC Healthy Schools [resource](#); USDA Local school wellness policy [outreach toolkit](#) and communication resource from [Alliance for a Healthier Generation](#).}

<sup>3</sup> {A Wellness Advisory Committee is not required. If the district chooses to have a committee, the district should amend the language here to establish the membership and responsibilities of the committee. [School Wellness Committee Toolkit](#) published by the Alliance for a Healthier Generation}

- ~~g. Board members;~~
- ~~h. Supplemental Nutrition Assistance Program (SNAP) education coordinators;~~
- ~~i. Healthcare professionals and/or other health related professionals (e.g., dietitians, doctors, nurses, dentists); and~~
- ~~j. Members of the general public.~~

2. The committee, appointed by the superintendent or designee, will meet to organize and vote on a committee chair and a secretary prior to or at the beginning of the school year. The chair and secretary will serve for one year minimum and may be reappointed.
3. The wellness advisory committee will meet ~~four~~ <sup>a minimum of two (2)</sup> times per year to review of the local wellness policy.
4. The committee will facilitate the development, review and update of the wellness policy, and evaluate each participating school's compliance with the policy.

~~The district will create building-level committees to establish school-specific goals and activities that implement this policy. A school coordinator will be designated to support compliance with this policy.]~~

## **NUTRITION PROMOTION AND NUTRITION EDUCATION**

Nutrition promotion and nutrition education positively influence lifelong eating behaviors by using evidence-based strategies and techniques and nutrition messages and by creating food environments that support healthy nutrition choices.

~~[Nutrition promotion and nutrition education shall be a sequential and integrated focus on improving students' eating behaviors, reflect evidence-based strategies and be consistent with state and local district health education standards.]~~

To promote nutrition education in the schools, the principal is responsible for ensuring the following goals are implemented:

1. {<sup>4</sup>} [Students and staff will receive consistent nutrition messages throughout the school environment;
2. Nutrition education is provided throughout the student's school years as part of the district's age-appropriate, comprehensive nutrition program[ (which includes the benefits of healthy eating, essential nutrients, nutritional deficiencies, principles of healthy weight management, the use and misuse of dietary supplements, safe food preparation, and handling and storage related to food and eating)], and is aligned and coordinated with the Oregon Health Education Standards and school health education programs;
3. Nutrition education will include culturally relevant, participatory activities that include social learning strategies and activities that are aligned and coordinated with the Oregon Health Education Standards and school health education programs;

<sup>4</sup> {The goals listed are not required, but districts are required to include goals in the policy. Districts are encouraged to evaluate needs and resources and to develop specific goals. Districts are required to "review and consider evidence-based strategies and techniques" (7 CFR 210.31(c)(1)). Model Wellness Policy resource published by the Alliance for a Healthier Generation. OSBA makes no representation of its compliance by providing this resource.}

4. Teachers will receive curriculum-specific training;
5. Parents and families are encouraged through school communications to send healthy snacks/meals and [reusable] water bottles with their student to school;
6. Families and community organizations are involved, to the extent practicable, in nutrition education;
7. Nutrition education homework that students can do with their families is assigned (e.g., reading and interpreting food labels, reading nutrition-related newsletters, preparing healthy recipes);
8. Materials on how to assess one's personal eating habits, set goals for improvement and achieve those goals.]

Nutrition promotion, including marketing and advertising nutritious foods and beverages to students, will be implemented consistently through a comprehensive and multi-channel approach, (e.g., in the classroom, cafeteria and at home) by staff, teachers, parents, students and the community.

To ensure adequate nutrition promotion, the following goals will be implemented:

1. <sup>{5}</sup> [Information about available meal programs is distributed prior to or at the beginning of the school year and at other times throughout the school year;
2. Information about availability and location of a Summer Food Service Program (SFSP) is distributed;
3. Nutrition promotion materials are sent home with students, published on the district website, and distributed at parent-teacher conferences;
4. Families are invited to attend exhibitions of student nutrition projects or health fairs;
5. Physical activity is a planned part of all school-community events.]

### School Meals

[Schools within the district participate in U.S. Department of Agriculture (USDA) child nutrition program(s), administered through the Oregon Department of Education (ODE)[.] [which may include the NSLP[.], [and] [the SBP,] [Fresh Fruit & Vegetable Program (FFVP),] [After School Snack Program (ASSP),] [Special Milk Program (SMP),] [Summer Food Service Program (SFSP),] [Supper programs] [or others].] [The district also operates additional nutrition-related programs and activities including Farm-to-School programs, school gardens, Breakfast in the Classroom, Mobile Breakfast carts or Grab 'n' Go Breakfast.]

The district's available meal program(s) will operate to meet meal pattern requirements and dietary specifications in accordance with the Healthy, Hunger-Free Kids Act and applicable federal laws and regulations.

<sup>5</sup> {The goals listed are not required, but districts are required to include goals in the policy. Districts are encouraged to evaluate needs and resources and to develop specific goals. Districts are required to "review and consider evidence-based strategies and techniques" (7 CFR 210.31(c)(1)). Model Wellness Policy resource published by the [Alliance for a Healthier Generation](#). OSBA makes no representation of its compliance by providing this resource.}

The [principal(s)] will support nutrition and food services operation as addressed in Board policy EFAA – District Nutrition and Food Services and its accompanying administrative regulation EFAA-AR – Reimbursable Meals and Milk Programs.

#### **Water**

*Keep*

Free, safe, unflavored, drinking water will be available to all students throughout the school day and throughout every school campus. The district will make drinking water available where school meals are served during mealtimes.*h*

#### **Competitive Foods and Beverages**

The district controls the sale of all competitive foods. All foods and beverages outside the reimbursable school meal programs that are **sold** to students on the school campus during the school day will meet or exceed Smart Snacks Standards<sup>6</sup>. These standards will apply in all locations and through all services where foods and beverages are sold, which may include, but are not limited to, à la carte options in cafeterias, vending machines, school stores, snack or food carts and fund raising.

#### **Celebrations and Rewards/Incentives**

All foods and beverages offered on the school campus, ~~[will meet or exceed]~~ (are encouraged to meet) the nutrition standards set by the USDA and the Oregon Smart Snacks Standards. This includes, but is not limited to, celebrations, parties, and classroom snacks brought by parents. ~~[Food will not be used as a reward or incentive.] [This information will be conveyed to staff and parents.]~~

#### **[Fund Raising]**

Foods and beverages that meet or exceed the nutrition standards set by the USDA and the Oregon Smart Snacks Standards may be sold through fund raisers on the school campus during the school day. Such requests to conduct a fund raiser will be submitted to the [principal] for approval before starting.]

#### **Food and Beverage Marketing in Schools**

Any foods and beverages marketed or promoted to students on the school campus during the school day will meet or exceed the nutrition standards for competitive foods set by the USDA.

~~[The district (i.e., school nutrition services, athletics department, PTA, PTO) will review existing contracts, new contracts and equipment, and product purchase or replacement to reflect the applicable food and beverage marketing guidelines.]~~

#### **PHYSICAL ACTIVITY AND PHYSICAL EDUCATION**

A quality physical education program is an essential component for all students to learn about and participate in physical activity. The district will develop and assess student performance standards and program minute requirements in order to meet ODE's physical education content standards and state law.

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<sup>6</sup> Oregon Department of Education, Oregon Smart Snacks Standards

Physical activity should be included in the school's daily education program for grades [pre-]K through 12 and include regular, instructional physical education, as well as co-curricular activities and recess.

In order to ensure students are afforded the opportunity to engage in physical education and physical activity in the school setting, the following goals are established:

1. {<sup>7</sup>} [Physical education will be a course of study that focuses on students' physical literacy and development of motor skills;
2. Staff encourages and provides support for parental involvement in their children's physical education;
3. Physical education courses will be the environment where students learn, practice and are assessed on developmentally appropriate knowledge, skills and confidence to become physically literate;
4. Instruction, provided by adequately prepared teachers, i.e., licensed or endorsed to teach physical education, will meet the state adopted academic content standards for physical education (Oregon Revised Statute (ORS) 329.045). Teachers of physical education shall regularly participate in professional development activities annually;
5. {<sup>8</sup>} Every public school student in ~~pre-K~~ kindergarten through grade 8 shall participate in physical education for the entire school year. Students in kindergarten through grade ~~8~~ [6] shall participate for a least 150 minutes during each school week, and students in grades ~~6~~ [7] through 8 for at least 225 minutes per school week;
6. Physical activity will be integrated across curricula and throughout the school day. Movement will be made a part of all classes or courses as part of a well-rounded education;
7. Physical activity during the school day (including, but not limited to, recess, classroom physical activity breaks or physical education) will not be used as a punishment or a reward;
8. {<sup>9</sup>} At least 50 percent of the weekly physical education class time in grades K through 8 shall be devoted to actual physical activity;
9. ~~Physical activity is a planned part of all school-community events;~~
10. ~~Materials promoting physical activity are sent home with students and published on the district website.]~~

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<sup>7</sup> {The goals listed are not required, but districts are required to include goals in the policy. Districts are encouraged to evaluate needs and resources and to develop specific goals. Districts are required to "review and consider evidence-based strategies and techniques" (7 CFR 210.31(c)(1)). Model Wellness Policy resource published by the Alliance for a Healthier Generation. OSBA makes no representation of its compliance by providing this resource.}

<sup>8</sup> {Districts are required to provide the specified number of physical education minutes, but are not required to include them as goals or in this policy. If the district operates K-5 elementary schools, select "5" in the first bracket and "6" in the second bracket. If the district operates K-6 elementary schools, select "6" in the first bracket and "7" in the second bracket.}

<sup>9</sup> {This language is not required to be in policy, but this is a required action pursuant to ORS 329.496.}

OK

[<sup>10</sup>] A student with a disability shall have suitably adapted physical education incorporated as part of their individualized education program (IEP) developed under ORS 343.151. A student who does not have an IEP but has chronic health problems, other disabling conditions or other special needs that preclude them from participating in regular physical education instruction, shall have suitably adapted physical education incorporated as part of their individualized health plan, developed by the district.]

### Other Activities that Promote Student Wellness

The district will integrate wellness activities throughout the entire school environment (districtwide). The district will coordinate and integrate other initiatives related to physical activity, physical education, nutrition and other wellness components so all efforts are complementary, not duplicated and work toward the same set of goals promoting student well-being, optimal development and strong educational outcomes.

The district will provide the following activities and encourage the following practices which promote local wellness:

1. [Scoliosis screenings;
2. ~~Safe Routes to Schools Program;~~
3. ~~Physically active family and community engagement activities for families to learn about healthy eating or to practice being active together (e.g., skate night, fun run, dance night);~~
4. ~~Nonfood-related fund raisers;~~
5. ~~Physical activity energizers during transitions from one subject to another;~~
6. ~~Intramural sports;~~
7. ~~Monthly/Weekly school walks;~~
8. ~~Assemblies which focus on wellness issues such as the importance of breakfast, healthy beverages, and how students and staff can incorporate 60 minutes of physical activity into their day;~~
9. ~~Use of alternates to food as rewards in the classroom;~~
10. ~~Creation of connections between out-of-school time (OST) programs that involve staff members from OST programs, both school- and community-based, in school initiatives that address healthy eating, such as school wellness teams or wellness committees;~~
11. Integration of social, emotional and mental health supports into school programs (e.g., promote a positive school climate where respect is encouraged and students can seek help from trusted adults);
12. ~~Communication between classroom teachers and nutrition staff, so that menus and nutrition promotion can be tied into classroom learning and coursework;~~

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<sup>10</sup> {This language is not required to be in policy, but this is a required action pursuant to ORS 329.496.}

13. Include wellness as a standing agenda item for school-based meetings (e.g., staff meetings, site council meetings, PTO).]

### **[<sup>11</sup>}Employee Wellness{<sup>12</sup>}**

The district encourages staff to pursue a healthy lifestyle that contributes to their improved health status, improved morale and a greater personal commitment to the school's overall wellness program. Many actions and conditions that affect the health of staff may also influence the health and learning of students. The physical and mental health of staff is integral to promoting and protecting the health of students and helps foster their academic success. The district's Employee Wellness Program will promote health, reduce risky behaviors of employees and identify and correct conditions in the workplace that can compromise the health of staff, reduce their levels of productivity, impede student success and contribute to escalating health-related costs such as absenteeism.

The district will collaborate with community partners to identify programs, services and/or resources to compliment and enrich employee wellness endeavors.

The district's Employee Wellness Program may include the following:

1. Health education and health promoting activities that focus on skill development and lifestyle behavior that change along with awareness building, information dissemination, access to facilities, and are preferably tailored to employees' needs and interests;
2. Safe, supportive social and physical environments including organizational expectations about healthy behavior, and implementation of policy that promotes health and safety and reduces the risk of disease;
3. Linkage to related programs such as employee assistance programs, emergency care and programs that help employees balance work life and family life;
4. Education and resources to help employees make decisions about health care; and
5. Nutrition and fitness educational opportunities that may include but are not limited to, the distribution of educational and informational materials, and the arrangement of presentations and workshops that focus on healthy lifestyles, health assessments, fitness activities and other appropriate nutrition and physical activity related topics.

The district encourages participation from all employees. "Employees" are not limited to instructional staff (i.e., teachers and instructional assistants), but includes all administrators and support staff.

The following groups are seen as essential for establishing, implementing and sustaining an effective employee wellness program:

1. School personnel who implement existing wellness programs in the district (i.e., employee wellness committee);

<sup>11</sup> {This language is optional and is not required by state or federal law.}

<sup>12</sup> {CDC resources for [school employee wellness](#) and [workplace health promotion](#)}

2. District personnel who implement health programs for students (e.g., school health coordinator, school nurses, psychologist, health and physical educators, nutrition professionals, counselors and other staff); and
3. Decision makers who have the authority to approve policy and provide administrative support essential for a school wellness program (e.g., Board members, superintendents, human resource administrators, fiscal services administrators and principals).]

#### [DEFINITIONS

1. "Competitive food" means all food and beverages other than meals reimbursed under programs authorized by the Richard B. Russell National School Lunch Act and the Child Nutrition Act available for sale to students on the school campus during the school day.
2. "Food and beverage marketing<sup>[13]</sup>" is defined as advertising and other promotion in schools. Food and beverage marketing often includes an oral, written or graphic statement made for the purpose of promoting the sale of a food or beverage product made by the producer, manufacturer, seller or any other entity with a commercial interest in the product.
3. "Oregon Smart Snacks Standards"<sup>14</sup> means the State's minimum nutrition standards for competitive foods and beverages (ORS 336.423).
4. "School day" means, for the purpose of competitive food standards implementation, the period from the midnight before, to 30 minutes after the end of the official school day[, i.e., at the conclusion of afternoon student activities, such as athletic, music or drama practices, clubs, academic support and enrichment activities].
5. "School campus" means, for the purpose of competitive food standards implementation, all areas of property under the jurisdiction of the school that are accessible to students during the school day.]

#### END OF POLICY

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#### Legal Reference(s):

[ORS 327.531](#)  
[ORS 327.537](#)  
[ORS 329.496](#)  
[ORS 332.107](#)

[ORS 336.423](#)  
[OAR 581-051-0100](#)  
[OAR 581-051-0305](#)

[OAR 581-051-0306](#)  
[OAR 581-051-0310](#)  
[OAR 581-051-0400](#)

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<sup>13</sup> [This term includes, but is not limited to, the following: brand names, trademarks, logos or tags, except when placed on a physically present food or beverage product or its container; displays, such as on vending machine exteriors; corporate brand, logo, name or trademark on school equipment, such as marquees, message boards, scoreboards or backboards (Note: Immediate replacement of these items is not required; however, districts will replace or update scoreboards or other durable equipment when existing contracts are up for renewal or to the extent that is financially possible over time so that items are in compliance.); corporate brand, logo, name or trademark on cups used for beverage dispensing, menu boards, coolers, trash cans and other food service equipment; as well as on posters, book covers, student assignment books or school supplies displayed, distributed, offered or sold by the district; advertisements in school publications or school mailings; free product samples, taste tests or coupons of a product, or free samples displaying advertising of a product.]

<sup>14</sup> Oregon Department of Education, [Oregon Smart Snacks Standards](#)

Healthy, Hunger-Free Kids Act of 2010, 42 U.S.C. §1758b (2018).  
National School Lunch Program, 7 C.F.R. Part 210 (2022).  
School Breakfast Program, 7 C.F.R. Part 220 (2022).

# OSBA Model Sample Policy

Code:  
Adopted:

GBEA



## Workplace Harassment \*

Workplace harassment is prohibited and shall not be tolerated. This includes workplace harassment that occurs between district employees or between a district employee and the district in the workplace or at a work-related event that is off district premises and coordinated by or through the district, or between a district and a district employee off district premises. Elected school board members, volunteers and interns are subject to this policy.

Any district employee who believes they have been a victim of workplace harassment may file a report with the district employee designated in the administrative regulation GBEA-AR - Workplace Harassment Reporting and Procedure, may file a report through the Bureau of Labor and Industries' (BOLI) complaint resolution process or under any other available law. The reporting of such information is voluntary. The district employee making the report is advised to document any incidents of workplace harassment.

“Workplace harassment” means conduct that constitutes discrimination prohibited by Oregon Revised Statute (ORS) 659A.030 (discrimination in employment based on race, color, religion, sex, sexual orientation, gender identity, national origin, marital status, age, or expunged juvenile record), including conduct that constitutes sexual assault<sup>1</sup> or that constitutes conduct prohibited by ORS 659A.082 (discrimination against person in uniformed service) or 659A.112 (discrimination in employment based on disability).

The district, upon receipt of a report from a district employee who believes they are a victim of workplace harassment, shall provide information about legal resources and counseling and support services, including any available employee assistance services. The district employee receiving the report, whether a supervisor of the employer or the district employee designated to receive reports, is advised to document any incidents of workplace harassment, and shall provide a copy of this policy and accompanying administrative regulation to the victim upon their disclosure about alleged workplace harassment.

All incidents of behavior that may violate this policy shall be promptly investigated.

Any person who reports workplace harassment has the right to be protected from retaliation.

The district may not require or coerce a district employee to enter into a nondisclosure<sup>2</sup> or nondisparagement<sup>3</sup> agreement.

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<sup>1</sup> “Sexual assault” means unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation.

<sup>2</sup> A “nondisclosure” agreement or provision prevents either party from disclosing the contents of or circumstances surrounding the agreement.

<sup>3</sup> A “nondisparagement” agreement or provision prevents either party from making disparaging statements about the other party.

The district may not enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation, or the receipt of benefits, that contains a nondisclosure provision, a nondisparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing workplace harassment that occurred between district employees or between a district employee and the district, in the workplace or at a work-related event that is off district premises and coordinated by or through the district, or between a district employee and employer off district premises.

The district may enter into a settlement agreement, separation or severance agreement that includes one or more of the following provisions only when a district employee claiming to be aggrieved by workplace harassment requests to enter into the agreement: 1) a nondisclosure or nondisparagement provision; 2) a provision that prevents disclosure of factual information relating to the claim of workplace harassment; or 3) a no-rehire provision that prohibits the employee from seeking reemployment with the district as a term or condition of the agreement. The agreement must provide the district employee at least seven days after signing the agreement to revoke it.

If the district determines in good faith that an employee has engaged in workplace harassment, the district may enter into a settlement, separation or severance agreement that includes one or more of the provisions described in the previous paragraph.

It is the intent of the Board that appropriate corrective action will be taken by the district to stop workplace harassment, prevent its recurrence and address negative consequences. Staff members in violation of this policy shall be subject to discipline, up to and including dismissal and/or additional workplace harassment awareness training, as appropriate. Other individuals (e.g., board members, witnesses, and volunteers) whose behavior is found to be in violation of this policy shall be subject to appropriate sanctions as determined and imposed by the superintendent or the Board.

The district shall make this policy available to all district employees and shall be made a part of district orientation materials provided and copied to new district employees at the time of hire.

The superintendent will establish a process of reporting incidents of workplace harassment and the prompt investigation.

END OF POLICY

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**Legal Reference(s):**

<a href="#">ORS 174.100</a>	<a href="#">ORS 659A.029</a>	<a href="#">ORS 659A.820</a>
<a href="#">ORS 243.317 - 243.323</a>	<a href="#">ORS 659A.030</a>	<a href="#">ORS 659A.875</a>
<a href="#">ORS 659A.001</a>	<a href="#">ORS 659A.082</a>	<a href="#">ORS 659A.885</a>
<a href="#">ORS 659A.003</a>	<a href="#">ORS 659A.112</a>	<a href="#">OAR 584-020-0040</a>
<a href="#">ORS 659A.006</a>	<a href="#">ORS 659A.370</a>	<a href="#">OAR 584-020-0041</a>

Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2018).

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e (2018).

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2020).

Bartsch v. Elkton School District, FDA-13-011 (March 27, 2014).

[House Bill 3041 \(2021\)](#)

# OSBA Model Sample Policy

Code: GCAA  
Adopted:

new ??  
don't have  
optional  
OK add

## Standards for Competent and Ethical Performance of Oregon Educators

### [Application of Rules

1. Oregon Administrative Rules were adopted by the Teacher Standards and Practices Commission (TSPC) in accordance with Oregon Revised Statutes (ORS).
2. Oregon Administrative Rules (OAR) may be used as criteria by the TSPC in matters pertaining to the revocation or suspension of licenses issued by ~~the commission~~ TSPC under Oregon ~~law~~ Revised Statutes (ORS) or the discipline of any license holder or any person who has held a license at any time within five years prior to issuance of the notice of charges under ~~Oregon Revised Statutes~~ ORS.
3. The ~~commission~~ TSPC determines whether an educator's performance is ethical or competent in light of all the facts and circumstances surrounding the educator's performance as a whole.
4. The ~~commission~~ TSPC will promptly investigate complaints:
  - a. The ~~commission~~ TSPC may at its discretion defer action to charge an educator against whom a complaint has been filed under ~~Oregon Revised Statutes~~ law when the investigation report indicates that disciplinary action against the educator is pending at the local district level or when criminal charges are pending or are likely to be filed against the educator. In considering whether to defer action to charge an educator, the ~~commission~~ TSPC shall consider all relevant circumstances including the nature and seriousness of the allegations and whether the educator is currently employed as a teacher or school administrator;
  - b. The executive secretary shall regularly inform the ~~commission~~ TSPC of the status of any complaints on which the ~~commission~~ TSPC has deferred action.]

### Definitions

The following definitions apply to Oregon Administrative Rules unless otherwise indicated by context:

1. "Administrator": any educator who holds a valid Oregon administrative license or registration and who works in a position requiring an administrative license;
2. "Competent": discharging required duties as set forth in these rules;
3. "Educator": any licensed or registered or certified person who is authorized to be engaged in the instructional program including teaching, counseling, school psychology, administering and supervising;
4. "Ethical": conforming to the professional standards of conduct set forth in these rules;
5. ~~"Sexual conduct": any conduct with a student that includes, but is not limited to:~~
  - a. ~~The intentional touching of the breast or sexual or other intimate parts of a student;~~

- b. ~~Causing, encouraging or permitting a student to touch the breast or sexual or other intimate parts of the educator;~~
- e. ~~Sexual advances or requests for sexual favors directed towards a student;~~
- d. ~~Verbal or physical conduct of a sexual nature when directed toward a student or when such conduct has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment; or~~  
Verbal or physical conduct which has the effect of unreasonably interfering with a student's educational performance or creates an intimidating, hostile or offensive educational environment.

6.5. "Sexual conduct: means verbal or physical conduct or verbal, written or electronic communications by a school employee, a contractor, an agent or a volunteer that involve a student that are:

- a. Sexual advances or requests for sexual favors directed toward the student; or
- b. Of a sexual nature that are directed toward the student or that have the effect of unreasonably interfering with the student's educational performance, or of creating an intimidating or hostile educational environment.

"Sexual conduct" does not include:

- a. Touching or other physical contact:
  - (1) That is necessitated by the nature of the district employee's job duties or by the services required to be provided by the contractor, agent, or volunteer; and
  - (2) For which there is no sexual intent.
- b. Verbal, written or electronic communications that are provided as party of an education program that meets the state educational standards or a policy approved by the Board
- c. Conduct or communications described in above if the district employee, contractor, agent or volunteer is also a student and the conduct or communications:
  - (1) Arise out of a consensual relationship between students;
  - (2) Do not create an intimidating or hostile educational environment; and
  - (3) Are not prohibited by law, any policies of the district or any applicable employment agreements.

7.6. "Sexual harassment": any unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- c. Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive working environment.

8.7. "Teacher": any person who holds a teacher's license as provided in ORS 342.125.

9.8. "Student": ~~any individual enrolled in the state's public or private schools from preschool through high school graduation or any individual under the age of 18~~ means any person who is:

- a. In any grade from kindergarten through grade 12; or
- b. Twenty-one years of age or younger and receiving educational or related services from an education provider that is not a post-secondary institution of education; or
- c. Who was previously known as a student by the person engaging in sexual conduct and who left school or graduated from high school within 90 days prior to the sexual conduct.

## **The Competent Educator**

The teacher or administrator demonstrates a commitment to:

1. Recognize the worth and dignity of all persons and respect for each individual;
2. Encourage scholarship;
3. Promote democratic and inclusive citizenship;
4. Raise educational standards;
5. Use professional judgment; and
6. Promote equitable learning opportunities.

## **Curriculum and Instruction**

The competent educator measures success by the progress of each student toward realization of personal potential as a worthy and effective citizen. The competent educator stimulates the spirit of inquiry, the acquisition of knowledge and understanding and the thoughtful formulation of goals as they are appropriate for each individual.

The competent teacher demonstrates:

1. Use of state- and district-adopted curriculum and goals;
2. Skill in setting instructional goals and objectives expressed as learning outcomes;
3. Use of current subject matter appropriate to the individual needs of students;
4. Use of students' growth and development patterns to adjust instruction to individual needs consistent with number of students and amount of time available; and
5. Skill in the selection and use of teaching techniques conducive to student learning.

The competent administrator demonstrates:

1. Skill in assisting individual staff members to become more competent ~~teachers~~ educator by complying with federal, state and local law, rules and lawful and reasonable district policy and contracts;
2. Knowledge of curriculum and instruction appropriate to assignment;
3. Skill in implementing instructional programs through adequate communication with staff; and

4. Skill in identifying and initiating any needed change which helps each student toward realization of personal learning potential.

### **Supervision and Evaluation**

The competent educator is a student of human behavior and uses this knowledge to provide a climate that is conducive to learning and that respects the rights of all persons without discrimination. The competent educator assumes responsibility for the activities planned and conducted through the district's program and assists colleagues to do the same. The competent educator gathers relevant information and uses it in the planning and evaluation of instructional activities.

The competent teacher **educator** demonstrates:

1. Multiple ways to assess the academic progress of individual students;
2. Skill in the application of assessment data to assist individual student growth;
3. Procedures for evaluating curriculum and instructional goals and practices;
4. Skill in the supervision of students; and
5. Skills in differentiating instruction.

The competent administrator demonstrates:

1. Skill in the use of assessment data to provide effective instructional programs;
2. Skill in the implementation of the district's student evaluation program;
3. Skill in providing equal opportunity for all students and staff; and
4. Skill in the use of employee and leadership techniques appropriate to the assignment and according to well-established standards which ensure due process for the staff for which the administrator is responsible for evaluating.

### **Management Skills**

The competent educator is a person who understands students and is able to relate to them in constructive and culturally competent ways. The competent educator establishes and maintains good rapport. The competent educator maintains and uses records as required and as needed to assist the growth of students.

The competent teacher **educator** demonstrates skills in:

1. Establishing and maintaining classroom management that is conducive to learning;
2. Using and maintaining district property, equipment and materials appropriately;
3. Using and maintaining student records as required by federal and state law and district policies and procedures;

4. Using district and school business and financial procedures; and
5. Using district lawful and reasonable rules and regulations.

The competent administrator demonstrates:

1. Leadership skills in managing the school, its students, staff and programs as required by lawful and reasonable district policies, rules and regulations, state and federal laws and regulations and other programs as assigned and assures that staff is informed of these requirements; and
2. Skills in planning and staff utilization assignment.

### **Human Relations and Communications**

The competent educator works effectively with others — students, staff, parents and patrons. The competent educator is aware of the ways the community identifies with the school, as well as community needs and ways the school program is designed to meet these needs. The competent educator can communicate with knowledge, clarity and judgment about educational matters, the school and the needs of students.

The competent teacher demonstrates:

1. Willingness to be flexible in cooperatively working with others; and
2. Skill in communicating with students, staff, parents and other patrons.

The competent administrator demonstrates:

1. Skill in helping students, staff, parents and other patrons to learn about the school, the district and its program;
2. Skills in communicating district and school goals to staff and the public;
3. Willingness to be flexible in cooperatively working with others; and
4. Skill in reconciling conflict.

### **The Ethical Educator**

The ethical educator is a person who accepts the requirements of membership in the teaching profession and acts at all times in ethical ways. In so doing the ethical educator considers the needs of the students, the district and the profession.

The ethical educator, in fulfilling obligations to the student, will:

1. Keep the confidence entrusted in the profession as it relates to confidential information concerning a student and the student's family;
2. Refrain from exploiting professional relationships with any student for personal gain or in support of persons or issues; and

3. Maintain an appropriate professional student-~~educator~~<sup>teacher</sup> relationship by:
  - a. Not demonstrating or expressing professionally inappropriate interest in a student's personal life;
  - b. Not accepting or giving or exchanging romantic or overly personal gifts or notes with a student;
  - c. Reporting to the educator's supervisor if the educator has reason to believe a student is, or may be, becoming romantically attached to the educator; and
  - d. Honoring appropriate adult boundaries with students in conduct and conversations at all times.

The ethical educator, in fulfilling obligations to the district, will:

1. Apply for, accept, offer or assign a position of responsibility only on the basis of professional qualifications and will adhere to the conditions of a contract or the terms of the appointment;
2. Conduct professional business, including grievances, through established lawful and reasonable procedures;
3. Strive for continued improvement and professional growth;
4. Accept no gratuities or gifts of significance that could influence judgment in the exercise of professional duties; and
5. Not use the district's or school's name, property or resources for noneducational benefit without approval of the educator's supervisor or the appointing authority.

The ethical educator, in fulfilling obligations to the profession, will:

1. Maintain the dignity of the profession by respecting and obeying the law, exemplifying personal integrity and honesty;
2. Extend equal treatment to all members of the profession in the exercise of their professional rights and responsibilities; ~~and~~
3. Respond to requests for evaluation of colleagues and to keep such information confidential as appropriate; ~~and~~
4. Respond to requests from a TSPC representative for information, furnish documents to TSPC, and participate in interviews with a TSPC representative relating to a TSPC investigation, except subject to the exercise of any legal right or privilege.

END OF POLICY

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**Legal Reference(s):**

[OAR 584-020-0000 - 0035](#)

2013

# OSBA Model Sample Policy

Code: GCBDB/GDBDB  
Adopted:

## Early Return to Work

Efforts will be made, on a case-by-case basis, to reinstate ill or injured employees to work. The reinstatement will be within the requirements of the injury, the limitations of the law and the limitations of the district.

In the event an employee is not able to perform essential job functions completely after an illness or injury, the district will determine whether reasonable accommodations are appropriate that would provide a temporary light-duty assignment, restructuring of a position to include modified workdays, shift or part-time work, hours of work or modifications in facilities, equipment, special aids and services. Reasonable accommodations must not result in an undue hardship on the district.

If an employee cannot be reasonably accommodated in ~~his/her~~ their current position, the district will review alternative assignments. The employee, if qualified, will be offered an available vacant position with or without reasonable accommodations. If recovery is ongoing, sick leave is exhausted and no other assignment is possible, the district ~~will~~ ~~may~~ provide temporary unpaid leave as an accommodation in accordance with state and federal law.

The district will maintain current job descriptions for each position. Physical requirements for appropriate job categories will be established.

The [superintendent] will develop procedures as necessary to implement this policy.

END OF POLICY

### Legal Reference(s):

[ORS 659A.043](#) [ORS 659A.046](#) [OAR 436-110-0001](#) ~~3~~ to -0900

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213; 29 C.F.R. Part 1630 (2016); 28 C.F.R. Part 35 (2016).  
Americans with Disabilities Act Amendments Act of 2008.

# OSBA Model Sample Policy

2013

Code: GCQB  
Adopted:

## Research

District staff ~~Employees~~ are encouraged to participate in research for the development and improvement of education. ~~If an employee plans~~ Staff who propose to engage in a research, e.g., study toward advanced work or for use in classroom instruction, ~~project during the workday or using~~ district resources or students, ~~either for study toward advanced work or for use in classroom instruction, approval must be secured from~~ will submit a proposal to the [superintendent] ~~[principal]~~ for approval ~~the superintendent~~ prior to commencing such research. If approved, and the study results in material or practices which ~~would~~ may be useful to other ~~employees~~ district staff, ~~it is recommended that it~~ such will be reviewed by [administration] and may be made available for distribution throughout the district as determined by administration. For the protection of all concerned, privacy rights of students or other individuals involved in ~~research~~ such ~~projects~~ research must be protected.

Research which is conducted by or for a nondistrict ~~employee~~ individual or organization must be approved by the superintendent ~~[or designee]~~.

END OF POLICY

### Legal Reference(s):

ORS 332.107

Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (~~2012~~2018); Family Educational Rights and Privacy, 34 C.F.R. Part 99 (~~2016~~2022).  
Protection of Pupil Rights, 20 U.S.C. § 1232h (~~2012~~2018); Student Rights in Research, Experimental Programs and Testing, 34 C.F.R. Part 98 (~~2016~~2022).

# OSBA Model Sample Policy

2013

Code: GDA  
Adopted:

## Instructional Assistants<sup>{1}</sup>

Instructional assistants shall be hired by the superintendent.

All instructional assistants<sup>2</sup> must:

1. Have a high school diploma or the equivalent;
2. Be at least 18 years of age or older; and
3. Have standards of moral character as required of teachers.

In addition to the above, instructional assistants providing translation services must have demonstrated proficiency and fluency, knowledge of and ability to provide accurate translations from a language other than English into English and from English into another language.

Instructional assistants<sup>3</sup> who work in Title IA programs and provide instructional support must have:

1. Completed at least two years of study at an institution of higher education; or
2. Obtained an associate's or higher degree; or
3. Met a rigorous standard of quality, and can demonstrate, through a formal state or local academic assessment or para-professional certificate program, knowledge of, and the ability to assist in instructing, as appropriate, reading/language arts, writing and mathematics or reading readiness, writing readiness and mathematics readiness.

<sup>1</sup> {Various laws, references and guidance documents use different terms in place of "instructional assistant." Districts should use the term that is commonly used in their district.}

<sup>2</sup> "Instructional assistant" means a classified school employee who does not require a license to teach, who is employed by a school district or education service district and whose assignment consists of and is limited to assisting a licensed teacher in accordance with the rules established by the TSPC.

<sup>3</sup> Instructional assistants may be assigned to: (1) provide one-on-one tutoring for eligible students, if the tutoring is scheduled at a time when a student would not otherwise receive instruction from a teacher; (2) assist with classroom management, such as organizing instructional and other materials; (3) provide assistance in a computer laboratory; (4) conduct parental involvement activities; (5) provide support in a library or media center; (6) act as a translator; or (7) provide instructional services to students while working under the direct supervision of a teacher. Instructional assistants may assume limited duties that are assigned to similar personnel who are not working in a program supported with Title IA funds, including duties beyond classroom instruction or that do not benefit participating children, so long as the amount of time spent on such duties is the same proportion of total work time as prevails with respect to similar personnel at the same school.

These requirements do not apply to an instructional assistant: (1) who is proficient in English and a language other than English and who provides services primarily to enhance the participation of children in Title IA programs by acting as a translator; or (2) whose duties consist solely of conducting parental involvement activities.

[The district [will] ~~[will not]~~ require individuals newly hired as Title IA instructional assistants who have met another district's academic assessment to meet the district's academic assessment standards.]

The general responsibilities of an instructional assistant shall be outlined in a job description. The major responsibility shall be to assist the classroom teacher, specialist or supervisor or related service provider with instruction and/or support. The instructional assistants shall be under the supervision of the appropriately licensed classroom teachers, specialist or supervisor. Other supporting tasks may include, but are not limited to: clerical support, student control, personal care, translation or parent and family involvement activities and media center or computer laboratory support. OK

Instructional assistants shall not be used by the district or teacher as substitute teachers. The responsibility for classroom supervision remains with the teacher at all times.

END OF POLICY

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**Legal Reference(s):**

[ORS 332.107](#)

[ORS 332.505](#)

[ORS 342.120](#)

[OAR 581-022-2400\(2\)](#)

[OAR 581-037-0005](#) ~~to~~ 0025

[OAR 584-005-0005\(20\)](#), ~~(2728)~~, ~~(41)~~

The Vietnam Era Veterans' Readjustment Assistance Act ~~of 1974~~, ~~as amended~~, 38 U.S.C. § 4212 (20122018).

Title II of the Genetic Information Nondiscrimination Act ~~of 2008~~, 42 U.S.C. § 2000ff-1 (2018); 29 C.F.R. Part 1635 (2022).

~~Section 503 of the~~ Rehabilitation Act ~~of 1973~~, 29 U.S.C. § 791, 793-794 (2018).

# OSBA Model Sample Policy

Code: IGAC  
Adopted:

## Religion and Schools

Teachers shall be permitted to teach or present to students information concerning religions and religious beliefs, but teachers shall not promote or inhibit, openly or covertly or by subtlety, a particular religion, religious belief or nonreligious belief.

Students and staff members may be excused from participating in programs or activities which are contrary to their religious beliefs without penalty.

END OF POLICY

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### Legal Reference(s):

ORS 332.107

ORS 336.035

U.S. Const. amend. I.

OR. CONST., art. I.

Kennedy v. Bremerton Sch. Dist., 142 S. Ct. 2407 (2022) 869 F.3d 813 (9th Cir. 2017).

7  
New

# OSBA Model Sample Policy

Code: IGAI  
Adopted:

## **Human Sexuality, AIDS/HIV, Sexually Transmitted Diseases, Health Education\*\***

The district shall provide an age appropriate, comprehensive plan of instruction focusing on human sexuality, HIV/AIDS and sexually transmitted infections and disease prevention in elementary and secondary schools as an integral part of health education and other subjects. Course material and instruction for all human sexuality education courses that discuss human sexuality shall enhance a student's understanding of sexuality as a normal and healthy aspect of human development. A part of the comprehensive plan of instruction shall provide age-appropriate child sexual abuse prevention instruction for students in kindergarten through grade 12. The district must provide a minimum of four instructional sessions annually; one instructional session is equal to one standard class period. In addition, the HIV/AIDS and sexually transmitted infections and disease prevention education and the human sexuality education comprehensive plan shall provide adequate instruction at least annually, for all students in grades 6 through 8 and at least twice during grades 9 through 12.

Parents, teachers, school administrators, local health departments staff, other community representatives and persons from the medical community who are knowledgeable of the latest scientific information and effective education strategies shall develop the plan of instruction and align it with the Oregon Health Education Standards and Benchmarks.

The Board shall approve the plan of instruction and require that it be reviewed and updated biennially in accordance with new scientific information and effective educational strategies.

Parents of minor students shall be notified in advance of any human sexuality or AIDS/HIV instruction. Any parent may request that their child be excused from that portion of the instructional program under the procedures set forth in Oregon Revised Statute (ORS) 336.035(2).

The comprehensive plan of instruction shall include the following information that:

1. Promotes abstinence for school-age youth and mutually monogamous relationships with an uninfected partner for adults;
2. Allays those fears concerning HIV that are scientifically groundless;
3. Is balanced and medically accurate;
4. Provides balanced, accurate information and skills-based instruction on risks and benefits of contraceptives, condoms and other disease reduction measures;
5. Discusses responsible sexual behaviors and hygienic practices which may reduce or eliminate unintended pregnancy, exposure to HIV, hepatitis B/C and other sexually transmitted infections and diseases;
6. Stresses the risks of behaviors such as the sharing of needles or syringes for injecting illegal drugs and controlled substances;

7. Discusses the characteristics of the emotional, physical and psychological aspects of a healthy relationship;
8. Discusses the benefits of delaying pregnancy beyond the adolescent years as a means to better ensure a healthy future for parents and their children. The student shall be provided with statistics based on the latest medical information regarding both the health benefits and the possible side effects of all forms of contraceptives including the success and failure rates for prevention of pregnancy, sexually transmitted infections and diseases;
9. Stresses that HIV/STDs and hepatitis B/C can be possible hazards of sexual contact;
10. Provides students with information about Oregon laws that address young people's rights and responsibilities relating to childbearing and parenting;
11. Advises students of consequences of having sexual relations with persons younger than 18 years of age to whom they are not married;
12. Encourages family communication and involvement and helps students learn to make responsible, respectful and healthy decisions;
13. Teaches that no form of sexual expression or behavior is acceptable when it physically or emotionally harms oneself or others and that it is wrong to take advantage of or exploit another person;
14. Teaches that consent is an essential component of healthy sexual behavior. Course material shall promote positive attitudes and behaviors related to healthy relationships and sexuality, and encourage active student bystander behavior;
15. Teaches students how to identify and respond to attitudes and behaviors which contribute to sexual violence;
16. Validates the importance of one's honesty, respect for each person's dignity and well-being, and responsibility for one's actions;
17. Uses inclusive materials and strategies that recognizes different sexual orientations, gender identities and gender expression;
18. Includes information about relevant community resources, how to access these resources, and the laws that protect the rights of minors to anonymously access these resources; and
19. Is culturally inclusive.

The comprehensive plan of instruction shall emphasize skills-based instruction that:

1. Assists students to develop and practice effective communication skills, development of self-esteem and ability to resist peer pressure;
2. Provides students with the opportunity to learn about and personalize peer, media, technology and community influences that both positively and negatively impact their attitudes and decisions related

to healthy sexuality, relationships and sexual behaviors, including decisions to abstain from sexual intercourse;

3. Enhances students' ability to access valid health information and resources related to their sexual health;
4. Teaches how to develop and communicate sexual and reproductive boundaries;
5. Is research based, evidence based or best practice; and
6. Aligns with the Oregon Health Education Content Standards and Benchmarks.

All sexuality education programs emphasize that abstinence from sexual intercourse, when practiced consistently and correctly, is the only 100 percent effective method against unintended pregnancy, sexually transmitted HIV and hepatitis B/C infection and other sexually transmitted infections and diseases.

Abstinence is to be stressed, but not to the exclusion of contraceptives and condoms for preventing unintended pregnancy, HIV infection, hepatitis B/C infection and other sexually transmitted infections and diseases. Such courses are to acknowledge the value of abstinence while not devaluing or ignoring those students who have had or are having sexual relationships. Further, sexuality education materials, including instructional strategies, and activities must not, in any way use shame or fear-based tactics.

Materials and information shall be presented in a manner sensitive to the fact that there are students who have experienced, perpetrated or witnessed sexual abuse and relationship violence.

The district's health and sexuality education will provide information on menstrual health and will be inclusive and affirming of ---ALL Students

END OF POLICY

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**Legal Reference(s):**

[ORS 336.035](#)

[ORS 336.059](#)

[ORS 336.107](#)

[ORS 336.455 - 336.475](#)

[ORS 339.370 - 339.400](#)

[OAR 581-021-0009](#)

[OAR 581-021-0593](#)

[OAR 581-022-2030](#)

[OAR 581-022-2050](#)

[OAR 581-022-2220](#)

# OSBA Model Sample Policy

Code: IGBAF  
Adopted:

OK

## Special Education - Individualized Education Program (IEP)\*\*

An individualized education program (IEP) shall be developed and implemented for each student with disabilities in the district, kindergarten through 21 years of age, including those who attend a public charter school located in the district, are placed in or referred to a private school or facility by the district; or receive related services from the district. The district is responsible for initiating and conducting the meetings to develop, review and revise the IEP of a student with disabilities. The district will ensure that one or both parents are present at each meeting or are afforded the opportunity to participate and are given a copy of the IEP. A meeting to develop an IEP shall be held within 30 calendar days of a determination that the student needs special education and related services, once every 365 days thereafter and when considering a change in the IEP or placement.

If a student is to be placed or referred to a private school or facility or attends a private or parochial school, the district will ensure that a representative of the private school or facility attends the IEP meeting. If the representative of the private school or facility is unable to attend the IEP meeting, the district shall use other methods to ensure participation including but not limited to, individual or conference telephone calls or individual meetings.

END OF POLICY

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### Legal Reference(s):

[ORS 343.151](#)  
[ORS 343.155](#)

[OAR 581-015-2000](#)  
[OAR 581-015-2190](#)  
[OAR 581-015-2195](#)  
[OAR 581-015-2200](#)

[OAR 581-015-2205](#)  
[OAR 581-015-2210](#)  
[OAR 581-015-2215](#)  
[OAR 581-015-2220](#)  
[OAR 581-015-2225](#)  
[OAR 581-015-2229](#)  
[OAR 581-015-2230](#)

[OAR 581-015-2235](#)  
[OAR 581-015-2055](#)  
[OAR 581-015-2600](#)  
[OAR 581-015-2065](#)  
[OAR 581-015-2265](#)

Assistance to States for the Education of Children with Disabilities, 34 C.F.R. §§ 300.5 to -300.6, 300.22 to -300.24, 300.34, 300.43, 300.105 to -106, 300.112, 320.325, 300.328, 300.501 (2012).

# OSBA Model Sample Policy

Code: IGBB

Adopted:

## Talented and Gifted Program and/or Services\*\*

The district is committed to an educational program that recognizes, identifies and serves the unique strengths and needs of ~~talented and gifted~~ students identified as talented and gifted. Talented and gifted students ~~are those who have been identified as academically talented and/or intellectually gifted~~ demonstrate exceptional performance when compared to applicable developmental or learning progressions, with consideration given for variations in student's opportunity to learn and to culturally relevant indicators of ability.

The Board directs the superintendent to develop a ~~written identification~~ process for identifying identification of ~~academically talented and intellectually gifted~~ students in grades K through 12. [(See Board policy IGBBA – Talented and Gifted Students – Identification\*\*)]

~~A written plan shall be developed that identifies programs or services needed to address the assessed levels of learning and accelerated rates of learning of identified students and provides an opportunity for the student's parents to discuss with the district the programs and services available to the student and to provide input on the programs and services to be made available to the student.~~

The district will develop a written plan of instruction for talented and gifted students[ ~~in accordance with law.~~ <sup>OK</sup> [that:

1. Includes a statement of the district policy on the education of talented and gifted students (this policy);
2. Identifies and assesses special talented and gifted programs and services available in the district;
3. States goals related to providing such programs and services, including timelines for achievement;
4. Describes the programs and services intended to accomplish stated goals;
5. Describes how the district provides parents an opportunity to discuss and to provide input on programs and services for their child;
6. Describes how the district will evaluate progress of the plan; and
7. States the name and contact information for the district's talented and gifted coordinator.<sup>1</sup> ]

[The district shall submit such plan to the Oregon Department of Education (ODE) as directed.]

[The plan will be provided at the school or the district office, when requested, and will be published on the district's website. The ~~district~~ website shall ~~also~~ provide the name and contact information of the district's

<sup>1</sup> For the list of complete requirements of the plan, see ORS 343.397(1).

OK  
coordinator of special education and programs for talented and gifted.] [The district will annually report the name and contact information of the district's TAG coordinator to ODE.]

[The district may also identify and provide programs for students who demonstrate outstanding ability or potential in creative abilities in using original or nontraditional methods in thinking and producing; leadership abilities ability in motivating the performance of others in educational or noneducational settings; and/or unusual abilities ability in the visual or performing arts, such as dance, music or art.]

Complaints regarding programs and/or services can be filed in accordance with [Board Policy KL – Public Complaints, beginning at [Step 2]. The superintendent or designee may choose to convene a committee in making a decision.] [the procedure in the accompanying administrative regulation, IGBB-AR - Complaints Regarding the Talented and Gifted Program and/or Services.]

END OF POLICY

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**Legal Reference(s):**

[ORS 343.391 - 343.401](#)  
[ORS 343.407 - 343.413](#)

[OAR 581-022-2325](#)  
[OAR 581-022-2330](#)

[OAR 581-022-2370](#)  
[OAR 581-022-2500](#)

Senate Bill 486 (2021)

# OSBA Model Sample Policy

Code: IGBBA  
Adopted:

TAG Coordinator

## Talented and Gifted Students - Identification\*\*

In order to serve ~~academically~~ talented and ~~intellectually~~ gifted ("TAG") students in grades K through 12, the district directs the superintendent [or designee] ~~[after due consideration of the input of staff, parents and the community]~~ to establish an ~~written~~ identification process.

This process of identification shall include ~~as~~ at a minimum:

1. Use of ~~research-based best~~ evidence-based practices ~~to identify talented and gifted students from under-represented populations such as ethnic minorities, students with disabilities, students who are culturally and/or linguistically diverse or economically disadvantaged~~ that include a variety of tools and procedures to determine if a student demonstrates a pattern of exceptional performance and/or achievement that is relevant to the identification of TAG students under ORS 343.395.
2. ~~Behavioral, learning and/or performance information~~ Collection and use of multiple modes and methods of qualitative and quantitative evidence to allow appropriate members of a student's identification team to make a determination about the identification and eligibility of the students for TAG services, supports and/or programs; with no single test or piece of evidence eliminating a student from eligibility.
3. ~~A nationally standardized mental ability test for assistance in the identification of intellectually gifted students.~~
- 4.3. Use of methods and practices that minimize or seek to eliminate the effects of bias in assessment and identification of students from historically underrepresented populations including, but not limited to:
  - a. Students who are racially/ethnically diverse;
  - b. Students experiencing disability;
  - c. Students who are culturally and/or linguistically diverse;
  - d. Students experiencing poverty; and
  - e. Students experiencing high mobility.
- 5.4. Incorporate assessments, tools and procedures that will inform the development of an appropriate plan of instruction for students who are identified as TAG and describe how information from the assessments, tools and procedures used in the identification for TAG students will be used to support development of the plan of instruction.
- 6.5. Identify how the educational record under ORS 326.565 of the student being considered will document and reflect the record of the team's decision and the procedures and data used by the team to make the decision.
7. ~~A nationally standardized academic achievement test of reading or mathematics [or a test of total English Language Arts/Literacy or total mathematics] on the Smarter Balanced Assessment [Consortium] for assistance in identifying academically talented students.~~

~~Identified students shall score at or above the 97th percentile on one of these tests. Other students who demonstrate the potential to perform at the eligibility criteria, as well as additional students who are talented and gifted may be identified.~~

The district will provide professional development for staff assigned the responsibility for identification of talented and gifted students.

OK  
[The identification team may use sources of evidence described in OAR 581-022-2325(3) to provide students with multiple opportunities to demonstrate a pattern or preponderance of evidence of talent or giftedness.]

[Academic evidence reviewed shall align to the full depth, breadth, and complexity of Oregon's content standards and benchmarks. Standardized assessments used for academic/achievement-based identification shall include technical documentation demonstrating alignment or documentation of intended use for the purpose of TAG identification. Standardized assessments used for intellectually gifted identification shall include technical documentation demonstrating alignment to research-based best practices inclusive of students from underrepresented populations.]

OK  
When a student is identified for TAG, the district shall inform parents of the programs and services available to their student and provide an opportunity for parents to provide input to, and discuss TAG instruction proposed for their student. The instruction provided shall be designed to accommodate the student's assessed levels of learning and accelerated rates of learning. Parents may request the withdrawal of their student from TAG at any time.

If a parent is dissatisfied with the identification process or placement of their student, they may submit an appeal ~~the decision~~ through [Board policy KL - Public Complaints and begin at [Step 2] with the superintendent [or designee]] ~~[the accompanying administrative regulation, IGBBA-AR - Appeal Procedure for Talented and Gifted Student Identification and Placement\*\*].~~

After exhausting the district's appeal procedure and receiving the district's final decision, a parent may appeal the decision to the Deputy Superintendent of Public Instruction under Oregon Administrative Rule (OAR) 581-002-0001 – 581-002-0023. The district shall provide a copy of the OARs upon request.

END OF POLICY

#### Legal Reference(s):

[ORS 343.395](#)  
[ORS 343.407](#)  
[ORS 343.409](#)

[ORS 343.411](#)  
[OAR 581-021-0030](#)  
[OAR 581-022-2325](#)

[OAR 581-022-2330](#)  
[OAR 581-022-2370](#)  
[OAR 581-022-2500](#)

check w/ Chris Cr. on changes

# OSBA Model Sample Policy

Code: IGBHE  
Adopted:

## Expanded Options Program\*\*

The Board is committed to providing additional educational options to eligible students enrolled in grades 11 and 12 to continue or complete their education, to earn concurrent high school and college credits and to gain early entry into post-secondary education. The district's Expanded Options Program (EOP) will comply with all requirements of Oregon law (ORS 340) and give priority status to "at-risk" students.

### Eligible Students

Eligible students may apply to take courses at an eligible post-secondary institution through the Expanded Options Program. A student is eligible for the EOP if the student:

1. Is 16 years of age or older at the time of enrollment in a course under the EOP;
2. Is in grade 11 or 12 at the time of enrollment in a course under the EOP or has not yet completed the required credits to be in grade 11 or 12, but the district has allowed the student to participate in the program;
3. Has developed an educational learning plan;
4. Has not successfully completed the requirements for a high school diploma. A student who has graduated from high school may not participate; and
5. Is not an ~~foreign~~-exchange student enrolled in a school under a cultural exchange program.

### Student Notification

Prior to February 15 of each year, the district shall notify all high school students and the parent or guardian of students of the EOP for the following school year. The district will notify a transfer high school student, or a ~~returning dropout~~ student returning to high school after dropping out of school, of the EOP if the student enrolls after the district has issued the February 15 notice. The district will notify a high school student who has officially expressed an intent to participate in the EOP, and the student's parent or guardian, of the student's eligibility status within 20 business days of the expression of intent.

It is a priority for the district to provide information about the EOP to high school students who have dropped out of school. The district shall establish a process to identify and provide those students with information about the program. The district shall send information about the program to the last-known address of the family of the student.

The notice must include the following:

1. Financial arrangements for tuition, textbooks, equipment and materials;
2. Available transportation services;

3. The effect of enrolling in the EOP on the student's ability to complete high school graduation requirements;
4. The consequences of failing or not completing a post-secondary course;
5. Notification that participation in the EOP is contingent on acceptance by an eligible post-secondary institution; and
6. District timelines affecting student eligibility and duplicate course determinations;
- ~~7. Exclusion of duplicate courses as determined by the district;~~
- ~~8. The process for a student to appeal the district's duplicate course determination to the Superintendent of Public Instruction or the Superintendent's designee under ORS 340.030;~~
- ~~9. Exclusion of post-secondary courses in which a student is enrolled if the student is also enrolled full time in the resident high school.~~

### Enrollment Process

Prior to May 15 of each year, a student who is interested in participating in the EOP shall notify the district of the intent to enroll in eligible post-secondary courses during the following school year. A high school transfer student or ~~returning dropout~~ a student returning to high school after dropping out of school has 20 business days from the date of enrollment to indicate interest.

The district shall review with the student and the student's parent or guardian the student's current status toward meeting all state and district graduation requirements and the applicability of the proposed eligible post-secondary course to the remaining graduation requirements.

A student who intends to participate in the EOP shall develop an educational learning plan in cooperation with an advisory support team. An advisory support team may include the student, the student's parent or guardian and a teacher or a counselor. The educational learning plan may include:

1. The student's short-term and long-term learning goals and proposed activities; and
2. The relationship of the eligible post-secondary courses proposed under the EOP and the student's learning goals.

A student who enrolls in the EOP may not enroll in eligible post-secondary courses for more than the equivalent of two academic years. A student who first enrolls in the EOP in grade 12 may not enroll in eligible post-secondary courses for more than the equivalent of one academic year. If a student first enrolls in an eligible post-secondary course in the middle of the school year, the time of participation shall be reduced proportionately. If a student is enrolled in a year-round program and begins each grade in the summer session, summer sessions are not counted against the time of participation.

### Duplicate Courses

The district will establish a process to determine duplicate course designations. The district will notify an eligible student and the student's parent or guardian, of any course the student wishes to take that the district determines is a duplicate course, within 20 business days after the student has submitted a list of intended courses.

A student may appeal a duplicate course determination to the Board based on evidence of the scope of the course. The Board or designee will issue a decision on the appeal within 30 business days of receipt of the appeal. If the appeal is denied by the Board or designee, the student may appeal the district's determination to the Superintendent of Public Instruction or designee under ORS 340.030.

### **Expanded Options Program Annual Credit Hour Cap**

The number of quarter credit hours that may be awarded by a high school under the EOP is limited to an amount equal to the number of students in grades 9 through 12 enrolled in the high school multiplied by a factor of 0.33. For example, the cap for a high school with 450 students in grades 9 through 12 would be 148.5 ( $450 \times 0.33 = 148.5$ ). (The caps must be established separately for each high school.)

At the district's discretion, the district may choose to exceed both the individual high school level cap and the aggregate district level cap. If the district has more eligible students than are allowed under the credit hour cap the district shall establish a process for selecting eligible students for participation in the program. The process will give priority for participation to students who are "at risk." [An "at-risk student" means: (1) a student who qualifies for a free or reduced-price lunch program; or (2) an at-risk student as defined by rules adopted by the State Board of Education if it has adopted rules to define an at-risk student.]

If the district has not exceeded the credit hour cap, the district shall ensure that all eligible at-risk students are allowed to participate in the EOP and may allow eligible students who are not at-risk to participate in the program.

### **Post-Secondary Institution Credit**

Prior to beginning an eligible post-secondary course, the district shall notify the student of the number and type of credits that the student will be granted upon successful completion of the course. If there is a dispute between the district and the student regarding the number or type of credits that the district will or has granted to a student for a particular course, the student may appeal the district's decision to the [Board]<sup>{1}</sup>.

Credits granted to a student shall be counted toward high school graduation requirements and subject area requirements of the state and the district. Evidence of successful completion of each course and credits granted shall be included in the student's education record. A student shall provide the district with a copy of the student's grade in each course taken for credit under the EOP. The student's education record shall indicate that the credits were earned at an eligible post-secondary institution.

### **Financial Agreement**

The district shall negotiate in good faith a financial agreement with the eligible post-secondary institution for the payment of actual instructional costs associated with the student's enrollment, including tuition and fees, textbooks, equipment and materials.

### **Waiver**

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<sup>1</sup> {ORS 340.040(3) allows a student to appeal through an "appeals process adopted by the school district board."}

A district may request an EOP waiver from the Superintendent of Public Instruction<sup>2</sup> if: compliance with the EOP would adversely impact the finances of the district **or** if all conditions identified in ORS 340.083(1)(b)[<sup>3</sup>] exist.

1. ~~Compliance would adversely impact the finances of the district; or~~
2. ~~Accelerated college credit programs are offered by the district (e.g., Dual Credit, Sponsored-Based Dual Credit, Assessment-Based Dual Credit, Articulated Career Technical Education (CTE) courses, two-plus-two programs, Advanced Placement (AP), International Baccalaureate Programs or other locally developed program that offers Accelerated College Credit to their respective high school students).~~

### **Student Reimbursement**

Students are not eligible for any state student financial aid for college coursework, but students may apply to the district for reimbursement for any textbooks, fees, equipment or materials purchased by the student that are required for an eligible post-secondary course. All textbooks, fees, equipment and materials provided to a student and paid for by the district are the property of the district.

### **Transportation Services**

The district may provide transportation services to eligible students who attend eligible post-secondary institutions within the education service district boundaries of which the district is a component district.

### **Special Education Services**

The district of an eligible student participating in the EOP shall be responsible for providing any required special education and related services to the student. If a post-secondary institution intends to provide special education and related services to an EOP participant, the institution shall enter into a written contract with the district of the student.

The contract shall include the following at a minimum:

1. Allowance for the student to remain in the program during the pendency of any special education due process hearing unless the parent or guardian and district agree otherwise;

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<sup>2</sup> Oregon Department of Education

<sup>3</sup> [The district does all of the following:

1. Offers a dual credit program, a two-plus-two program, an advanced placement program, an International Baccalaureate program or any other accelerated college credit program;
2. Ensures that at-risk students who participate in the accelerated college credit programs are not required to make any payments for participation in the programs; and
3. Has a process for participation in the programs that allows:
  - a. All at-risk students who are eligible students to participate in the programs;
  - b. At-risk students to earn the number of credit hours established by the State Board of Education by rule under ORS 340.080; or
  - c. For an increasing number of at-risk students who are eligible students to participate in the programs each school year based on demand and appropriateness and as provided by a plan developed by the school district.]

2. Immediate notification to the district if the institution suspects that a student participating in the program may have a disability and requires special education or related services;
3. Immediate notification to the district if the student engaged in conduct that may lead to suspension or expulsion; and
4. Immediate notification to the district of any complaint made by the parent or guardian of the student regarding the student's participation in the program at the institution.

### **District Alternative Programs**

The EOP does not affect any program, agreement or plan that existed on January 1, 2006, between the district and a post-secondary institution, which has been continued or renewed.

Any new program, agreement or plan that is developed after January 1, 2006, and is intended to provide access for public high school students to a post-secondary course, may be initiated at the discretion of the district and the post-secondary institution.

END OF POLICY

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### **Legal Reference(s):**

[ORS 329.485](#)  
[ORS 332.072](#)

[ORS 336.615 - 336.665](#)  
[ORS Chapter 340](#)

Every Student Succeeds Act, 20 U.S.C. §§ 1111-1605; §§ 3111-3203 (2018).

McKinney-Vento Homeless Assistance Act, Subtitle VII-B, reauthorized by Title IX-A of Every Student Succeeds Act, 42 U.S.C. §§ 11431-11435 (2018).

Americans with Disabilities Act, 42 U.S.C. §§ 12101-12112 (2018); 29 C.F.R. Part 1630 (2022); 28 C.F.R. Part 35 (2022).

Americans with Disabilities Act Amendments Act, 42 U.S.C. §§ 12101-12133 (2018).

Rehabilitation Act, 29 U.S.C. §§ 791, 794 (2018).

Title IX of the Education Amendments, 20 U.S.C. §§ 1681-1683, 1701, 1703-1705, 1720 (2018).

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2022).

Individuals with Disabilities Education Act, as amended, 20 U.S.C. §§ 1400-1401, 1411-1416 (2018); 34 C.F.R. Part 300 (2022).

# OSBA Model Sample Policy

Code: IGDJ

Adopted:

## Interscholastic Activities\*\*

[The Board recognizes the integral role interscholastic activities<sup>1</sup> play in the character development and general enhancement of the education of its students. Accordingly, administrators, coaches, advisors, student participants, and others associated with the district's high school activities programs and events<sup>2</sup> shall conduct themselves in a manner that is consistent with the letter and spirit of policies, rules, and regulations of the district and ~~of the Oregon School Activities Association (OSAA) and the fundamental values of sportsmanship~~ any associated voluntary organization<sup>3</sup>. Each will be held accountable for their actions.]

The district and its schools may only be members of and pay fees, if any, to a voluntary organization that administers interscholastic activities or that facilitates the scheduling and programming of interscholastic activities if the organization:

1. Implements and adheres to equity focused policies that:
  - a. Address the use of derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule that occurs at an interscholastic activity, including by spectators of the interscholastic activity;
  - b. Prohibit discrimination;
  - c. Permit a student to wear religious clothing in accordance with the student's sincerely held religious belief and consistent with any safety and health requirements; and
  - d. Balance the health, safety, and reasonable accommodation needs of participants on an activity-by-activity basis;
2. Maintains a transparent complaint process that:
  - a. Has a reporting system to allow participants of interscholastic activities or members of the public to make complaints about student, coach, or spectator behavior;
  - b. Responds to a complaint made within 48 hours of the complaint being received; and
  - c. Resolves a complaint within 30 days of the complaint being received unless the organization determines that there is good cause to extend the timeline for resolving the complaint;
3. Develops and implements a system of sanctions against schools, students, coaches, and spectators if a complaint is verified; and

<sup>1</sup> Interscholastic activities includes: for students any grade from kindergarten through grade 12, athletics, music, speech and other similar or related activities; for students in any grade from kindergarten through grade eight, activities that are offered only before or after regular school hours and that may, but are not required to, involve interaction among other schools.

<sup>2</sup> ~~This applies to only OSAA-sanctioned activities and events.~~

<sup>3</sup> Includes a voluntary organization that administers interscholastic activities or that facilitates the scheduling and programming of interscholastic activities.

4. Performs an annual survey of students and their parents to understand and respond to potential violations of equity focused policies or other discrimination.

{<sup>4</sup>} [The district shall allow homeschooled students that reside in the district, students eligible to attend school and enrolled in a ~~district or ESD provided General Education Development (GED)~~ high school equivalency program<sup>5</sup> that reside in the district, and students attending a public charter school that does not provide interscholastic activities that reside in the district, the opportunity to participate in available interscholastic activities when the requirements found in Oregon law are met. OK

Interscholastic activities when provided by the district will comply with Title IX and other nondiscrimination laws.]

{<sup>6</sup>} [District employees, students, parents, alumni, and activity volunteers are prohibited from inducing or attempting to induce a student to attend a district school for interscholastic activity eligibility or participation. The principal, activities director, advisors and coaches are each responsible for ensuring student participants meet all district ~~and OSAA~~ eligibility requirements of participation and those of the associated voluntary organization. The principal [or designee] is responsible for ensuring accurate certification regarding the eligibility of participating students and for verifying that athletic directors, coaches of sports, and activity advisors have all required certifications prior to assuming their duties. The principal [or designee] shall ensure that a program is in place to effectively evaluate the performance of all coaches and activity advisors under their supervision.

Volunteers may be approved to assist with district activities with prior approval from the principal.

The principal shall investigate all allegations of district student ineligibility, staff recruitment violations or other student or staff conduct that may violate Board policies, administrative regulations, and/or ~~OSAA~~ the rules and regulations of the associated voluntary organization. The principal shall notify the superintendent [or designee] of conduct that violates the terms of this policy and report to the associated voluntary organization ~~OSAA as if~~ required.

An employee determined to have violated Board policies and/or rules and regulations of the associated voluntary organization ~~OSAA~~ [will] [may] be subject to discipline, up to and including, dismissal. A student in violation of Board policies and/or the ~~OSAA~~ rules and regulations of the associated voluntary organization will be subject to discipline, up to and including, dismissal from an interscholastic activity or program, suspension and/or expulsion from school. Volunteers in violation of Board policies and/or the ~~OSAA~~ rules and regulations of the associated voluntary organization shall be subject to discipline, up to and including, removal from district programs and activities and such other sanctions as may be deemed appropriate by the district.

Employees, volunteers, or students in violation of ~~OSAA~~ such policies, rules and/or regulations ~~will~~ [may] be required to remunerate the district in the event ~~of~~ fines are assessed ~~by OSAA~~ as a result of their actions.

<sup>4</sup> {This policy content is required practice but is not required policy language.}

<sup>5</sup> "High school equivalency program" means a program provided to assist a student in earning a certificate for passing an approved high school equivalency test such as the General Educational Development (GED) test.

<sup>6</sup> {The remaining policy content is optional, but highly recommended language to inform about and support governance of activities (see beginning bracket here; ending with last paragraph of policy – see closing bracket).}

The superintendent will develop procedures, as necessary, to implement this policy, including a process to ensure that all district rules governing the conduct of students, staff, and volunteers engaged in district activities are regularly reviewed and updated.

The district will annually review interscholastic activities and participation to determine whether the current offerings reflect the students the district serves.]

END OF POLICY

*OK delete*

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**Legal Reference(s):**

[ORS 326.051](#)  
[ORS 332.075\(1\)\(e\)](#)  
[ORS 332.107](#)  
[ORS 339.450 - 339.460](#)

[OAR 581-015-2255](#)  
[OAR 581-021-0045 – 0049](#)  
[OAR 581-022-2308\(2\)](#)  
[OAR 581-026-0005](#)

[OAR 581-026-0700](#)  
[OAR 581-026-0705](#)  
[OAR 581-026-0710](#)

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1683 (2018); Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 34 C.F.R. Part 106 (2022).

~~OREGON SCHOOL ACTIVITIES ASSOCIATION, OSAA HANDBOOK.~~

Montgomery v. Bd. of Educ., 188 Or. App. 63 (2003).

Senate Bill 1522 (2022).

# OSBA Model Sample Policy

Code: IK  
Adopted:

add  
to admin  
meeting 9/27

## Academic Achievement\*\*

The Board believes it is important that teachers have as much accurate knowledge of student achievement as possible to assess students' needs and growth; thus, a sharing of information among parent, teacher and student is essential.

The district shall ensure that all students have the opportunity to demonstrate progress toward mastery of the knowledge and skills of the student's current grade level or course content level. Students who have not yet met or who exceed all of the standards at any grade level, will be offered additional services or alternative educational or public school options.

The Board directs staff to follow these guidelines in measuring and determining student progress:

1. Parents and students ~~[will]~~ ~~[may]~~ be informed ~~[at least annually,]~~ of their student's progress toward achieving the academic content standards, including but not limited to:
  - a. Information on progress in each subject area to meet or exceed the academic content standards at the student's current grade level or course content level, including major goals used to determine the information;
  - b. Specific evidence of student progress toward mastery of a continuum of academic knowledge and skills (academic content standards) of a subject area, upon request from a parent;
  - c. [Evidence of the student's progress in a continuum of knowledge and skills that are not academic and that may include student behaviors that are defined by the district;]
  - d. Student scores on all state and local assessments indicating any of the requirements that have been waived for the district or the individual and time periods for the waiver; and
  - e. Student progress toward completion of diploma requirements to parents of students in grades 9-12, including credits earned, demonstration of extended application and demonstration of the Essential Skills.
2. Parents will be alerted and conferred with as soon as possible when a student's performance or attitude becomes unsatisfactory or shows marked or sudden deterioration;
3. Grades and/or portfolio content assessment will be based upon academic performance and will not include student attitude[ or behavior]. Grades will not be used for disciplinary purposes. Absenteeism or misconduct shall not be the sole criterion for the reduction of a student's grade[.] [;] [Behavior performance shall be reported separately;] OK
4. At comparable levels, the school system will strive for consistency in grading and reporting except when this consistency is inappropriate for certain classes or certain students;
5. When no grades are given but the student is evaluated in terms of progress, the school staff will ~~also~~ provide a realistic appraisal of the student's standing in relation to his/her peers show whether the student is achieving course requirements at the student's current grade level;

6. The staff will take particular care to explain to students the meaning of marks and symbols used to reflect student performance.

END OF POLICY

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**Legal Reference(s):**

[ORS 107.154](#)  
[ORS 329.485](#)

[ORS 343.295](#)  
[ORAR 581-021-0022](#)

[ORAR 581-022-2260](#)  
[ORAR 581-022-2270](#)

# OSBA Model Sample Policy

Code: IKF  
Adopted:

## Graduation Requirements\*\*

(If the district has additional credit or graduation requirements above the state requirements, the district is required to include those additional credits and graduation requirements in the following lists.)

The Board establishes graduation requirements for awarding of a high school diploma, a modified diploma, an extended diploma and an alternative certificate which meet or exceed state requirements.

A student may satisfy graduation requirements in less than four years. The district will award a diploma to a student fulfilling graduation requirements in less than four years if consent is given by the student's parent or guardian or by the student if the student is 18 years of age or older or emancipated.

If the district requires diploma requirements beyond the state requirements, the district shall grant a waiver for those requirements to any student who, at any time from grade 9 to 12, was:

1. A foster child<sup>1</sup>;
2. Homeless;
3. A runaway;
4. A child in a military family covered by the Interstate Compact on Educational Opportunity for Military Children;
5. A child of a migrant worker; or
6. Enrolled in the Youth Corrections Education Program or the Juvenile Detention Education Program.

For any student identified above, the district shall accept any credits earned by the student in ~~another district or public charter school~~ an educational program<sup>2</sup> in this state, applying those credits toward the state requirements for a diploma if the credits satisfied those requirements in that ~~district or public charter school~~ educational program in this state.

<sup>1</sup> As defined in ORS 30.297.

<sup>2</sup> "Educational program in this state" means an educational program that is provided by a school district, a public charter school, the Youth Corrections Education Program or the Juvenile Detention Program, or funded as provided by ORS 343.243 for students in a long term care or treatment facility described in ORS 343.962 or a hospital identified in ORS 343.261.

## Diploma

A high school diploma will be awarded to students in grades 9 through 12 who complete a minimum of 24 credits<sup>{3}</sup> which include at least:

1. Three credits in mathematics (shall include one unit at the Algebra I level and two units that are at a level higher than Algebra I);
2. Four credits in language arts (shall include the equivalent of one unit in written composition);
3. Three credits in science;
4. Three credits in social sciences (including history, [civics<sup>4</sup>,] geography and economics (including personal finance));
5. One credit in health education;
6. One credit in physical education; and
7. Three credits in career and technical education, the arts or world languages<sup>5</sup> (units shall be earned in any one or a combination).

The district shall offer students credit options provided the method for obtaining such credits is described in the student's personal education plan and the credit is earned by meeting requirements described in Oregon Administrative Rule (OAR) 581-022-2025.

To receive a diploma, in addition to credit requirements outlined in OAR 581-022-2000, a student must<sup>[6]</sup>:

1. Develop an education plan and build an education profile;
2. Demonstrate extended application through a collection of evidence; and
3. Participate in career-related learning experiences.

## Modified Diploma

A modified diploma will be awarded only to students who have demonstrated the inability to meet the full set of academic standards adopted by the State Board of Education for a diploma while receiving

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<sup>3</sup> {If the district has additional credit or graduation requirements, the district is required to include those additional credits and graduation requirements in the following lists. However, if the district provides an education as described in ORS 336.585 or 336.590 and awards high school diplomas, the district may not impose requirements for a high school diploma in those instances that are in addition to the requirements prescribed by ORS 329.451 (2)(a) or by rule of the State Board of Education.}

<sup>4</sup> [Civics becomes a half-credit requirement beginning on January 1, 2026 (~~Senate Bill 513, 2021~~ ORS 329.451). {This is not required language at this time but the district could choose to keep language with the footnote, and certainly should keep if the district already provides this instruction.}]

<sup>5</sup> "World language" includes sign language, heritage language and languages other than a student's primary language.

<sup>6</sup> [The proficiency in Essential Skills requirement has been waived and is not a condition of receiving a high school diploma during the 2021-2022, 2022-2023 or 2023-2024 school year (Senate Bill 744, 2021).]

reasonable modifications and accommodations. A modified diploma may only be awarded to a student who meets the eligibility criteria below and other criteria, if applicable, outlined in OAR 581-022-2010(3):

1. Has a documented history of an inability to maintain grade level achievement due to significant learning and instructional barriers; or
2. Has a documented history of a medical condition that creates a barrier to achievement.

Having met the above eligibility criteria, a modified diploma will be awarded to students who, while in grade nine through completion of high school, complete 24 credits which shall include:

1. Three credits in language arts;
2. Two credits in mathematics;
3. Two credits in science;
4. Two credits in social sciences (which may include history, civics, geography and economics (including personal finance));
5. One credit in health education;
6. One credit in physical education; and
7. One credit in career technical education, the arts or world languages (units may be earned in any one or a combination).

Students may earn additional credits to earn a modified diploma pursuant to OAR 581-022-2010.

In addition to credit requirements as outlined in OAR 581-022-2010, a student must:

1. Develop an education plan and build an education profile; and
2. Demonstrate extended application through a collection of evidence.

Districts may make modifications to the assessment for students who seek a modified diploma when the following conditions are met:

1. For a student on an individualized education program (IEP) or Section 504 plan, any modifications to work samples must be consistent with the requirements established in the IEP or 504 plan. Modifications include practices and procedures that compromise the intent of the assessment through a change in learning expectations, construct, or content that is to be measured, grade level standard, or measured outcome of the assessment. This means that IEP or 504 school teams responsible for approving modifications for a student's assessment may adjust the administration of the assessment and/or the assessment's achievement standard;
2. For a student not on an IEP or 504 plan, any modifications to work samples must have been provided to the student during their instruction in the content area to be assessed and in the year in which the student is being assessed, and modifications must be approved by the school team that is responsible for monitoring the student's progress toward the modified diploma.

Students not on an IEP or a Section 504 Plan may not receive a modified Smarter Balanced assessment.

A student's school team shall decide that a student should work toward a modified diploma no earlier than the end of grade six and no later than two years before the student's anticipated exit from high school.

A student's school team may decide to revise a modified diploma decision.

A student's school team may decide that a student who was not previously working toward a modified diploma should work toward one when the student is less than two years from anticipated exit from high school if the documented history has changed.

Beginning in grade five or beginning after a documented history to qualify for a modified diploma, the district shall annually provide to the parents or guardians of the student, information about the availability and requirements of a modified diploma.

### **Extended Diploma**

An extended diploma will be awarded only to students who have demonstrated the inability to meet the full set of academic content standards adopted by the State Board of Education for a diploma while receiving modifications and accommodations. To be eligible for an extended diploma, a student must:

1. While in grade nine through completion of high school, complete 12 credits, which may not include more than six credits in a self-contained special education classroom and will include:
  - a. Two credits in mathematics;
  - b. Two credits in language arts;
  - c. Two credits in science;
  - d. Three credits in history, geography, economics or civics;
  - e. One credit in health;
  - f. One credit in physical education; and
  - g. One credit in the arts or a world language.
2. Have a documented history of:
  - a. An inability to maintain grade level achievement due to significant learning and instructional barriers;
  - b. A medical condition that creates a barrier to achievement; or
  - c. A change in the student's ability to participate in grade level activities as a result of a serious illness or injury that occurred after grade eight.

Beginning in grade five or beginning after a documented history to qualify for an extended diploma, the district shall annually provide to the parents or guardians of the student, information about the availability and requirements of an extended diploma.

### **Alternative Certificates**

Alternative certificates will be awarded to students who do not satisfy the requirements for a diploma, a modified diploma, or an extended diploma if the students meet minimum requirements established by the district.

Beginning in grade five or beginning after a documented history to qualify for an alternative certificate, the district shall annually provide to the parents or guardians of the student, information about the availability and requirements of an alternative certificate.

### **Other District Responsibilities**

The district will ensure that students have onsite access to the appropriate resources to achieve a diploma, a modified diploma, an extended diploma, or an alternative certificate at each high school. The district will provide [age-appropriate and developmentally appropriate] literacy instruction to all students until graduation.

The district may not deny a student the opportunity to pursue a diploma with more stringent requirements than a modified diploma or an extended diploma for the sole reason the student has the documented history listed under the above modified diploma or extended diploma requirements.

The district may award a modified diploma or an extended diploma to a student only upon the written consent of a student who is emancipated or who has reached the age of 18 at the time the modified or extended diploma is awarded, or the student's parent or guardian. The district shall receive the written consent during the school year in which the modified diploma or the extended diploma is awarded.

A student shall have the opportunity to satisfy the requirements for a modified diploma, an extended diploma or an alternative certificate in the later of 4 years after starting the ninth grade, or until the student reaches the age of 21 if the student is entitled to a public education until the age of 21 under state or federal law.

A student may satisfy the requirements for a modified diploma, an extended diploma or an alternative certificate in less than four years but not less than three years. To satisfy the requirements for a modified diploma, an extended diploma or an alternative certificate in less than four years, the student's parent or guardian or a student who is emancipated or has reached the age of 18 must provide written consent which clearly states the parent, guardian or student is waiving the fourth year and/or years until the student reaches the age of 21. A copy of the consent will be forwarded to the district superintendent who will annually report to the Superintendent of Public Instruction the number of such consents.

A student who qualifies to receive or receives a modified diploma, an extended diploma, or an alternative certificate shall have the option of participating in a high school graduation ceremony with the student's class.

A student who receives a modified diploma, an extended diploma, or an alternative certificate shall have access to instructional hours, hours of transition services and hours of other services that are designed to meet the unique needs of the student and when added together provide a total number of hours of instruction and services that equals at least the total number of instructional hours that are required to be provided to students who are attending a public high school.

The district will award to students with disabilities a document certifying successful completion of program requirements. No document issued to students with disabilities educated in full or in part in a special education program shall indicate that the document is issued by such a program. When a student who has an IEP completes high school, the district will give the student an individualized summary of performance.

Eligible students with disabilities are entitled to a free appropriate public education (FAPE) until the age of 21, even if they have earned a modified diploma, an extended diploma, an alternative certificate or completion of a General Education Development document. The continuance of services for students with disabilities for a modified diploma, extended diploma or alternative certificate is contingent on the IEP team determining the student's continued eligibility and special education services are needed.

Students and their parents will be notified of graduation and diploma requirements.

The district may not deny a diploma to a student who has opted out of statewide assessments if the student is able to satisfy all other requirements for the diploma. Students may opt-out of the Smarter Balanced or alternate Oregon Extended Assessment by completing the Oregon Department of Education's Opt-out Form<sup>7</sup> and submitting the form to the district.

The district will issue a high school diploma pursuant to Oregon law (ORS 332.114) to a veteran if the veteran resides within the boundaries of the district or is an Oregon resident and attended a high school of the district, or to a deceased veteran, upon request from a representative of the veteran, if the deceased veteran resided within the boundaries of the district at the time of death or was an Oregon resident at the time of death and attended a high school of the district.

The act of student-initiated test impropriety is prohibited. A student that participates in an act of student-initiated test impropriety will be subject to discipline. "Student-initiated test impropriety" means student conduct that is inconsistent with the *Test Administration Manual* or accompanying guidance; or results in a score that is invalid.

END OF POLICY

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**Legal Reference(s):**

[ORS 329.007](#)  
[ORS 329.045](#)  
[ORS 329.451](#)  
[ORS 329.479](#)  
[ORS 332.107](#)  
[ORS 332.114](#)  
[ORS 336.585](#)  
[ORS 336.590](#)

[ORS 339.115](#)  
[ORS 339.505](#)  
[ORS 343.295](#)  
  
[OAR 581-021-0009](#)  
[OAR 581-022-0102](#)  
[OAR 581-022-2000](#)  
[OAR 581-022-2005](#)

[OAR 581-022-2010](#)  
[OAR 581-022-2015](#)  
[OAR 581-022-2020](#)  
[OAR 581-022-2025](#)  
[OAR 581-022-2030](#)  
[OAR 581-022-2115](#)  
[OAR 581-022-2120](#)  
[OAR 581-022-2505](#)

*Test Administration Manual*, published by the OREGON DEPARTMENT OF EDUCATION.

~~House Bill 2056 (2021).~~

~~Senate Bill 744 (2021).~~

~~Senate Bill 1522 (2022).~~

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<sup>7</sup> Oregon Department of Education page for: [30-day notice and opt-out form](#)

# OSBA Model Sample Policy

Code: JEA  
Adopted:

OK

1/2020

## Compulsory Attendance\*\*

Except when exempt by Oregon law, all children between ages 6 and 18 who have not completed the 12th grade are required to regularly attend a public, full-time school during the entire school term. Persons having legal control of a child between the ages 6 and 18, who has not completed the 12th grade, are required to have the child attend and maintain the child in regular attendance during the entire school term.

All children five years of age who have been enrolled in a public school are required to attend regularly while enrolled in the public school. Persons having legal control of a child, who is five years of age and has enrolled the child in a public school, are required to have the child attend and maintain the child in regular attendance during the school term.

~~Persons having legal control of a child between the ages 6 and 18, who has not completed the 12th grade, are required to have the child attend and maintain the child in regular attendance during the entire school term. Persons having legal control of a child, who is five years of age and has enrolled the child in a public school, are required to have the child attend and maintain the child in regular attendance during the school term.~~

Attendance supervisors shall monitor and report any violation of the compulsory attendance law to the superintendent or designee. ~~Failure to send a child to school and to maintain a child in regular attendance in school is a Class C violation.~~

The district will develop procedures for issuing a citation.

A parent who is not supervising their child by requiring school attendance may also be in violation of Oregon Revised Statute (ORS) 163.577(1)(c); failing to supervise a child is a Class A violation.

## Exemptions from Compulsory School Attendance

In the following cases, children shall not be required to attend public, full-time schools:

1. Children being taught in a private or parochial school in courses of study usually taught in kindergarten through grade 12 in the public schools, and in attendance for a period equivalent to that required of students attending public schools.
2. Children proving to the Board's satisfaction that they have acquired equivalent knowledge to that acquired in the courses of study taught in kindergarten through grade 12 in the public schools.
3. Children who have received a high school diploma or a modified diploma.
4. Children being taught, by a private teacher, the courses of study usually taught in kindergarten through grade 12 in the public school for a period equivalent to that required of students attending public schools.

5. Children being educated in the home by a parent, guardian or private teacher~~[:].]~~
  - a. [When a student is taught or is withdrawn from a public school to be taught by a parent or private teacher, the parent or teacher must notify the [ ] Education Service District (ESD) in writing within 10 days of such occurrence. In addition, when a home-schooled student moves to a new ESD, the parent shall notify the new ESD in writing, within 10 days, of the intent to continue home schooling. The ESD~~superintendent~~ shall acknowledge receipt of any notification in writing within 90 days of receipt of the notification. The ESD is to notify, at least annually, school districts of home-schooled students who reside in their district;
  - b. Each child being taught by a parent or private teacher shall be examined no later than August 15, following grades 3, 5, 8 and 10:
    - (1) If the student was withdrawn from public school, the first examination shall be administered at least 18 months after the date the student withdrew;
    - (2) If the child never attended public or private school, the first examination shall be administered prior to the end of grade 3~~:~~;
  - c. Procedures for homeschooling students with disabilities are set out in Oregon Administrative Rule (OAR) 581-021-0029~~:~~;
  - d. Examinations testing each child shall be from the list of approved examinations from the State Board of Education;
  - e. The examination must be administered by a neutral, individual qualified to administer tests on the approved list provided by the Oregon Department of Education;
  - f. The person administering the examination shall score the examination and report the results to the parent. Upon request of the ESD superintendent, the parent shall submit the results of the examination to the ESD;
  - g. All costs for the test instrument, administration and scoring are the responsibility of the parent;
  - h. In the event the ESD superintendent finds that the child is not showing satisfactory educational progress, the ESD superintendent ~~shall provide the parent with a written statement of the reasons for the finding, based on the test results and~~ shall follow the guidelines in Oregon Revised Statutes and Oregon Administrative Rules.]
6. Children whose sixth birthday occurred on or before September 1 immediately preceding the beginning of the current school year, if the parent or guardian notified the child's resident district in writing that the parent or guardian is delaying the enrollment of their child for one school year to better meet the child's needs for cognitive, social or physical development, as determined by the parent or guardian.
7. Children who are present in the United States on a nonimmigrant visa and who are attending a private, accredited English language learner program in preparation for attending a private high school or college.
8. Children excluded from attendance as provided by law.

9. Children who are eligible military children<sup>1</sup> are exempt up to 10 days after the date of military transfer or pending transfer indicated in the official military order.
10. An exemption may be granted to the parent or guardian of any child 16 or 17 years of age who is lawfully employed full-time, or who is lawfully employed part-time and enrolled in school, a community college or an alternative education program as defined in ORS 336.615.
11. An exemption may be granted to any child who is an emancipated minor or who has initiated the procedure for emancipation under ORS 419B.550 - 419B.558.

END OF POLICY

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**Legal Reference(s):**

[ORS 153.018](#)  
[ORS 163.577](#)  
[ORS 339.010 - 339.095](#)  
[ORS 339.139](#)

[ORS 339.990](#)  
[ORS 807.065](#)  
[ORS 807.066](#)  
[ORAR 581-021-0026](#)

[ORAR 581-021-0029](#)  
[ORAR 581-021-0076](#)  
[ORAR 581-021-0077](#)

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<sup>1</sup> "Military child" means a child who is in a military family covered by the Interstate Compact on Educational Opportunity for Military Children, as determined under rules adopted by the State Board of Education.

# OSBA Model Sample Policy

Code: JEA-AR  
Revised/Reviewed:

## Compulsory Attendance Notices and Citations\*\*

Compulsory attendance citations may be issued by the superintendent or designee as a means to enforce the compulsory attendance law. All such citations shall be issued according to the following procedures:

### 1. Attendance Supervisor

The attendance supervisor shall:

- a. Determine that the parent or guardian has failed to enroll their child and to maintain the child in regular attendance. "Regular attendance" means attendance which does not include more than eight unexcused one-half day absences or the equivalent in any four-week period in which school is in session;
- ~~b. [Verify the compulsory attendance violation through such means as matching attendance supervisor records with classroom teacher records;]~~
- e.b. Provide written compulsory attendance noncompliance notification to the parent or guardian within 24 hours of verification of the violation. If the student is a youth offender on parole or probation, at the same time notice is given to the parent or other person, the attendance supervisor shall notify the student's parole or probation officer of the absence;
- ~~d.c.~~ e.c. Serve the notification personally or by certified mail. The notification will be written in the native language of the parent or guardian;
- e.d. Ensure that notification includes a statement requiring the student to appear on the next school day following receipt of the notice and to maintain regular attendance for the remainder of the school year;
- ~~f.e.~~ e.f. Ensure that the notification states that the parent or guardian has the right to request an evaluation to determine if the child should have an individualized education program (IEP), if the child does not currently have an IEP, or request a review of their child's current IEP;
- ~~g.f.~~ e.g. Provide a copy of the notice and pertinent attendance records to the superintendent or designee at the time notice is given to the parent or guardian;
- ~~h.g.~~ e.h. Notify the superintendent within three days of knowledge that the parent or guardian receiving the notification has not complied with the notice.

### 2. Superintendent or Designee

The superintendent or designee will:

- ~~a. [Review the compulsory attendance noncompliance notice and pertinent student attendance records;]~~
- b.a. If after review of attendance records a citation appears warranted, prior to issuing the citation, provide written notification to the parent or guardian. The notice will be written in the native language of the parent or guardian ~~can understand~~. The notice will be delivered personally or by certified mail and will state that:

- (1) The student is required to attend regularly, a school full-time during the school year;

~~(2) — Failure to send the student to school and to maintain the student in regular attendance is a Class C violation;~~

~~(3)~~(2) A citation for violation of compulsory attendance laws may be issued by the superintendent or designee;

~~(4)~~(3) The parent has the right to request:

- (a) An evaluation to determine if the student should have an IEP, if the student does not have one; or
- (b) A review of the student's current IEP.

~~(5)~~(4) The parent or guardian and student are required to attend a conference with the superintendent or designee. The date, time and place of conference will be specified. This conference may not be scheduled until after an evaluation or review as described in item 4.3. above, if requested by the parent, has been completed~~;~~~~].~~

~~(0) — [Failure to attend the conference or failure to send the student to school following the conference may result in the issuance of a citation.]~~

#### 4.3. [Conference

The superintendent or designee will conduct a conference with the parent or guardian and student. Auxiliary aids and services will be provided upon advance request. The superintendent or designee will:

- a. [Review Oregon's compulsory attendance law and the student's attendance record;
- b. Determine the reasons for the noncompliance;
- c. Develop a plan for student attendance improvement (i.e., contract, etc.);
- d. Inform the parent and student of other available resources in the district and community, if available;
- e. Discuss the potential consequences for continued compulsory attendance noncompliance, including the potential for the issuance of a citation and the consequences for violation of the Board's student conduct and truancy policies.]]

#### 5.4. [Citation

Compulsory attendance noncompliance citations may be issued by the superintendent or designee.

The superintendent or designee shall:

- a. Determine that the parent or guardian has continued to fail to enroll their student in school or maintain the student in regular attendance following a conference or has refused to attend the conference as required;
- b. Contact the clerk of the court for the county and determine which court will hear the case and when;
- c. Ensure the official representing the district will be available to present evidence of the violation at the time and date specified;
- d. Determine whether the local court's interpretation of Oregon Revised Statute (ORS) 339.095 requires the student be named as defendant. Complete form accordingly;
- e. Complete Uniform Compulsory Attendance Citation and Complaint form as follows:

- (1) Specify appropriate court, district, circuit, municipal or justice;

- (2) Specify when the court will hear the case, including date, time and location of the court appearance at the bottom of the form;
- (3) Provide all pertinent defendant information, including the name and address of the parent or guardian. Only one adult should be named as the defendant;
- (4) Provide all pertinent offense information, including the period of time during which the absences occurred;
- (5) Ensure the minimum number of absences constituting irregular attendance as defined in law has in fact occurred. Excused absences should not be counted for purposes of this citation;
- (6) Provide all pertinent student information including the grade, date of birth, length of time in the district and parent(s) name(s);
- (7) Provide date of superintendent's or designee's prior notification of attendance requirements, consequences including possibility of citation and conference meeting date was sent;
- (8) Ensure that the prior notice was served to the same parent or guardian who is named as the defendant in the citation;
- (9) Provide district name, date, superintendent's name and signature. If the superintendent has designated another district official to issue citations, such delegation will be documented and the delegated official's name and signature will appear on the form;
- (10) Personally serve (not mail) the citation;
- (11) Complete time and date citation was issued, name, title and signature of district official serving the citation;
- (12) Ensure the parent or guardian is provided the citation;
- (13) Ensure the designated court is appropriately notified immediately after the citation is served;
- (14) Ensure the district retains a copy of the citation;
- ~~(15) [Ensure the parent or guardian is served with the goldenrod (bottom) copy;]~~
- ~~(16) [Ensure the white and yellow copies are sent to the appropriate court, immediately after the citation is served;]~~
- ~~(17) [Ensure the pink copy is retained by the district. Additional information may be maintained on the back of the pink copy, including the dates the attendance supervisor's and the superintendent's or designee's notifications were sent, dates of contact with parents or guardians and names of school staff who have been involved with the issue;]~~
- ~~(+18)~~(15) Consult with district's attorney to assist in these procedures, as necessary.

f. Maintain student attendance records in accordance with applicable education records laws. ]

[District]  
[Address, City, State, Zip Code]  
[Phone: ]

\*\*\*\*\* ATTENDANCE SUPERVISOR'S NON-ENROLLMENT NOTICE \*\*\*\*\*

Date \_\_\_\_\_  
Parent(s)/Guardian \_\_\_\_\_  
Address \_\_\_\_\_

Dear \_\_\_\_\_,  
(Parent/Guardian)

~~A determination has been made that your student~~ After review of attendance records, your child \_\_\_\_\_; (name) ~~has~~ is not ~~enrolled in school and has not been~~ exempted from compulsory attendance ~~in~~ for school, under provisions of ORS 339.030, and is not currently enrolled in school.

In accordance with Oregon law, ~~you are hereby notified that you~~ children between ages 6 through 18 must be enrolled ~~your student at in [ ] S~~ school. Please enroll your child at [name of school] no later than the next school day following receipt of this notice and maintain your child in regular attendance for the remainder of the school year.

~~Please be advised that failure to comply with Oregon's compulsory attendance law is a Class C violation and may result in a compulsory attendance citation and complaint issued by the superintendent and a fine by a court.~~

You may request an evaluation to determine if your child should have an individualized education program (IEP), or request a review of your child's current IEP.

[If your child is taught by a parent, guardian or private teacher, you must notify your local education service district and comply with ORS 339.035. Your local ESD is: [name of ESD and contact information].]

If you have questions and/or need assistance, please contact [name] at [number].

Sincerely,

[Attendance Supervisor] [Principal]

[cc: [Principal]]/[Superintendent]]

[District]  
[Address, City, State, Zip Code] | [Phone:   ]

\*\*\*\*\* ATTENDANCE SUPERVISOR'S IRREGULAR ATTENDANCE NOTICE \*\*\*\*\*

Date \_\_\_\_\_  
Parent(s)/Guardian \_\_\_\_\_  
Address \_\_\_\_\_

Dear \_\_\_\_\_,  
(Parent/Guardian)

~~A determination has been made that your student~~ After review of attendance records, your child, \_\_\_\_\_; (name) is not maintaining regular attendance as required by ORS 339.065. ["Regular attendance" is defined by Oregon law as attendance which does not include more than eight unexcused one-half day absences or the equivalent in any four-week period school is in session.] According to ~~school~~ attendance records, your child has had [    ] unexcused absences from school ~~[    ] days~~ on the following dates: [    ].

~~You are hereby notified that you must~~ Please send your child to school no later than the next school day following receipt of this notice and maintain your child in regular attendance for the remainder of the school year. ~~Please be advised that failure to comply with Oregon's compulsory attendance law is a Class C violation and may result in a compulsory attendance citation and complaint issued by the superintendent and a fine by a court.~~

You may request an evaluation to determine if your child should have an individualized education program (IEP), or request a review of your child's current IEP. If you request an evaluation for an IEP or a review of a current IEP, ~~the~~ conference ~~referred to above~~ will be held after such evaluation or review.

[If your child is taught by a parent, guardian or private teacher, you must notify your local education service district and comply with ORS 339.035. Your local ESD is: [name of ESD and contact information].]

If you have questions ~~and/or need assistance~~, please contact [name] at [number].

Sincerely,

[Attendance Supervisor] [Principal]

[cc:    [Principal]]/[Superintendent]]

[District]  
[Address, City, State, Zip Code]  
[Phone: ]

**\*\* SUPERINTENDENT'S NOTICE OF COMPULSORY ATTENDANCE NONCOMPLIANCE \*\***

Date \_\_\_\_\_  
Parent(s)/Guardian \_\_\_\_\_  
Address \_\_\_\_\_

Dear \_\_\_\_\_,  
(Parent/Guardian)

According to district records, you were notified by the district's attendance supervisor on [date] that your child, [name], ~~has~~ ~~failed to~~ is not yet enrolled in school [failed is not] maintaining regular school attendance as required by Oregon compulsory attendance laws.

Your child was required to appear in school no later than the next school day following your receipt of ~~that the~~ notice and maintain regular attendance for the remainder of the school year. District records indicate your child continues to be absent from school. A child is required to regularly attend a full-time school.

The superintendent or designee may issue a citation for your continued violation of Oregon's compulsory attendance law.

~~A student is required to regularly attend a full-time school. Failure to send the student to school and to maintain the student in regular attendance is a Class C violation. A citation for such compulsory attendance violations may result in a court fine.~~

You ~~did not~~ may request an evaluation of your child's individualized education program (IEP) or a review of your child's current IEP.] [requested an evaluation to determine if your child should have an individualized education program (IEP).] [ [requested a review of an existing IEP for your child] and the requested evaluation or review was completed on [date].]

In accordance with law, you and your child are required to attend a conference with [designated school official] on [date] at [time] to discuss:

1. Oregon's compulsory attendance law and your child's attendance record;
2. The reasons for your noncompliance;
3. The development of a plan for improvement;
4. Resources available to help your child be successful in school, referrals to other agencies as may be needed and such alternative education information as may be required by law;
5. Any questions you may have concerning the potential consequences for continued noncompliance with Oregon's compulsory attendance law, as set forth above and as provided in Board student conduct and truancy policies.

Failure to attend this conference or ~~failure to send your student to school and~~ to maintain your child in regular school attendance ~~following this conference~~ will result in the issuance of a citation ~~to you~~, as provided by law.

[If your child is taught by a parent, guardian or private teacher, you must notify your local education service district and comply with ORS 339.035. Your local ESD is: [name of ESD and contact information].]

If you have questions and/or need assistance, please contact [name] at [number].

Sincerely,

[Superintendent]/[Designee]

# OSBA Model Sample Policy

Code: JGAB  
Adopted:

## Use of Restraint or Seclusion\*\*

The Board is dedicated to the development and application of best practices within the district's public educational/behavioral programs. The Board establishes this policy and its administrative regulation to define the circumstances that must exist and the requirements that must be met prior to, during, and after the use of restraint or seclusion as an intervention with district students.

The use of the following types of restraint on a student in the district is prohibited:

1. Chemical restraint.
2. Mechanical restraint.
3. Prone restraint.
4. Supine restraint.
5. Any restraint that involves the intentional and nonincidental use of a solid object<sup>1</sup>, including a wall or the floor, to impede a student's movement, unless the restraint is necessary to prevent an imminent life-threatening injury or to gain control of a weapon.
6. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, neck or throat.
7. Any restraint that places, or creates a risk of placing, pressure on a student's mouth, unless the restraint is necessary for the purpose of extracting a body part from a bite.
8. Any restraint that impedes, or creates a risk of impeding, breathing.
9. Any restraint that involves the intentional placement of the hands, feet, elbow, knee or any object on a student's neck, throat, genitals or other intimate parts.
10. Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on the stomach or back by a knee, foot or elbow bone.
11. Any action designed for the primary purpose of inflicting pain.

**The use of a seclusion cell is prohibited.**

Restraint or seclusion may not be used for discipline, punishment, retaliation or convenience of staff, contractors or volunteers of the district.

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<sup>1</sup> The use of a solid object, including furniture, a wall, or the floor, by district staff performing a restraint is not prohibited if the object is used for the staff's own stability or support while performing the restraint and not as a mechanism to apply pressure directly to the student's body.

Restraint may be imposed on a student in the district only under the following circumstances:

1. The student's behavior imposes a reasonable risk of imminent and substantial physical or bodily injury to the student or others; and
2. Less restrictive interventions would not be effective.

Seclusion may be used on a student in the district only under the following circumstances:

1. The student's behavior imposes a reasonable risk of imminent and serious bodily injury to the student or others; and
2. Less restrictive interventions would not be effective.

If restraint or seclusion is used on a student, by trained staff or other staff available in the case of an emergency when trained staff are not immediately available due to the unforeseeable nature of the emergency, e.g., teacher, administrator[, or volunteer], it will be used only for as long as the student's behavior poses a reasonable risk of imminent and substantial physical or bodily injury to the student or others and less restrictive interventions would not be effective. Students will be continuously monitored by staff for the duration of the restraint or seclusion.

## Definitions

1. "Restraint" means the restriction of a student's actions or movements by holding the student or using pressure or other means.

"Restraint" does not include:

- a. Holding a student's hand or arm to escort the student safely and without the use of force from one area to another;
- b. Assisting a student to complete a task if the student does not resist the physical contact; or
- c. Providing reasonable intervention with the minimal exertion of force necessary if the intervention does not include a restraint prohibited under Oregon Revised Statute (ORS) 339.288 and the intervention is necessary to:
  - (1) Break up a physical fight;
  - (2) Interrupt a student's impulsive behavior that threatens the student's immediate safety, including running in front of a vehicle or climbing on unsafe structures or objects; or
  - (3) Effectively protect oneself or another from an assault, injury or sexual contact with the minimum physical contact necessary for protection.

2. "Seclusion" means the involuntary confinement of a student alone in a room from which the student is physically prevented from leaving. Seclusion includes, but is not limited to, the involuntary confinement of a student alone in a room with a closed door, whether the door is locked or unlocked.

"Seclusion" does not include the removal of a student for a short period of time to provide the student with an opportunity to regain self-control if the student is in a setting from which the student is not physically prevented from leaving, or a student being left alone in a room with a closed door for a brief period of time if the student is left alone for a purpose that is unrelated to the student's behavior.

3. "Seclusion cell" means a freestanding, self-contained unit that is used to isolate the student from other students or physically prevent a student from leaving the unit or cause the student to believe that the student is physically prevented from leaving the unit.

4. "Serious bodily injury" means any significant impairment of the physical condition of a person, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.
5. "Substantial physical or bodily injury" means any impairment of the physical condition of a person that requires some form of medical treatment.
6. "Mechanical restraint" means a device used to restrict the movement of a student or the movement or normal function of a portion of the body of a student.

"Mechanical restraint" does not include:

- a. A protective or stabilizing device ordered by a licensed physician; or
  - b. A vehicle safety restraint when used as intended during the transport of a student in a moving vehicle.
7. "Chemical restraint" means a drug or medication that is used on a student to control behavior or restrict freedom of movement that is not prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice for standard treatment of the student's medical or psychiatric condition; and administered as prescribed by a licensed physician or other qualified health professional acting under the professional's scope of practice.
  8. "Prone restraint" means a restraint in which a student is held face down on the floor.
  9. "Supine restraint" means a restraint in which a student is held face up on the floor.

Any student being restrained or secluded within the district whether in an emergency or as a part of a plan shall be constantly monitored by staff for the duration of the intervention. Any room used for seclusion of a student must meet the standards as outlined in Oregon Administrative Rule (OAR) 581-021-0568.

The district shall utilize the [ <sup>2</sup> ] training program of restraint or seclusion for use in the district. As required by state regulation, the selected program shall be one approved by the Oregon Department of Education (ODE) and include, but not limited to, positive behavior support, conflict prevention, de-escalation and crisis response techniques. Any program selected by the district must be in compliance with state and federal law with respect to the use of restraint and seclusion.

An annual review of the use of restraint and seclusion during the preceding school year shall be completed and submitted to ODE to ensure compliance with district policies and procedures.

The results of the review and annual report shall be documented and shall include at a minimum:

1. The total number of incidents involving restraint;
2. The total number of incidents involving seclusion;
3. The total number of seclusions in a locked room;
4. The total number of students placed in restraint;
5. The total number of students placed in seclusion;
6. The total number of incidents that resulted in injuries or death to students or staff as a result of the use of restraint or seclusion;

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[<sup>2</sup> The district must identify the program utilized for training.]

7. The total number of students placed in restraint or seclusion more than 10 times in a school year and an explanation of what steps have been taken by the district to decrease the use of restraint and seclusion for each student;
8. The total number of restraint or seclusion incidents carried out by untrained individuals;
9. The demographic characteristics<sup>3</sup> of all students upon whom restraint or seclusion was imposed;
10. The total number of rooms available for use by the district for seclusion of a student and a description of the dimensions and design of the rooms.

This annual report shall be made available to the public at the district's main office and on the district's website, and to the Board.

At least once each school year the parents and guardians of students of the district shall be notified about how to access the report.

The district shall investigate all complaints regarding the use of restraint and/or seclusion practices according to the procedures outlined in Board policy KL - Public Complaints and KL-AR - Public Complaint Procedure. The complaint procedure is available at the district's administrative office and is available on the home page of the district's website.

The complainant, whether an organization or an individual, may appeal a district's final decision to the Oregon Department of Education pursuant to OAR 581-002-0001 - 581-002-0023.[ This appeal process is identified in administrative regulation KL-AR(2) - Appeal to the Deputy Superintendent of Public Instruction.]

The superintendent shall develop administrative regulations to carry out the requirements set forth in this policy and to meet any additional requirements established by law related to the use, reporting, and written documentation of the use of restraint or seclusion by district staff.

END OF POLICY

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**Legal Reference(s):**

[ORS 161.205](#)  
[ORS 339.250](#)  
[ORS 339.285](#)  
[ORS 339.288](#)  
[ORS 339.291](#)  
[ORS 339.294](#)  
[ORS 339.297](#)

[ORS 339.300](#)  
[ORS 339.303](#)  
  
[OAR 581-021-0061](#)  
[OAR 581-021-0550](#)  
[OAR 581-021-0553](#)  
[OAR 581-021-0556](#)

[OAR 581-021-0563](#)  
[OAR 581-021-0566](#)  
[OAR 581-021-0568](#)  
[OAR 581-021-0569](#)  
[OAR 581-021-0570](#)  
[OAR 581-022-2267](#)  
[OAR 581-022-2370](#)

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<sup>3</sup> Including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual student.

# OSBA Model Sample Policy

Code: JHC  
Adopted:

## Student Health Services and Requirements\*\*

Although the district's primary responsibility is to educate students, the students' health and general welfare is also an ~~major~~ important Board ~~concern~~ responsibility. The Board believes school programs should be conducted in a manner that protects and enhances student and employee health and is consistent with good health practices.

[The district shall staff nursing services appropriate for students with medical needs and prevention-oriented health services per applicable requirements of Oregon Revised Statutes (ORS) 336.201 and Oregon Administrative Rule (OAR) 581-022-2220.]

The district shall provide:

1. One registered nurse or school nurse for every 125 medically fragile students;
2. One registered nurse or school nurse or one licensed practical nurse under the supervision of a registered nurse or school nurse for each nursing-dependent student; and
3. One registered nurse or school nurse for every 225 medically complex students.

The district may use the most cost effective means available to meet the above requirements.

[The nurse(s) employed by the district shall be licensed to practice as a registered nurse or nurse practitioner in Oregon and will function as an integral member of the instructional staff, serving as a resource person to teachers in securing appropriate information and materials on health-related topics.]

[Any nurse(s) providing services on behalf of the district shall follow all applicable requirements of ORS Chapter 678 and OAR Chapter 851. This includes, but is not limited to, delegation in accordance with OAR 851-047, which includes performing a nursing assessment of the patient prior to delegation, providing adequate supervision during the delegation, and evaluating the skills, ability and willingness of the delegee.<sup>1</sup>]

The district shall maintain a prevention-oriented health services program which provides:

1. Pertinent health information on the students, as required by Oregon statutes or rules;
2. Health appraisal to include screening for possible vision or hearing problems ~~[and also scoliosis];~~
3. Health counseling for students and parents, when appropriate;

<sup>1</sup> For additional delegation requirements, see OAR [851-047-0030](#).

4. Health care and first-aid assistance that are appropriately supervised and isolates the sick or injured child from the student body;
5. Control and prevention of communicable diseases as required by Oregon Health Authority, Public Health Division, and the county health department;
6. Assistance for students in taking prescription and/or nonprescription medication according to established district procedures;
7. Services for students who are medically fragile or have special health care needs;
8. Integration of school health services with school health education programs.

The Board directs its district health staff to coordinate with health personnel from other public agencies in matters pertaining to health instruction or the general health of students and employees.

In accordance with the requirements of federal law, the district recognizes its responsibility to notify parents in advance of any nonemergency, invasive physical examination<sup>2</sup> or screening that is required as condition of attendance; administered and scheduled by the school in advance; and not necessary to protect the immediate health and safety of the student, or of other students. Notification will be provided at least annually at the beginning of the school year or when enrolling students for the first time in school and will include the specific or approximate dates during the school year when such activities are scheduled or expected to be scheduled.

Procedures shall be developed and implemented to carry out this policy. All district employees will be apprised of their responsibilities in this area. Parents shall have the opportunity to request their students be exempt from participation in ~~[scoliosis,]~~ vision or hearing screening. The district will abide by those requests.

END OF POLICY

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**Legal Reference(s):**

[ORS 329.025](#)  
[ORS 336.201](#)

[ORS 336.211](#)  
[OAR 581-022-2050](#)

[OAR 581-022-2220](#)  
[OAR 581-022-2225](#)

Protection of Pupil Rights, 20 U.S.C. § 1232h (~~2012~~2018); Student Rights in Research, Experimental Programs and Testing, 34 C.F.R. Part 98 (~~2017~~2022).

Every Student Succeeds Act, 20 U.S.C. § 7928 (~~2012~~2018).

Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (~~2012~~2018).

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<sup>2</sup> The term “invasive physical examination,” as defined by law, means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision or scoliosis screening. The term does not include any physical examination or screening that is permitted or required by state law, including physical examinations or screenings that are permitted without parental notification.

# OSBA Model Sample Policy

2013

Code: KBA  
Adopted:

## Public Records Request\*\*

OK

~~"Public record" means any information that:~~

- ~~1. Is prepared, owned, used or retained by the district;~~
- ~~2. Is related to an activity, transaction or function of the district; and~~
- ~~3. Is necessary to satisfy the fiscal, legal, administrative or historical policies, requirements or needs of the district.~~

A request to inspect or receive a copy of a public record shall be in writing and will be presented to the [district] office.

A "public record" includes any writing that contains information relating to the conduct of the public's business, prepared, owned, used or retained by the district regardless of physical form or characteristics, unless otherwise exempted by law.<sup>1</sup> "Writing" ~~includes~~ means handwriting, typewriting, printing, photographing and every means of recording, including letters, words, pictures, sounds, or symbols or combination thereof and all papers, maps, files, facsimiles or electronic recordings. Public record does not include any writing that does not relate to the conduct of the public's business and that is contained on a privately owned computer ~~messages on voice mail or on other telephone message storage and retrieval systems, or spoken communication that is not recorded.~~<sup>2</sup>

~~A request to inspect or receive a copy of a public record shall be in writing and will be presented to the [superintendent's] office.~~

~~Board meetings and records will be matters of public information subject to such restrictions as are set by federal law or regulation, by state statute or by pertinent court rulings.~~

~~The Board's official minutes, its written policies and its financial records will be available at the superintendent's office for inspection by any citizen desiring to examine them during hours when the superintendent's office is open.~~ All such information will be made available to individuals with disabilities in ~~any appropriate~~ an accessible format, upon request and with appropriate advanced notice. Auxiliary aids and services available to ensure equally effective communications to qualified persons with disabilities may include large print, Braille, audio recordings, readers, assistance in locating materials or other equally effective accommodations.

<sup>1</sup> There are multiple definitions for "public record" in ORS 192. This definition comes from ORS 192.311 and applies to the inspection of records.

<sup>2</sup> In accordance with *Bialostosky v. Cummings*, 319 Or. App. 352 (2022), an individual board member may be considered a public body for public record purposes. Consequently, records created and retained solely by individual board members may be considered public records.

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Public Records Request\*\* – KBA  
1-2

The Board supports the right of the people to know about programs and services of their schools and will make reasonable every efforts to disseminate information. Each principal is authorized to use all available means available to keep parents and others of his/her in the particular school's community informed about the school's program and activities.

No records will be released for inspection by the public or any unauthorized persons—either by the superintendent or any other person designated as custodian for district records—if such disclosure would be contrary to the public interest, as described in state law.

The Board reserves the right to establish a fee schedule which will reasonably reimburse the district for the actual cost of making public records available pursuant to law. The district will not be obligated to complete a request for which the requester has not paid the fee as permitted by state law. There will be no additional charge for auxiliary aids and services provided for qualified persons with disabilities.

Employee and volunteer personal residential addresses, personal electronic mail addresses (~~other than district electronic mail addresses assigned by the district to district employees~~), social security numbers, dates of birth and personal telephone or cellular numbers, and other information listed in Oregon Revised Statute (ORS) 192.355 as exempt, contained in personnel records maintained by the district are exempt from public disclosure pursuant to Oregon Revised Statute (ORS) 192.363 - 368 and ORS 192.355(3). District electronic mail addresses assigned by the district to district employees are not exempt. ~~Such information may be released only upon the written request of the employee or volunteer or as otherwise provided by law.~~ This exemption does not apply to a substitute teacher, as defined in ORS 342.815, when requested by a professional education association of which the substitute teacher may be a member. ~~District electronic mail addresses assigned by the district to district employees are not exempt.~~

The district will not disclose the identification badge or card of an employee without the employee's written consent if the badge or card contains the employee's photograph and the badge or card was prepared solely for internal use by the district to identify district employees. A duplicate of the photograph used on the badge or card shall not be disclosed.

The district shall not, in accordance with state law, disclose personal information for the purpose of enforcement of federal immigration laws.

The district shall retain and maintain its public records in accordance with Oregon Administrative Rule (OAR) 166-005-0010 and Chapter 166, Division 400 and ORS Chapter 192.

END OF POLICY

Legal Reference(s):

ORS 180.805  
ORS Chapter 192

OAR 137-004-0800(1)  
OAR 166-005-0010

OAR 166-400

Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101-12213 (2012~~8~~); 29 C.F.R. Part 1630 (2017~~2021~~); 28 C.F.R. Part 35 (2017~~2021~~).  
OREGON DEP'T OF JUSTICE, OREGON ATTORNEY GENERAL, *Public Records and Meetings Manual* (2014).  
Americans with Disabilities Act Amendments Act of 2008, 42 U.S.C. §§ 12101-12133 (2018).  
*Bialostosky v. Cummings*, 319 Or. App. 352 (2022).

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Public Records Request\*\* – KBA

# OSBA Model Sample Policy

Code: KBA-AR  
Revised/Reviewed:

## Public Records Request

In compliance with Oregon law the following guidelines apply to the dissemination, inspection and examination of the public records of the district:

1. A public records request shall be submitted in writing through the [district office] at [address].
2. Upon receipt of a written request, the district shall respond within five business days<sup>1</sup> acknowledging receipt of the request or completing<sup>2</sup> the district's response to the request.

If the district provides an acknowledgment of the request, it must:

- a. Confirm that the district is the custodian of the requested record;
  - b. Inform the requester that the district is not the custodian of the requested record; or
  - c. Notify the requester that the district is uncertain whether the district is the custodian of the requested record.
3. If the district is the custodian of the requested record, as soon as reasonably possible but not later than 10 business days after the date the district is required to acknowledge receipt of the request as described above, the district shall:
  - a. Complete its response to the public records request in accordance with ORS 192.329(2). If the district determines that a record is exempt from public disclosure, the district will include a statement to that effect and that the requester may appeal the decision pursuant to state law; or
  - b. Provide a written statement that the district is still processing the request and a reasonable estimated date by which the district expects to complete its response based on the information currently available.
4. The time periods, established by Oregon law and identified above in Section 2 or 3, will not apply to the district if compliance would be impracticable because:
  - a. The staff or volunteers<sup>3</sup> necessary to complete a response to the public records request are unavailable;
  - b. Compliance would demonstrably impede the district's ability to perform other necessary services; or

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<sup>1</sup> "Business day" means a day other than Saturday, Sunday or a legal holiday, and on which at least one paid employee of the district is scheduled to and does report to work. Business day does not include any day on which the central administration offices of the district are closed.

<sup>2</sup> The district response to a public records request will be considered complete when it complies with criteria in Oregon law (ORS 192.329).

<sup>3</sup> Staff member or volunteers who are on leave or are not scheduled to work are considered to be unavailable.

c. Of the volume of the public records request being simultaneously processed by the district.

~~The~~ In these situations, the district shall, as soon as practicable and without unreasonable delay, acknowledge a public records request and complete the response to the request.

5. The district may request additional information or clarification from the requester for the purpose of expediting the district's response to the request as permitted by law. If the district requests additional information or clarification, in good faith, the obligation to complete the request is suspended until the requester provides the requested information or clarification or affirmatively declines to provide the information or clarification. If the requester fails to respond within 60 days to a good faith request from the district for information or clarification, the district shall close the request.
6. If a copy of a public record is requested, the district will provide a single copy. If a request to inspect a public record is made and the record is maintained in a machine readable or electronic form, the custodian shall provide the record in the form requested, if available. If the public record is not available in the form requested, it will be ~~provided~~ made available in the form the record is maintained.
7. If a person who is a party to a civil judicial proceeding to which the district is a party or who has filed notice under Oregon Revised Statute (ORS) 30.275(5)(a) asks to inspect or to receive a copy of a public record that the person knows relates to the proceeding or notice, the individual must submit the request in writing to the designated custodian of district records and at the same time to the district's attorney.
8. Information will be made available to individuals with disabilities in an ~~appropriate~~ accessible format upon request and advance notice. Auxiliary aids and services available to qualified persons with disabilities may include large print, Braille, audio recordings, readers, assistance in locating materials or other equally effective accommodations.
9. Where the labor effort exceeds 30 minutes, labor, material and out-of-pocket charges will be reimbursed to the district. Labor will be calculated at the hourly rate of the employee affected. Materials and out-of-pocket charges will be reimbursed at the established rate of [\$.25 per page]. Auxiliary aids and services for qualified persons with disabilities will be available at no additional charge.

If the district has informed the requester of a permitted fee, the obligation of the district to complete its response to the request is suspended until the fee has been received by the district. If the requester fails to pay the fee within 60 days of the date ~~he/she was~~ they were informed of the fee or fails to pay the fee within 60 days of the date on which the district informed them of the denial of the fee waiver, the district shall close the request.

~~The district reserves the right to restrict the inspection of some public records to the district's facilities.~~

**Knappa School District #4**  
**Board Meeting Background Information**

☐ Policy  
☒ Financial  
☐ Discussion

☐ Vision & Goals  
☐ Information  
☐ Resolution

**Item Title: School Bus Purchase**

**Presenter: Dr. Fritz**

**Background Information Related to this Issue:**

The School Board allocates resources annually for the purchase of new school buses to replace older units in the district's fleet.

Western Bus Sales bids buses through the Eugene School District and Knappa is able to "piggy back" on that pricing.

The bus we have identified is a 72 passenger Blue Bird bus. It will come equipped with interior cameras and back up camera. This bus will be designed as a route bus.

This bus will be the second in our fleet to run on propane fuel. The cost per gallon for fuel is lower and there is a federal rebate of .50/gallon. Propane buses also require less routine maintenance, and burn cleaner.

We now have on-site propane fueling.

This bus qualifies for a \$50,000 Oregon DEQ grant to offset the cost of purchase, given that we will be retiring a bus that is less efficient and has higher emissions. We also have made application for a EPA grant that can (if received) offset another \$30,000 of the cost.

This bus, pending Board approval, would be available in fall of 2023.

**Background (con't)****Financial Impact:**

The purchase price is \$171,891, which will be offset by a \$50,000 grant, making the net cost \$121,891. If the EPA grant is received, the net cost will be \$91,891.

**Recommended Action:**

It is the recommendation of the Superintendent that the Board authorize purchase of the Blue Bird bus as described above, and that the Board grant the superintendent authority to spend up to \$180,000 for this vehicle (\$130,000 or 100,000 net after the rebate, depending on whether we receive one or two grants).

# DIVISION 22 STANDARDS

## Knappa School District No. 4 2021-2022 School Year Compliance

Rule Number & Title	Summary	Compliance Status
<p>*New Rules/Requirements for reporting on the 2021-22 SY are highlighted in yellow</p> <p>**New Rules/Requirements for implementation in the 2022-23 SY are highlighted in blue</p>	<p>* <i>Modifications and waivers for 2021-22 are in italics and highlighted in yellow</i></p> <p>**<i>Modifications and waivers for 2022-23 are in italics and highlighted in blue</i></p>	
<a href="#">581-022-0102 Definitions</a>	All definitions as they pertain to D22	n/a
* <a href="#">581-022-0106(4) State Standards for the 2021-22 School Year</a>	<p>School districts and public charter schools must periodically submit to the Department a plan for operation during the 2021-22 school year. The plan must be submitted on a timeline to be determined by the Department and on a form provided by the Department.</p> <p>**This requirement will carry over to the 2022-23 school year under <a href="#">OAR 581-022-0107</a> Operational Plans for the 2022-23 School Year.</p>	Met
<a href="#">581-022-2000 Diploma Requirements</a>	<p>*<i>Waiver – Essential Skills for class of 2022. OAR 581-022-2000(7) is waived for Students first enrolled in ninth grade in the 2018-19 school year or earlier or were first enrolled in ninth grade in the 2019-2020 and have an approved early graduation plan. Oh</i></p> <p>All requirements for standard diploma.</p>	Waived
<a href="#">581-022-2005 Veterans Diploma</a>	Basic information regarding the requirement to offer Veterans Diploma.	Met

<a href="#">581-022-2010 Modified Diploma</a>	All requirements for the Modified Diploma.	Met
<a href="#">581-022-2015 Extended Diploma</a>	All requirements for the Extended Diploma.	Met
<a href="#">581-022-2020 Alternative Certificate</a>	All requirements for the Alternative Certificate.	Met
<a href="#">581-022-2025 Credit Options</a>	Elective or content credit may be earned based on mastery of recognized standards, competencies and skills.	Met
<a href="#">581-022-2030 District Curriculum</a>	Outlines all required components of a district's planned K–12 instructional program.	Met
<a href="#">581-022-2045- Prevention Education in Drugs and Alcohol</a>	Emphasizes prevention strategies, availability of school/community resources, management of peer pressure, responsible decision-making, positive health choices.  Includes staff training re: referral procedures and staff responsibilities.	Met
<a href="#">581-022-2050 Human Sexuality Education</a>	Districts must plan for and implement K-12 comprehensive sexuality education program that meets the Health Education Standards, including providing instruction on child abuse prevention, healthy relationships, and healthy sexuality.	Correction Plan Approved by ODE and In Progress
<a href="#">581-022-2055 Career Education</a>	K-12 Career Education as part of Comprehensive School Counseling.	Met
<a href="#">581-022-2060 Comprehensive School Counseling</a>	Comprehensive plan to meet academic, career, social-emotional and community involvement development of every student.  Plan/Profile for all students in grades 7-12, that builds upon itself year to year.  Annual Review of District Plan required.  Districts operating remote or online programs	Met

	and serving students in a remote instructional model must ensure full access to comprehensive counseling services.	
<a href="#">581-022-2100 Administration of State Assessments</a>	Definitions and policies related to Test Administration.	Met
<a href="#">581-022-2110 Exception of Students with Disabilities from State Assessments</a>	Applies to students with disabilities with an IEP or a Section 504 plan.  States that a public entity cannot exempt a student from state testing, unless the parent has made a request for exemption.	Met
<a href="#">581-022-2115 Assessment of Essential Skills</a>	<i>*Waiver – Essential Skills for class of 2022, 2023, and 2024. See section (22) of the rule.</i>  Policies governing the Assessment of Essential Skills, including diploma requirements and local performance assessments. One worksample per grade must be provided to students in grades 3-8 and one offered in high school, using Official State Scoring Guides, in the following areas: writing, speaking, math problem-solving, and scientific inquiry; or, comparable measure adopted by the district.  Also defines Assessment of Essential Skills Review Panel (AESRP) policies/practices.	Waived
<a href="#">581-022-2120 Essential Skill Assessments for English Language Learners</a>	Districts must determine policy whether to allow students to demonstrate proficiency in the student's native language.	Met
<a href="#">581-022-2130 Kindergarten Assessment</a>	<i>*Waived for 2021-22.</i>  KA measures school readiness, which may include the following: physical and social-emotional development, early literacy, language, cognitive, logic and reasoning.	n/a

<a href="#">581-022-2205 Policies on Reporting of Child Abuse</a>	School Boards must adopt policies on Child Abuse Reporting. Outlines all requirements that the policy must include.	Met
<a href="#">81-022-2210 Anabolic Steroids and Performance Enhancing Substances</a>	Includes training requirements for coaches and athletic directors and utilization of evidence-based programs, e.g. ATLAS and ATHENA.	Met
<a href="#">581-022-2215 Safety of School Sports – Concussions</a>	Definitions and policies for athletic participation, including training requirements..	Met
<a href="#">581-022-2220 Health Services</a>	Policies/practices that govern district health, including: school nurses services, prevention of communicable disease, availability of health rooms/space, vision and hearing screenings, health records, staff CPR training requirements, medically fragile student services, medication administration, and medical emergency response for each building.	Met
<a href="#">581-022-2223 Healthy and Safe Schools Plan</a>	Definitions, HASS Plan requirements, final plan due by 7/1/19.  Building lead levels checked every 6 years, testing requirements defined.	Met
<a href="#">581-022-2225 Emergency Plans and Safety Programs</a>	Regulations for establishing and updating HASS Plans, annual statements/final test results re: lead in water tested as per ODE schedule set forth in HASS plan.	Met
<a href="#">581-022-2230 Asbestos Management Plans</a>	Asbestos Management Plan requirements.  Training requirement for custodial and maintenance staff- OSHA.	Met
<a href="#">581-022-2250 District Improvement Plan</a>	Definitions and guidelines for requirements for district CIP.	Met

	<p>Must be done once every 4 years, unless there are substantial changes, which are defined in the Standard.</p> <p>Community input and evaluation of the plan are critical components.</p>	
<a href="#">581-022-2255 School and District Performance Report Criteria</a>	<p>Definitions and required components of state, district and school report cards, based on identified performance standards.</p> <p>State Superintendent must make available to the public and media by 12/15.</p> <p>School districts must make a copy of the state provided district and school to parent(s) or guardian(s) by 1/15. They may be mailed, sent electronically, or posted on the school or district website.</p>	Met
<a href="#">581-022-2260- Records and Reports</a>	<p>Requirements for filing state records and reports; maintaining student records and policy for Student Activity Funds.</p>	Met
<a href="#">*581-022-2263 Physical Education Requirements</a>	<p>Grade level time requirements for PE instruction.</p> <p>K-5 requirement: 150 minutes/week (4 day week = 120 minutes).</p> <p>*6-8 requirement for 2021-22 SY: 180 minutes/week (4 day week = 144 minutes).</p> <p>**Increase to 225 for the 2022-23 SY (4 day week = 180).</p> <p>Requirements must also be met for students being served in a remote and online instructional model.</p>	Met

<a href="#">581-022-2265 Report on PE Data</a>	<p>Provide data to ODE annually on PE minutes, physical capacity and facilities.</p> <p><b>**Note for the 22-23 SY: These collections are suspended from July 1, 2022 through June 30, 2023.</b></p>	Met
<a href="#">581-022-2267 Annual Report on Restraint and Seclusion</a>	Definitions and guidance on requirements for annual report completed via the ODE Restraint and Seclusion Incidents Data Collection and the ODE Seclusion Rooms Data Collection.	Met
<a href="#">581-022-2270 Individual Student Assessment, Recordkeeping and Reporting</a>	Includes requirements for proficiency-based instruction and assessment, grading systems, and annual reports on student progress.	Met
<a href="#">581-022-2300 Standardization</a>	Outlines methods of verifying compliance with Division 22 standards.	Met
<a href="#">581-022-2305 District Assurances of Compliance with Public School Standards</a>	Requirements for annual Division 22 Standards assurances process: make report to board in September or October, report to ODE by November 15, must use ODE provided form for report to community, post report on district website and provide ODE with link to precise location.	Met
<a href="#">581-022-2310 Equal Education Opportunities</a>	Policies regarding Equal Opportunity and prohibition of harassment, intimidation, bullying, and cyberbullying,	Met
<a href="#">581-022-2312 Every Student Belongs</a>	<p>Requires adoption of a policy that (among other things) prohibits the use or display of hate symbols, establishes procedures for addressing bias incidents.</p> <p>Districts that sponsor public charter schools are also assuring their charter schools have adopted the appropriate policy.</p>	Met

<a href="#">581-022-2315 Special Education for Children with Disabilities</a>	Mandates a district provide an educational program to serve eligible students with disabilities in accordance with all applicable OARs.	Met
<a href="#">581-022-2320 Required Instructional Time</a>	<p>Requirements for instructional time in grades K-12: Grade 12 — 966 hours; Grades 9–11 — 990 hours; and Grades K–8 — 900 hours.</p> <p>Requirements must also be met for students being served in a remote and online instructional model. See <a href="#">Remote &amp; Online Learning Policy FAQ</a>.</p>	Met
<a href="#">**581-022-2325 Identification of Academically Talented and Intellectually Gifted Students</a>	<p>Guidelines for TAG identification.</p> <p>Revised standard adopted in 2022.</p> <p><b>**New for 2022-23 SY: Person who is responsible for identification must be trained.</b></p>	Met
<a href="#">581-022-2330 Rights of Parents of TAG Students</a>	<p>Parent right to notification at time of identification regarding services and programs offered, opportunity to provide input on their child's plan.</p> <p>Parents may opt their student out at any time.</p>	Met
<a href="#">581-022-2335 Daily Class Size</a>	Must maintain class sizes that promote effective practices consistent with expected outcomes.	Met
<a href="#">581-022-2340 Media Programs</a>	<p>Provides guidelines for a cohesive K-12 media program, including expectations around facilities and materials, staffing, program development, instructional goals, and program maintenance.</p> <p>In regards to staffing, at minimum, a district/school must employ a classified employee to oversee and maintain the media program. If a certificated media specialist is not employed by the district, the district may consult with Jennifer Maurer, the School Library Consultant at the State Library of Oregon, and should either consult with the local ESD, or a</p>	Met

	local public librarian to assist with program development, implementation, and maintenance.	
<a href="#">581-022-2345 Auxiliary Services</a>	Compliance with statute and rules regarding transportation, food, custodial, facilities, equipment and materials services.	Met
<a href="#">581-022-2350 Independent Adoptions of Instructional Materials</a>	<p>Requirements for conducting an independent adoption of instructional materials.</p> <p>Districts that use digital content as core curriculum for a course of study or any part thereof must complete an independent adoption of the digital instructional materials. If districts did not do this process in the 2021-22 school year or prior, they will need to indicate this in their Division 22 reporting in November 2022, and complete the process to resolve this non-compliance. Districts must provide their local school board with the information in sections 1 through 7 of OAR 581-022-2350 to inform the local school board's review and independent adoption of instructional materials.</p>	Met
<a href="#">581-022-2355 Instructional Materials Adoption</a>	Districts must follow the adoption cycle established by the State Board of Education and provide free and appropriate instructional materials that meet the NIMAS guidelines.	Met
<a href="#">581-022-2360 Postponement of Purchase of State-Adopted Instructional Materials</a>	Postponement of instructional materials adoption, based on the state adoption cycle, requires an application to the State.	Met
<a href="#">581-022-2370 Complaint Procedures</a>	Each district must have a written complaint policy, describing the process.	Met
<a href="#">581-022-2400 Personnel</a>	All teachers, specialists and administrators employed must be licensed	Met
<a href="#">581-022-2405 Personnel Policies</a>	District must adopt personnel policies that include:	Met

	<p>Affirmative action, staff development, Equal Employment Opportunity, Evaluation Procedures, Employee Communication System, release of information in employee file for anyone convicted of a crime under ORS 342.143</p> <p>Includes requirements for bonded employees.</p>	
<a href="#">581-022-2410 Teacher and Administrator Evaluation and Support</a>	Districts must establish local evaluation systems aligned to the requirements in the <a href="#">Oregon Framework for Teacher and Principal Evaluation and Support</a> .	Met
<a href="#">581-022-2415 Core Teaching Standards</a>	<p>Core teaching standards must be used to evaluate teachers. InTASC standards defined.</p> <ol style="list-style-type: none"> <li>1. The Learner and Learning.</li> <li>2. Content</li> <li>3. Instructional Practice</li> <li>4. Professional Responsibility</li> </ol>	Met
<a href="#">581-022-2420 Educational Leadership - Administrator Standards</a>	<p>Administrators must be evaluated on adopted leadership standards.</p> <ol style="list-style-type: none"> <li>1. Visionary Leadership</li> <li>2. Instructional Improvement</li> <li>3. Effective Management</li> <li>4. Inclusive Practice</li> <li>5. Ethical Leadership</li> <li>6. Socio-political context</li> </ol>	Met
<a href="#">581-022-2430 Fingerprinting of Subject Individuals in Positions Not Requiring Licensure as Teachers, Administrators, Personnel Specialists, School Nurses</a>	Compliance with OAR 581-021-0510	Met
<a href="#">581-022-2440 Teacher Training Related to Dyslexia</a>	<p>School districts must ensure that at least one kindergarten through grade five teacher in each kindergarten through grade five school has received training related to dyslexia.</p> <p>A waiver may be obtained using the process</p>	Met

	outlined in 581-002-1810.	
<a href="#">581-022-2445 Universal Screenings for Risk Factors of Dyslexia</a>	<p>School districts must universally screen for risk factors of dyslexia in kindergarten, and for students entering Oregon schools for the first time in first grade, using a screening test that is on the <a href="#">Department's approved list</a>.</p> <p>Districts may select a tool not on the approved list through a petition process outlined in the rule. .</p>	Met
<a href="#">581-022-2505 Alternative Education Programs</a>	Policies and procedures relative to alternative education programs.	Met
<a href="#">581-022-2510 Suicide Prevention Plan</a>	Requires adoption of a policy on suicide prevention for students, particularly focused on LGBTQ2SIA+ (lesbian, gay, bisexual, transgender/non-binary, queer/questioning, two-spirit, intersex, asexual, and the myriad other ways to describe sexual and gender identities) youth, foster youth, youth with disabilities, BIPOC (Black, Indigenous, and People of Color) and tribal communities/members/students as well as historically and currently underserved youth, in kindergarten through grade 12. Includes requirements of the plan.	Met

# Progressive Design-Build Agreement

## Document No. 544

Second Edition, 2022

© Design-Build Institute of America  
Washington, D.C.





## Design-Build Institute of America - Contract Documents

### LICENSE AGREEMENT

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased, or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification, or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification, or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error-free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty," which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings, or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgment.** You acknowledge that you have read this agreement, understand it, and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

# INSTRUCTIONS

For DBIA Document No. 544 Progressive Design-Build Agreement (2022 Edition)

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## Checklist

Use this Checklist to ensure that the Agreement is fully completed and all exhibits are attached.

_____	Page 1	Owner's name, address, and form of business
_____	Page 1	Design-Builder's name, address, and form of business
_____	Page 1	Project name and address
_____	Section 2.1.7	Identify other exhibits to the Agreement
_____	Section 4.3.2	Complete blanks for additional sum for use of Work Product
_____	Section 5.2.1	Complete blanks for calendar days and note the optional language that is provided
_____	Section 5.2.2	Insert any interim milestones (optional)
_____	Section 5.4	Complete blanks for liquidated damages and note the optional provisions that are provided
_____	Section 5.5	If the parties select the option provided they must insert an amount
_____	Section 5.6	Complete blanks for early completion bonus and note the optional provision that is provided
_____	Section 5.7	Note the optional provisions that are provided
_____	Section 6.1.1	Complete blank for Phase 1 Services price
_____	Section 6.1.3	Insert basis for pricing specific Work (optional)
_____	Section 6.2	Complete blank for Lump Sum pricing (optional)
_____	Section 6.3	Choose markups for changes
_____	Section 6.4	Choose basis for Fee and complete blanks
_____	Section 6.4.2	Insert financial arrangements for adjustments and note optional provisions
_____	Section 6.5.1.3	Complete blanks for markup; insert or attach personnel names, etc.
_____	Section 6.5.1.4	Note optional language that is provided
_____	Section 6.7.4	Note the optional provision that is provided
_____	Section 7.2.1	Complete blanks for day of month
_____	Section 7.3.1	Complete blanks for retention percentage and note optional provision
_____	Section 7.3.2	Note optional provision
_____	Section 7.5	Complete blanks for interest rate
_____	Section 8.1	Choose overhead/profit method for termination for convenience
_____	Section 8.2.1	Complete blanks for percentages
_____	Section 8.2.2	Complete blanks for percentages
_____	Section 9.1.1	Insert Owner's Senior Representative's name, etc. (optional)
_____	Section 9.1.2	Insert Owner's Representative's name, etc. (optional)
_____	Section 9.2.1	Insert Design-Builder's Senior Representative's name, etc. (optional)
_____	Section 9.2.2	Insert Design-Builder's Representative's name, etc. (optional)
_____	Section 10.1	Attach Insurance Exhibit
_____	Section 10.2	Insert amount and conditions of bonds or other security and note the options that are provided
_____	Section 11	Insert any other provisions (optional) or exhibits or documents incorporated or referenced in the Agreement
_____	Section 12	Complete blank for rate
_____	Last Page	Owner's and Design-Builder's execution of the Agreement
_____	Exhibit A	Detail Owner's Project Criteria as referenced in Section 1.1.1
_____	Exhibit B	Detail Phase 1 Scope of Work as referenced in Section 1.2.1

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America ("DBIA") has regularly evaluated the needs of owners, design-builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Documents on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms – familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Agreement	<p>DBIA Document No. 544 ("Agreement") should be used for progressive design-build projects. Progressive Design-Build allows an Owner to complete a Design-Build project in two phases. In Phase 1, Owner completes preliminary design, sets the construction plan, and establishes the Phase 2 costs to complete final design and the planned construction. This Agreement allows for Owner to pay Design-Builder for design services and construction work in Phase 2 using Cost of the Work plus a Fee, with or without a Guaranteed Maximum Price ("GMP"), or Lump Sum.</p> <p>If there is uncertainty about Owner's final design Project Criteria after Phase 1, or the final design Project Criteria remain to be developed by Owner and Design-Builder together during Phase 2, a cost-plus/GMP contracting approach is desirable.</p> <p>If there is certainty as to Owner's Project Criteria and project design after Phase 1, a lump sum fixed price for the completion of all design and construction services in Phase 2 may be suitable, especially when Owner procures Design-Builder's services by competitive means.</p>
General	Purpose of These Instructions	These Instructions are not part of this Agreement, but are provided to aid the parties in their understanding of the Agreement and in completing the Agreement.
General	Related Documents	This Agreement shall be used in conjunction with the General Conditions of Contract. Other related Contract Documents are listed in Article 2 of this Agreement.
General	Date	On Page 1, enter the date when both parties reach a final understanding. It is possible, due to logistical reasons, that the dates when the parties execute the Agreement may be different. Once both parties execute the Agreement, the effective date of the Agreement will be the date recorded on Page 1. This date does not, however, determine Contract Time, which is measured according to the terms of Article 5.
General	Parties: Owner and Design-Builder	On Page 1 enter the legal name and full address of Owner and Design-Builder, as well as the legal form of each entity, e.g., corporation, partnership, limited partnership, limited liability company, or other.
1.3	Contract Price Amendment and Proposal	<p>When a GMP or Lump Sum is established after execution of this Agreement for Phase 2 work, the Proposal must be attached to the Contract Price Amendment pursuant to Section 1.3.2.3. Both the Contract Price Amendment and Proposal will include those Basis of Design Documents Design-Builder uses as the basis for its Contract Price.</p> <p>This Agreement provides the parties flexibility in establishing the Phase 2 Contract Price. Parties can establish a GMP or Lump Sum for Phase 2 after entering into this Agreement, or elect to proceed on the basis of costs plus a fee, without a GMP or Lump Sum.</p> <p>If a GMP or Lump Sum method is elected, the GMP or Lump Sum should not be established until the Basis of Design Documents is sufficiently defined during Phase 1 to make the GMP or Lump Sum realistic and meaningful. Setting it too early does not permit reasonable opportunity for scope definition and evaluation of Project risk. On the other hand, setting it too late may not achieve Owner's objective of having an early price guarantee to enable it to make decisions relative to the Project.</p>
1.3.1.4	Schedule	Given that expedited delivery is one of the primary factors driving many owners to select the design-build method, DBIA strongly believes that the parties should discuss and understand what each party must do to support the Project schedule. The entire Work, both design and construction, should be scheduled. The schedule should indicate the dates for the start and completion of the various stages of the Work, including the date when Owner information and approvals are required, and any Owner-created constraints. The Agreement also provides flexibility to establish the Scheduled Substantial Completion Date prior to submission of the Proposal.

Section	Title	Instruction
1.3.2.3	Acceptance of Proposal	If Owner accepts the Proposal, the parties should amend this Agreement to add the final Proposal as a Contract Document pursuant to Section 2.1.2.
1.3.2.4	Failure to Accept the Proposal	<p>This Agreement provides three options for Owner in the event it fails to accept the Proposal and two choices for Design-Builder if Owner fails to exercise any of the three options. These options are specifically designed to prevent one party from receiving a windfall in the event the parties cannot agree on the GMP or Lump Sum and the Agreement is terminated. This Agreement also states when the Agreement terminates or the Agreement is deemed completed if Owner fails to exercise one of the options.</p> <p>The parties should take note that if Owner exercises its option to terminate for convenience, or Design-Builder suspends performance, Design-Builder will not be entitled to payment for uncompleted Work provided by Section 8.2. However, additional payment for Owner's use of Work Product will be due Design-Builder pursuant to Section 4.3, if Owner proceeds to complete the Project using Design-Builder's Work Product.</p>
2.1	Order of Precedence	The Contract Documents are listed in Section 2.1 in the order of their precedence. The Contract Price Amendment and Proposal are based on the Basis of Design Documents, which are comprised of various documents. The parties should strongly consider establishing the priority of the various documents comprising the Contract Price Amendment or Proposal to avoid disputes should discrepancies arise among the documents. Moreover, Section 2.1.7 recognizes that there may be other exhibits attached to this Agreement. If this is the case, the parties should discuss whether these exhibits should be part of the Basis of Design Documents. If these exhibits are not made part of the Basis of Design Documents, these exhibits will not take priority over the Basis of Design Documents in the event of a conflict.
2.1.5	Construction Documents	After execution of the Agreement, and consistent with the requirements of Section 2.4 of the General Conditions of Contract, Design-Builder will prepare Construction Documents, subject to Owner's review and approval.
3.3	Definitions	Terms, words and phrases used in the Agreement shall have the same meanings used in the General Conditions of Contract.
3.4	Design Specifications	Owner is cautioned that consistent with legal precedent, if it includes design specifications in its Project Criteria Design-Builder is entitled to rely on the information provided and to the extent said information is not accurate, Design-Builder is entitled to an adjustment in the Contract Price and/or Contract Time. Accordingly, Owner should consider using performance specifications to avoid such potential liability.
4.1	Work Product	This Agreement provides that Design-Builder shall retain ownership of the Work Product it produces, but obligates Design-Builder to grant a limited license to Owner to use the Work Product according to the terms and circumstances described in Sections 4.2, 4.3, 4.4 and 4.5.
4.2	Owner's Limited License Upon Payment in Full	Design-Builder shall grant Owner, at Owner's sole risk, a limited license to use the Work Product at the completion of the Work in connection with Owner's occupation of the Project. This Section also provides the parties with the option of transferring ownership of some or all of the Work Product to Owner upon payment in full for all Work performed. Generally, where Owner desires ownership of Work Product, it is sufficient to transfer ownership of unique architectural and design elements.

Section	Title	Instruction
4.3	Owner's Limited License Upon Owner's Termination for Convenience or Design-Builder's Election to Terminate	Owner should not use the Termination for Convenience Clause to obtain Design-Builder's valuable design concepts, and then seek lower bids from other design-builders. Therefore, where Owner terminates this Agreement for its convenience, and then decides to complete the Project with its own or third-party forces, Design-Builder shall grant Owner the rights set forth in Section 4.2, provided Owner pays Design-Builder all amounts due Design-Builder as required by the Contract Documents, including paying Design-Builder an additional sum per Section 4.3.2 for the use of the Work Product. In the event Design-Builder elects to terminate this Agreement for cause, for reasons set forth in Section 11.4 of the General Conditions of Contract, these same conditions apply to Owner's use of the Work Product.
4.3.2	Additional Compensation	To minimize disputes, the parties should negotiate prior to the execution of the Agreement the amount Owner shall pay Design-Builder for the use of Design-Builder's Work Product in the event Owner terminates this Agreement for its convenience or Design-Builder elects to terminate this Agreement for cause. Enter this amount.
4.4	Owner's Limited License upon Design-Builder's Default	If Design-Builder is properly terminated for default, Owner is granted a limited license to use the Work Product, to complete the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2.
4.5	Owner's Indemnification for Use of Work Product	Owner's use or alteration of the Work Product shall be at its sole risk, and Owner must agree to defend, indemnify, and hold harmless Design-Builder and anyone working by or through Design-Builder, including Design Consultants of any tier.
5.1	Date of Commencement	Design-Builder's obligation to commence work is triggered by its receipt of a Notice to Proceed unless the parties mutually agree otherwise.
5.2.1	Substantial Completion of the Entire Work	Enter the calendar days of duration by which Substantial Completion has to be achieved. The parties in this Section have the option of modifying the definition of Substantial Completion set forth in the General Conditions of Contract. If this option is selected, Substantial Completion will be deemed to be achieved no later than the date a Temporary Certificate of Occupancy is issued if applicable to the Project.
5.2.2	Interim Milestones	It may be that some portions of the Work must be completed in phases or within a prescribed period of time to accommodate Owner's needs. The parties may, at their option, identify these portions of the Work to be completed prior to Substantial Completion of the entire Work. Enter the calendar days, starting from the Date of Commencement, for achieving Substantial Completion of these identified portions of the Work. If these portions of the Work are required to be substantially completed by certain milestone dates, enter those dates. As presently drafted, no remedy is provided to Owner if an interim milestone is not met. If Owner has special requirements as it relates to interim milestones, Owner may want to consider a remedy for Design-Builder's failure to meet an interim milestone, as well as providing a bonus to Design-Builder for satisfying such interim milestone.

Section	Title	Instruction
5.4	Liquidated Damages	<p>Owner should make a good faith evaluation of the amount that is reasonably necessary to compensate it for delay. Owner should not establish liquidated damages to penalize Design-Builder. Moreover, in the event a GMP or Lump Sum is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing liquidated damages until such time as the GMP or Lump Sum is established.</p> <p>Section 5.4 establishes a grace period between the Scheduled Substantial Completion Date and the assessment of liquidated damages in order to prevent disputes as to which party bears responsibility for only a few days of delay. The parties should enter the calendar days that may pass following the Scheduled Substantial Completion Date before liquidated damages will be assessed.</p> <p>The parties are also provided the option of establishing liquidated damages if the Design-Builder fails to achieve Final Completion within a specified number of days after Substantial Completion. If this option is selected, the parties must negotiate the number of days, as well as the liquidated damages amount. The parties in negotiating liquidated damages should keep in mind that the amount of liquidated damages for failing to achieve Final Completion should be a considerably scaled down amount and should reflect the financial harm to Owner. In no case should the total amount of liquidated damages for the Project exceed an amount that is reasonably necessary to compensate Owner for Project delay.</p> <p>The parties also have the option here of eliminating liquidated damages altogether in which case Owner can recover actual damages for Project delay at an amount that is capped by the parties. Owner is cautioned that it still cannot recover consequential damages under Section 10.5.1 of the General Conditions of Contract.</p>
5.5	Liquidated Damages Cap	The parties can agree to cap liquidated damages at a negotiated amount.
5.6	Early Completion Bonus	If the Project economics justify liquidated damages, then it is appropriate to couple these liquidated damages with an early completion bonus. The parties should enter the number of calendar days prior to the Scheduled Substantial Completion Date that will set the Bonus Date. Also, enter the amount of the bonus to be paid per day that will allow Owner to share with Design-Builder the economic benefits of early completion. Moreover, in the event a GMP or Lump Sum is not established upon execution of the Agreement, it appears prudent for the parties to refrain from establishing an early completion bonus until such time as the GMP or Lump Sum is established. The parties also have the option in Section 5.6 of capping the early completion bonus at a negotiated amount.
5.7	Compensation for Force Majeure Events	The parties are provided the opportunity of providing Design-Builder the right to receive compensation for Force Majeure Events. By selecting this option, the parties agree to modify Section 8.2.2 of the General Conditions of Contract, in which case the parties must negotiate how many cumulative days of Force Majeure delays must occur before Design-Builder is entitled to either a negotiated amount per day for delay or the direct costs it has incurred as a result of such delay.

6.1	GMP or Lump Sum at Agreement Execution	<p>Enter the GMP or Lump Sum for Phase 2 Services, if appropriate. Attach as an amendment to this Agreement the Basis of Design Documents used to establish the GMP or Lump Sum. These documents comprise the Contract Price Amendment which shall become a Contract Document pursuant to Section 2.1.2 of the Agreement. Design-Builder does not guarantee any specific line item provided as part of a GMP.</p> <p>By selecting the alternate option if using a GMP, Design-Builder agrees to guarantee the line item in its GMP for general conditions costs only. Design-Builder agrees that it is responsible for paying general conditions costs in excess of this line item. Design-Builder does not guarantee any other line items in the GMP.</p>
6.1.3	Optional Pricing	This Agreement allows the parties the flexibility to establish within the Contract Price a different payment basis for certain portions of the Work which may be necessary to permit Design-Builder to furnish Owner with a GMP or Lump Sum.
6.4.1	Design-Builder's Fee	Enter the amount of Design-Builder's Fee as a sum certain or as a percentage of the Cost of the Work. Design-Builder's Fee shall be commensurate with the services it provides and the risk it assumes in providing single point responsibility to Owner.
6.4.2	Adjustments to Design-Builder's Fee	For additive Change Orders, the parties must negotiate the Fee Design-Builder will receive. For deductive Change Orders, the parties have the option by checking the appropriate box of whether there will be no additional reduction or whether there will be an additional reduction based on a negotiated percentage.
6.5.1.3	Wages for Design-Builder's Employees at Principal or Branch Offices	DBIA endorses reimbursing salaries and associated benefits of Design-Builder's Project personnel, such as accountants, stationed at offices other than the field office, when to do so is more efficient and cost effective. Enter the percentage markup to be applied for Project-related overhead associated with such personnel. Insert, or attach as an exhibit, a list of such personnel and their job functions.
6.5.1.4	Employee Benefits	It may be simpler for the parties to agree on a multiplier (rather than actual costs) to compensate Design-Builder for employee benefits. Accordingly, the parties may want to insert the multiplier to be applied to the wages and salaries of its reimbursable employees.
6.5.1.7	Costs for Defective/Non-Conforming Work	The Cost of the Work shall include the costs to repair or correct defective or non-conforming Work (including warranty or corrective work performed after Substantial Completion) unless caused by Design-Builder's negligence. DBIA believes that Design-Builder should not be penalized for inadvertent mistakes which are inevitable when designing and constructing a Project. To do so would encourage ultra-conservatism in every task, the ultimate cost of which would be greater than a proactive approach to performing the Work, which includes ordinary mistakes or inadvertence.
6.5.1.23	Warranty Escrow	At this section, the parties are provided the opportunity to establish prior to Final Completion an escrow account in a negotiated amount to be used to reimburse Design-Builder for its costs incurred in performing warranty Work if a GMP is used. If funds remain in the escrow account after the expiration of the warranty period, the funds are returned to Owner subject to Design-Builder's share of any savings. Note that even if the escrow account is exhausted, if funds remain under the GMP, Owner is still obligated to reimburse Design-Builder for its warranty Work.

6.7.4	Allowance Value	This section recognizes that the parties may agree that certain items of Work should be treated as an Allowance Item and priced based on Allowance values. The Allowance Value for which Design-Builder will be entitled to receive compensation includes direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the Allowance Item. All other costs associated with the Allowance Item, such as design fees, general conditions costs, and Fee are deemed to be included in the Contract Price. However, by checking the box, the parties agree that in the event the actual cost of the Allowance Item is greater than or less than the Allowance Value by a negotiated percentage, then Design-Builder's right to Fee and markup shall be determined pursuant to Section 6.4.2.
6.6.2	GMP Contingency	<p>Enter the amount of Design-Builder's Contingency if using a GMP. The Contingency is for the exclusive use of Design-Builder and covers all unanticipated costs incurred that are not the basis of a Change Order. This section sets forth by way of example only the type of costs that would be funded out of the Contingency. Other costs such as, but not limited to, any deductibles Design-Builder is obligated to pay would be subject to reimbursement. Design-Builder is also required to provide Owner with a monthly status report accounting for the Contingency, including all reasonably foreseen uses and potential uses, of the Contingency for the upcoming three months.</p> <p>While not provided for in the Contingency provision, DBIA recognizes that there may be situations where Owner will want to recapture the Contingency prior to Final Completion. For example, Owner may want to use amounts in the Contingency to fund changes to the Project. Owner's desire must be balanced against Design-Builder's need to use the Contingency to fund unanticipated costs for which it is liable. An option to consider to accommodate both interests is to establish an "Owner's Contingency" and a "Design-Builder's Contingency" in the GMP. If this option is used, any savings clause in the agreement should be drafted appropriately to address these pools of funds.</p>
6.6.3	Savings	One of the benefits of a GMP approach is the possibility that with good management by Design-Builder and timely support from Owner the actual Cost of the Work and Fee may be less than the GMP. This creates a savings pool that should result in a benefit to both Design-Builder and Owner. Sharing these savings creates an incentive for Design-Builder to save costs. Some factors to consider in determining how the Savings are shared include the timing for the establishment of the GMP and the amount of Design-Builder's Fee established under Section 6.4.1.
6.6.3.1	Savings Calculations	This section provides that if the actual Cost of the Work and Design-Builder's Fee is less than the GMP, as such GMP may have been adjusted, the savings, if any, shall be shared. The Agreement offers two choices for distributing Savings. Choose a method and enter the appropriate figures.
6.8	Performance Incentives	In addition, for the potential of Design-Builder to share in Savings as set forth in Section 6.6.3, there may be other performance incentives that will influence Project success. Such incentives may include award fees tied to Design-Builder achieving certain standards relative to client satisfaction, safety, and personnel retention. The parties are encouraged to discuss the use of such incentives during negotiation of this Agreement. Any agreement on the use of incentives should be set forth in an exhibit attached to this Agreement.
7.2.1	Progress Payments	Enter the day of the month when Design-Builder shall submit its Application for Payment.

7.3.1	Retainage	<p>Enter the percentage Owner will retain from Progress Payments to Design-Builder until fifty percent (50%) of the Work is completed. Owner should recognize that it creates undue hardship to hold retainage on Subcontractors that have completed their work early in the Project. Owner should accordingly consider releasing retainage on Subcontractors that complete work early in the Project, providing that these Subcontractors have satisfactorily performed their portion of the Work.</p> <p>The parties are provided the option of modifying the retainage provision by checking the box. This option excludes from retainage the Design-Builder's General Conditions costs and amounts paid to Design-Builder's Design Consultant. The rationale for selecting this option is that Design-Builder is obligated to pay its General Conditions costs in full each month and that under the design-bid-build delivery method, Owner typically does not retain sums from its Designer.</p>
7.3.2	Release of Retainage	This section requires Owner to release retainage to Design-Builder. If Design-Builder and Owner have established a warranty reserve in accordance with Section 6.5.1.23, the parties shall establish an escrow account at this time.
7.5	Interest	The parties should enter the rate at which interest will accrue on Design-Builder's payments if unpaid five (5) days after due. Late payment creates a hardship for Design-Builder, its Design Consultants, and Subcontractors.
7.6	Record Keeping	Owner is provided access to Design-Builder's accounting information as it relates to Costs of the Work. However, if the parties have agreed to multipliers or markups, the time to challenge and negotiate those percentages is at the time the parties execute the Agreement and not during the Project or after it has been completed. Accordingly, Owner can at any time audit these percentages only to confirm that such percentage has been properly charged and not to challenge the composition of such percentage.
8.1	Termination for Convenience: Overhead and Profit	The parties should choose prior to execution of the Agreement the method that will be used to determine overhead and profit paid to Design-Builder in the event Owner terminates Design-Builder for its convenience. The parties may choose to set percentage rates for overhead and profit prior to execution of the Agreement, or may choose to determine reasonable sums to be paid for overhead and profit at the time of the termination. If the parties choose to set overhead and profit rates prior to execution of the Agreement, the percentages should be entered in Section 8.1.
8.2	Termination for Convenience: Additional Payments	Although it is important for Owner to have a process for terminating this Agreement for convenience, the process must consider the interests of Design-Builder. If Owner terminates this Agreement for its own convenience, compensating Design-Builder for its costs will not be adequate because Design-Builder will have committed its resources for a small amount of revenue. Therefore, in addition to the overhead and profit paid in Section 8.1, Owner shall pay Design-Builder an additional sum, calculated as a percentage of the remaining balance of the Contract Price or, if a GMP or Lump Sum has not been established, the remaining balance of the most recent estimated Contract Price. Enter the percentages Owner shall pay Design-Builder if Owner terminates this Agreement for its own convenience prior to or after the start of construction.
8.3	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3.

Article 9	Representatives of the Parties	<p>Enter the name, title, address and telephone number of Owner's Senior Representative and Owner's Representative at Sections 9.1.1 and 9.1.2, respectively.</p> <p>Enter the name, title, address and telephone number of Design-Builder's Senior Representative and Design-Builder's Representative at Sections 9.2.1 and 9.2.2, respectively.</p> <p>The parties can elect to establish these Representatives during the performance of the Project rather than at the time of execution of this Agreement. If Representatives are identified after execution of the Agreement, an appropriate amendment should be made to the Agreement at the time these individuals are designated.</p>
10.1	Insurance	Attach an Insurance Exhibit setting forth in detail the insurance coverages required for the Project. Parties are advised to familiarize themselves with the terms of Article 5 of the General Conditions of Contract, Insurance and Bonds, and to consult their insurance advisor.
10.2	Bonds	Enter the type and amount of bonds or other performance security required for the Project. Where bonding is not required by statute, Owner may want to evaluate the project risks versus the bonding costs in deciding what type of performance security to require.
11.1	Other Provisions	Insert any other provisions. For example, the parties may elect to have disputes resolved through litigation rather than arbitration, in which case the following optional language in this Section should be included.
11.2	Listing of Exhibits	Include a listing of exhibits and documents incorporated or referenced in the Agreement. This listing includes the exhibits and documents referenced in the Agreement. Additional documents or exhibits referenced in the Agreement should be listed here.
12	Limitation of Liability	This provision establishes a limit of liability of Design-Builder's liability for the Project.



# Progressive Design-Build Agreement

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

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This **AGREEMENT** is made as of the 23rd day of September in the year of 2022, by and between the following parties, for services in connection with the Project identified below:

**OWNER:**

*(Name and address)*

**Knappa School District #4**  
**William Fritz, Superintendent**  
**41535 Old Highway 30, Astoria, OR 97103**

**DESIGN-BUILDER:**

*(Name and address)*

**Fortis Construction**  
**Blain Grover, Project Director**  
**1705 SW Taylor Street, Suite 200 Portland, OR 97205**

**PROJECT:**

*(Include Project name and location as it will appear in the Contract Documents)*

**Knappa School District #4 New Construction and Renovations**  
**41535 Old Highway 30, Astoria, OR 97103**

In consideration of the mutual covenants and obligations contained herein, Owner and Design-Builder agree as set forth herein.

## **Article 1**

### **Design-Builder's Services and Responsibilities**

#### **1.1 General Services.**

1.1.1 Owner shall provide Design-Builder with Owner's Project Criteria describing Owner's program requirements and objectives for the Project as set forth in Exhibit A. Owner's Project Criteria shall include Owner's use, space, price, time, site, performance, and expandability requirements. Owner's Project Criteria may include conceptual documents, design specifications, design performance specifications, and other technical materials and requirements prepared by or for Owner.

1.1.2 If Owner's Project Criteria have not been developed prior to the execution of this Agreement, Design-Builder will assist Owner in developing Owner's Project Criteria, with such service deemed to be an additional service for which additional compensation shall be paid by Owner to Design-Builder. If Owner has developed Owner's Project Criteria prior to executing this Agreement, Design-Builder shall review and prepare a written evaluation of such criteria, including recommendations to Owner for different and innovative approaches to the design and construction of the Project. The parties shall meet to discuss Design-Builder's written evaluation of Owner's Project Criteria and agree upon what revisions, if any, should be made to such criteria.

#### **1.2 Phased Services.**

1.2.1 Phase 1 Services. Design-Builder shall perform the services of design, pricing, and other services for the Project based on Owner's Project Criteria, as may be revised in accordance with Section 1.1 hereof, as set forth in Exhibit B, Scope of Services. Design-Builder shall perform such services to the level of completion required for Design-Builder and Owner to establish the Contract Price for Phase 2, as set forth in Section 1.3 below. The Contract Price for Phase 2 shall be developed during Phase 1 on an "open-book" basis. Design-Builder's Compensation for Phase 1 Services is set forth in Section 6.1.1 herein. The level of completion required for Phase 1 Services is defined in Exhibit B, Scope of Services (either as a percentage of design completion or by defined deliverables).

1.2.2 Phase 2 Services. Design-Builder's Phase 2 services shall consist of the completion of design services for the Project, the procurement of all materials and equipment for the Project, the performance of construction services for the Project, the start-up, testing, and commissioning of the Project, and the provision of warranty services, all as further described in the Contract Price Amendment. Upon receipt of Design-Builder's proposed Contract Price for Phase 2, Owner may proceed as set forth in Section 1.3.

1.3 Proposal. Upon completion of the Phase 1 Services and any other Basis of Design Documents upon which the parties may agree, Design-Builder shall submit a proposal to Owner (the "Proposal") for the completion of the design and construction for the Project for the Contract Price, which may be based on Lump Sum or Design-Builder's Fee and Cost of the Work with an option for a Guaranteed Maximum Price (GMP).

1.3.1 The Proposal shall include the following unless the parties mutually agree otherwise:

1.3.1.1 The Contract Price that may be based on a Lump Sum or Design-Builder's Fee and Cost of the Work, with an option for a GMP, which shall be the sum of:

- i Design-Builder's Fee as defined in Section 6.4.1 hereof;
- ii The estimated Cost of the Work as defined in Section 6.5 hereof, inclusive of any Design-Builder's Contingency as defined in Section 6.6.2 hereof; and

iii If applicable, any prices established under Section 6.1.3 hereof;

1.3.1.2 The Basis of Design Documents, which may include, by way of example, Owner's Project Criteria, which are set forth in detail and are attached to the Proposal;

1.3.1.3 A list of the assumptions and clarifications made by Design-Builder in the preparation of the Proposal, which list is intended to supplement the information contained in the drawings and specifications and is specifically included as part of the Basis of Design Documents;

1.3.1.4 The Scheduled Substantial Completion Date upon which the Proposal is based, to the extent said date has not already been established under Section 5.2.1 hereof, and a schedule upon which the Scheduled Substantial Completion Date is based and a Project Schedule for the Work;

1.3.1.5 If applicable, a list of Allowance Items, Allowance Values, and a statement of their basis;

1.3.1.6 If applicable, a schedule of alternate prices;

1.3.1.7 If applicable, a schedule of unit prices;

1.3.1.8 If applicable, a statement of Additional Services which may be performed but which are not included in the Proposal, and which, if performed, shall be the basis for an increase in the Contract Price and/or Contract Time(s);

1.3.1.9 If applicable, a Savings provision;

1.3.1.10 If applicable, Performance Incentives;

1.3.1.11 The time limit for acceptance of the Proposal; and

1.3.1.12 An Owner's permit list, a list detailing the permits and governmental approvals that Owner will bear responsibility to obtain.

1.3.1.13 Review and Adjustment to Proposal.

1.3.1.14 After submission of the Proposal, Design-Builder and Owner shall meet to discuss and review the Proposal. If Owner has any comments regarding the Proposal, or finds any inconsistencies or inaccuracies in the information presented, it shall promptly give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the Proposal.

1.3.1.15 Acceptance of Proposal. If Owner accepts the Proposal, as may be amended by Design-Builder, the Contract Price and its basis shall be set forth in an amendment to this Agreement, when mutually agreed between the parties (Contract Price Amendment). Once the parties have agreed upon the Contract Price and Owner has issued a Notice to Proceed with Phase 2, Design-Builder shall perform the Phase 2 Services, all as further described in the Contract Price Amendment, as it may be revised.

1.3.1.16 Failure to Accept the Proposal. If Owner rejects the Proposal, or fails to notify Design-Builder in writing on or before the date specified in the Proposal that it accepts the Proposal, the Proposal shall be deemed withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

- i Owner may suggest modifications to the Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the Proposal shall be deemed accepted and the parties shall proceed in accordance with Section 1.3.2.3 above;
- ii Owner may authorize Design-Builder to continue to proceed with the Work on the basis of reimbursement as provided in Section 6.1.2 hereof without a Contract Price, in which case all references in this Agreement to the Contract Price shall not be applicable; or
- iii Owner may terminate this Agreement for convenience in accordance with Article 8 hereof; provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof.

If Owner fails to exercise any of the above options, Design-Builder shall have the right to (a) continue with the Work as if Owner had elected to proceed in accordance with Section 1.3.2.4 ii. above, and be paid by Owner accordingly, unless and until Owner notifies it in writing to stop the Work; (b) suspend performance of Work in accordance with Section 11.3.1 of the General Conditions of Contract, provided, however, that in such event Design-Builder shall not be entitled to the payment provided for in Section 8.2 hereof; or (c) may give written notice to Owner that it considers this Agreement completed. If Owner fails to exercise any of the options under Section 1.3.2.4 within ten (10) days of receipt of Design-Builder's notice, then this Agreement shall be deemed completed. If Owner terminates the relationship with Design-Builder under Section 1.3.2.4(iii), or if this Agreement is deemed completed under this paragraph, then Design-Builder shall have no further liability or obligations to Owner under this Agreement.

## **Article 2**

### **Contract Documents**

2.1 The Contract Documents are comprised of the following:

2.1.1 All written modifications, amendments, minor changes, and Change Orders to this Agreement issued in accordance with DBIA Document No. 535, *Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder* (2022 Edition) ("General Conditions of Contract");

2.1.2 The Contract Price Amendment referenced in Section 1.3.2.3 herein or the Proposal accepted by Owner in accordance with Section 1.3 herein.

2.1.3 This Agreement, including all exhibits (list for example, performance standard requirements, performance incentive arrangements, markup exhibits, allowances, unit prices, or exhibit detailing offsite reimbursable personnel) but excluding, if applicable, the Contract Price Amendment;

2.1.4 The General Conditions of Contract;

2.1.5 Construction Documents prepared and approved in accordance with Section 1.4 of the General Conditions of Contract;

2.1.6 RFQ Scope of services dated August 8<sup>th</sup>, 2022

2.1.7 The following other documents, if any: Specification 0600 & 0700 dated August 8<sup>th</sup>, 2022.

## **Article 3**

### **Interpretation and Intent**

3.1 Design-Builder and Owner, at the time of acceptance of the Proposal by Owner in accordance with Section 1.3 hereof, shall carefully review all the Contract Documents, including the various documents comprising the Basis of Design Documents for any conflicts or ambiguities. Design-Builder and Owner will discuss and resolve any identified conflicts or ambiguities prior to execution of the Agreement, or if applicable, prior to Owner's acceptance of the Proposal.

3.2 The Contract Documents are intended to permit the parties to complete the Work and all obligations required by the Contract Documents within the Contract Time(s) for the Contract Price. The Contract Documents are intended to be complementary and interpreted in harmony so as to avoid conflict, with words and phrases interpreted in a manner consistent with construction and design industry standards. In the event inconsistencies, conflicts, or ambiguities between or among the Contract Documents are discovered after Owner's acceptance of the Proposal, Design-Builder and Owner shall attempt to resolve any ambiguity, conflict, or inconsistency informally, recognizing that the Contract Documents shall take precedence in the order in which they are listed in Section 2.1 hereof.

3.3 Terms, words, and phrases used in the Contract Documents, including this Agreement, shall have the meanings given them in the General Conditions of Contract.

3.4 If Owner's Project Criteria contain design specifications: (a) Design-Builder is entitled to reasonably rely on the accuracy of the information represented in the design specifications and their compatibility with other information set forth in Owner's Project Criteria, including any design performance specifications; and (b) Design-Builder shall be entitled to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by such inaccurate design specification.

3.5 The Contract Documents form the entire agreement between Owner and Design-Builder and by incorporation herein are as fully binding on the parties as if repeated herein. No oral representations or other agreements have been made by the parties except as specifically stated in the Contract Documents.

## **Article 4**

### **Ownership of Work Product**

4.1 Work Product. All drawings, specifications and other documents and electronic data, including such documents identified in the General Conditions of Contract, furnished by Design-Builder to Owner under this Agreement ("Work Product") are deemed to be instruments of service and Design-Builder shall retain the ownership and property interests therein, including but not limited to any intellectual property rights, copyrights, and/or patents, subject to the provisions set forth in Sections 4.2 through 4.5 below.

4.2 Owner's Limited License upon Project Completion and Payment in Full to Design-Builder. Upon Owner's payment in full for all Work performed under the Contract Documents, Design-Builder shall grant Owner a limited license to use the Work Product in connection with Owner's occupancy of the Project, conditioned on Owner's express understanding that its alteration of the Work Product without the involvement of Design-Builder is at Owner's sole risk and without liability or legal exposure to Design-Builder or anyone working by or through Design-Builder, including Design Consultants of any tier (collectively the "Indemnified Parties"), and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein.

4.3 Owner's Limited License upon Owner's Termination for Convenience or Design-Builder's Election to Terminate. If Owner terminates this Agreement for its convenience as set forth in Article 8 hereof, or if Design-Builder elects to terminate this Agreement in accordance with Section 11.4 of the General Conditions of Contract, Design-Builder shall, upon Owner's payment in full of the amounts due Design-

Builder under the Contract Documents, grant Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights as set forth in Section 4.2 above, conditioned on the following:

4.3.1 Use of the Work Product is at Owner's sole risk without liability or legal exposure to any Indemnified Party, and on the Owner's obligation to provide the indemnity set forth in Section 4.5 herein, and

4.3.2 Owner agrees to pay Design-Builder the additional sum of \_\_\_ N/A \_\_\_ Dollars (\$\_\_\_) as compensation for the right to use the Work Product to complete the Project and subsequently use the Work Product in accordance with Section 4.2 if Owner resumes the Project through its employees, agents, or third parties.

4.4 Owner's Limited License upon Design-Builder's Default. If this Agreement is terminated due to Design-Builder's default pursuant to Section 11.2 of the General Conditions of Contract, then Design-Builder grants Owner a limited license to use the Work Product to complete the Project and subsequently occupy the Project, and Owner shall thereafter have the same rights and obligations as set forth in Section 4.2 above. Notwithstanding the preceding sentence, if it is ultimately determined that Design-Builder was not in default, Owner shall be deemed to have terminated the Agreement for convenience, and Design-Builder shall be entitled to the rights and remedies set forth in Section 4.3 above.

4.5 Owner's Indemnification for Use of Work Product. Owner recognizes that in the event of an early termination of the Work, whether for convenience or for cause, Design-Builder will not have the opportunity to finish or to finalize its Work Product. Therefore, if Owner uses the Work Product, in whole or in part, or if Owner is required to indemnify any Indemnified Parties based on the use or alteration of the Work Product under any of the circumstances identified in this Article 4, Owner shall defend, indemnify, and hold harmless the Indemnified Parties from and against any and all claims, damages, liabilities, losses, and expenses, including attorneys' fees, arising out of or resulting from the use or alteration of the Work Product, to the fullest extent permitted by applicable law.

## **Article 5**

### **Contract Time**

5.1 Date of Commencement. The Phase 1 Services shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed unless the parties mutually agree otherwise in writing. The Work shall commence within five (5) days of Design-Builder's receipt of Owner's Notice to Proceed for Phase 2 Services ("Date of Commencement") if the Proposal is accepted and the Contract Price Amendment is amended to this Agreement unless the parties mutually agree otherwise in writing.

5.2 Substantial Completion and Final Completion.

5.2.1 Substantial Completion of the entire Work shall be achieved no later than            To be established at GMP amendment            (            ) calendar days after the Date of Commencement ("Scheduled Substantial Completion Date").

5.2.2 Interim milestones and/or Substantial Completion of identified portions of the Work shall be achieved as follows: (Insert any interim milestones ("Scheduled Interim Milestone Dates") for portions of the Work with different scheduled dates for Substantial Completion.)

5.2.2.1 Schematic Design Documents – January 16<sup>th</sup>, 2023

5.2.2.2 Design Development Documents – May 20<sup>th</sup>, 2023

5.2.3 Final Completion of the Work or identified portions of the Work shall be achieved as expeditiously as reasonably practicable. Final Completion is the date when all Work is complete pursuant to the definition of Final Completion set forth in Section 1.2.8 of the General Conditions of Contract.

5.2.4 All of the dates set forth in this Article 5 ("Contract Time(s)") shall be subject to adjustment in accordance with the General Conditions of Contract.

5.3 Time is of the Essence. Owner and Design-Builder mutually agree that time is of the essence with respect to the dates and times set forth in the Contract Documents.

5.4 Liquidated Damages. Design-Builder understands that if Substantial Completion is not attained by the Scheduled Substantial Completion Date, Owner will suffer damages which are difficult to determine and accurately specify. Design-Builder agrees that if Substantial Completion is not attained by ten (10) days after the Scheduled Substantial Completion Date (the "LD Date"), Design-Builder shall pay Owner Five Hundred Dollars (\$500.00) as liquidated damages for each day that Substantial Completion extends beyond the LD Date. (If a GMP is not established upon execution of this Agreement, the parties should consider setting liquidated damages after GMP negotiations.)

5.5 Any liquidated damages assessed pursuant to this Agreement shall be in lieu of all liability for any and all extra costs, losses, expenses, claims, penalties, and any other damages, whether special or consequential, and of whatsoever nature, incurred by Owner which are occasioned by any delay in achieving Substantial Completion, Interim Milestone Dates (if any), or Final Completion.

☐ Owner and Design-Builder agree that the maximum aggregate liability Design-Builder has for any liquidated damages that may be assessed under this Agreement shall be Fifty Thousand Dollars (\$50,000.00).

5.6 Early Completion Bonus. If Substantial Completion is attained on or before ten (10) days before the Scheduled Substantial Completion Date (the "Bonus Date"), Owner shall pay Design-Builder at the time of Final Payment under Section 7.4 hereof an early completion bonus of Five Hundred Dollars (\$500) for each day that Substantial Completion is attained earlier than the Bonus Date. *(If a GMP is not established upon execution of this Agreement, the parties should consider setting the early completion bonus after GMP negotiations. If an early completion bonus is applicable to any dates set forth in Section 5.2.2 or 5.2.3 hereof, this Section 5.6 will need to be modified accordingly.)*

☒ Owner and Design-Builder agree that the maximum aggregate amount that Design-Builder shall receive as the early Completion Bonus is Ten Thousand Dollars (\$10,000.00).

5.7 Owner's Review Time. The parties have established the following maximum and minimum amount of time for Owner to review Design Submissions and the Project Schedule or any updates thereto unless the parties agree in writing otherwise.

5.7.1 Owner shall have a minimum of 10 days of receipt by Owner to review all Design Submissions, the Project Schedule, and any updates thereto.

## **Article 6**

### **Contract Price**

6.1 Contract Price.

6.1.1 Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of Seven Hundred Eighty-Five Thousand Dollars (\$ 785,000) for the Phase 1 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Phase 1 Services compensation is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.1.2 For Phase 2 Services, Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract a contract price ("Contract Price") equal to the Lump Sum amount set forth in Section 6.2 hereof or in the Contract Price Amendment, or equal to the Design-Builder's Fee (as defined in Section 6.4 hereof) plus the Cost of the Work (as defined in Section 6.5 hereof), subject to any GMP established in Section 6.6 hereof or as set forth in the Contract Price Amendment and any adjustments made in accordance with the General Conditions of Contract.

6.1.3 For the specific Work set forth below, Owner agrees to pay Design-Builder, as part of the Contract Price, on the following basis: *(This is an optional section intended to provide the parties with flexibility to identify and price limited services.)*

6.2 Lump Sum. Owner shall pay Design-Builder in accordance with Article 6 of the General Conditions of Contract the sum of N/A Dollars (\$       ) ("Contract Price") for the Work for Phase 2 Services, subject to adjustments made in accordance with the General Conditions of Contract. Unless otherwise provided in the Contract Documents, the Contract Price is deemed to include all sales, use, consumer and other taxes mandated by applicable Legal Requirements.

6.3 Markups for Changes. If the Contract Price requires an adjustment due to changes in the Work, and the cost of such changes is determined under Sections 8.4.1.3 or 8.4.1.4 of the General Conditions of Contract, the following markups shall be allowed on such changes:

6.3.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of Four and Eight Tenths percent ( 4.8 %) of the additional costs incurred for that Change Order.

6.3.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

☐ No additional reduction to account for Design-Builder's Fee or any other markup.

or

☒ An amount equal to the sum of: (a) Four and Eight Tenths percent ( 4.8 %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee).

6.4 Design-Builder's Fee.

6.4.1 Design-Builder's Fee shall be:

☐        Dollars (\$       ), as adjusted in accordance with Section 6.4.2 below.

or

☒ Four and Eight Tenths percent ( 4.8 %) of the Cost of the Work, as adjusted in accordance with Section 6.4.2 below.

6.4.2 Design-Builder's Fee will be adjusted as follows for any changes in the Work:

6.4.2.1 For additive Change Orders, including additive Change Orders arising from both additive and deductive items, it is agreed that Design-Builder shall receive a Fee of \_\_\_\_\_ Four and Eight Tenths \_\_\_\_\_ percent (\_\_\_\_\_ 4.8 \_\_\_\_\_ %) of the additional Costs of the Work incurred for that Change Order, plus any other markups set forth at Exhibit \_\_\_\_\_ hereto.

6.4.2.2 For deductive Change Orders, including deductive Change Orders arising from both additive and deductive items, the deductive amounts shall include:

☐ No additional reduction to account for Design-Builder's Fee or any other markup.

or

☒ An amount equal to the sum of: (a) \_\_\_\_\_ Four and Eight Tenth \_\_\_\_\_ percent (\_\_\_\_\_ 4.8 \_\_\_\_\_ %) applied to the direct costs of the net reduction (which amount will account for a reduction associated with Design-Builder's Fee).

6.5 Cost of the Work.

6.5.1 The term Cost of the Work shall mean costs reasonably incurred by Design-Builder in the proper performance of the Work. The Cost of the Work shall include only the following:

6.5.1.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site, provided, however, that the costs for those employees of Design-Builder performing design services shall be calculated on the basis of prevailing market rates for design professionals performing such services or, if applicable, those rates set forth in an exhibit to this Agreement.

6.5.1.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

6.5.1.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in Exhibit \_C\_ and performing the function set forth in said Exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices is included in project fee.

6.5.1.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under Sections 6.5.1.1 through 6.5.1.3 hereof.

6.5.1.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

6.5.1.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants.

6.5.1.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder. If the costs associated with such Work are recoverable from insurance, Subcontractors or Design Consultants, Design-Builder shall exercise best efforts to obtain recovery from the appropriate source and provide a credit to Owner if recovery is obtained.

6.5.1.8 Costs, including transportation, inspection, testing, storage, and handling of materials, equipment, and supplies incorporated or reasonably used in completing the Work.

6.5.1.9 Costs less salvage value of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling, and removing such items.

6.5.1.10 Costs of removal of debris and waste from the Site.

6.5.1.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying, and reasonable petty cash expenses.

6.5.1.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

6.5.1.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

6.5.1.14 All fuel and utility costs incurred in the performance of the Work.

6.5.1.15 Sales, use, or similar taxes, tariffs, or duties incurred in the performance of the Work.

6.5.1.16 Legal costs, court costs, and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

6.5.1.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

6.5.1.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

6.5.1.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

6.5.1.20 Costs incurred in preventing damage, injury, or loss in case of an emergency affecting the safety of persons and property.

6.5.1.21 Accounting and data processing costs related to the Work.

6.5.1.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner.

6.5.2 Non-Reimbursable Costs. The following shall be excluded from the Cost of the Work:

6.5.2.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in Sections 6.5.1.1, 6.5.1.2, and 6.5.1.3 hereof.

6.5.2.2 Overhead and general expenses, except as provided for in Section 6.5.1 hereof, or which may be recoverable for changes to the Work.

6.5.2.3 The cost of Design-Builder's capital used in the performance of the Work.

6.5.2.4 If the parties have agreed on a GMP, costs that would cause the GMP, as adjusted in accordance with the Contract Documents, to be exceeded.

6.5.2.5 In accordance with Exhibit X Cost General Conditions Matrix dated 8.24.22

6.6 The Guaranteed Maximum Price.

6.6.1 Design-Builder guarantees that it shall not exceed the GMP of Sixteen Million Dollars (\$16,000,000). Documents used as a basis for the GMP shall be identified in the Contract Price Amendment to this Agreement. Design-Builder does not guarantee any specific line item provided as part of the GMP and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it will be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

6.6.2 The GMP includes a Contingency in the amount of Set at GMP Amendment Dollars (\$\_\_\_\_\_) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under Section 8.2.2 of the General Conditions of Contract that result in an extension of the Contract Time but do not result in an increase in the Contract Price. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by Section 2.1.2 of the General Conditions of Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

6.6.3 Savings.

6.6.3.1 If the sum of the actual Cost of the Work and Design-Builder's Fee (and, if applicable, any prices established under Section 6.1.3 hereof) is less than the GMP, as

such GMP may have been adjusted over the course of the Project, the difference ("Savings") shall be shared as follows:

☒      Zero percent (0.0 %) to Design-Builder and  
                 One Hundred percent (100.0 %) to Owner.

## 6.7 Allowance Items and Allowance Values.

6.7.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the Contract Price Amendment or the Proposal.

6.7.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

6.7.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Price.

6.7.4 The Allowance Value includes the direct cost of labor, materials, equipment, transportation, taxes, and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and Fee, are deemed to be included in the original Contract Price, and are not subject to adjustment notwithstanding the actual amount of the Allowance Item.

6.7.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Price shall be adjusted accordingly by Change Order, subject to Section 6.7.4. The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

## **Article 7**

### **Procedure for Payment**

7.1 Payment for Preliminary Services. Design-Builder and Owner agree upon the following method for partial and final payment to Design-Builder for the services hereunder: (Insert terms.)

7.2 Contract Price Progress Payments.

7.2.1 Design-Builder shall submit to Owner on the Fifth (5th) day of each month, beginning with the first month after the Date of Commencement, Design-Builder's Application for Payment in accordance with Article 6 of the General Conditions of Contract.

7.2.2 Owner shall make payment within thirty (30) days after Owner's receipt of each properly submitted and accurate Application for Payment in accordance with Article 6 of the General Conditions of Contract, but in each case less the total of payments previously made, and less amounts properly withheld under Section 6.3 of the General Conditions of Contract.

7.2.3 If Design-Builder's Fee under Section 6.4 hereof is a fixed amount, the amount of Design-Builder's Fee to be included in Design-Builder's monthly Application for Payment and paid by Owner shall be proportional to the percentage of the Work completed, less payments previously made on account of Design-Builder's Fee.

### 7.3 Retainage on Progress Payments.

Owner will retain five percent (5 %) of the cost of Work, exclusive of General Conditions costs, and any amounts paid to Design-Builder's Design Consultant, from each Application for Payment provided, however, that when fifty percent (50%) of the Work has been satisfactorily completed by Design-Builder and Design-Builder is otherwise in compliance with its contractual obligations, Owner will not retain any additional amounts from Design-Builder's subsequent Applications for Payment. Owner will also reasonably consider reducing retainage for Work completed early in the Project.

7.3.1 Within fifteen (15) days after Substantial Completion of the entire Work or, if applicable, any portion of the Work, pursuant to Section 6.6 of the General Conditions of Contract, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to: (a) the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion; and (b) all other amounts Owner is entitled to withhold pursuant to Section 6.3 of the General Conditions of Contract.

7.4 Final Payment. Design-Builder shall submit its Final Application for Payment to Owner in accordance with Section 6.7 of the General Conditions of Contract. Owner shall make payment on Design-Builder's properly submitted and accurate Final Application for Payment (less any amount the parties may have agreed to set aside for warranty work) within ten (10) days after Owner's receipt of the Final Application for Payment, provided that Design-Builder has satisfied the requirements for final payment set forth in Section 6.7.2 of the General Conditions of Contract.

7.5 Interest. Payments due and unpaid by Owner to Design-Builder, whether progress payments or final payment, shall bear interest commencing five (5) days after payment is due at the rate of One and a half percent (1.5 %) per month until paid.

7.6 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time to time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda, and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, but the composition of such multiplier or markup is not subject to audit. Any lump sum agreed to by Owner and Design-Builder as part of this Agreement is not subject to audit.

## **Article 8**

### **Termination for Convenience**

8.1 If Design-Builder is terminated for convenience pursuant to Section 11.6 of the General Conditions, and the parties have agreed to a payment to Design-Builder in the case of such termination of convenience,

Owner shall pay Design-Builder for the following in addition to the amount set forth in Section 11.6.1 of the General Conditions:

☐ The fair and reasonable sums for overhead and profit on the sum of items as set forth in Section 11.6.1 of the General Conditions.

or

☒ Overhead and profit in the amount of Ten percent (10 %) on the sum of items set forth in Section 11.6.1 of the General Conditions.

## **Article 9**

### **Representatives of the Parties**

#### **9.1 Owner's Representatives.**

9.1.1 Owner designates the individual listed below as its Senior Representative ("Owner's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: (Abram Jenks, Kloth Group, 4854A SW Scholls Ferry Road, Portland, Oregon 97225, (503)-729-0566.)

9.1.2 Owner designates the individual listed below as its Owner's Representative, which individual has the authority and responsibility set forth in Section 3.4 of the General Conditions of Contract: (Ann Gydé, Kloth Group, 422 Gateway #170, Astoria, Oregon 97103 (503) 468-9970.)

#### **9.2 Design-Builder's Representatives.**

9.2.1 Design-Builder designates the individual listed below as its Senior Representative ("Design-Builder's Senior Representative"), which individual has the authority and responsibility for avoiding and resolving disputes under Section 10.2.3 of the General Conditions of Contract: (Blain Grover, Project Director, Fortis Construction, 1705 SW Taylor STE 200, 503.572.5517.)

9.2.2 Design-Builder designates the individual listed below as its Design-Builder's Representative, which individual has the authority and responsibility set forth in Section 2.1.1 of the General Conditions of Contract: (Blain Grover, Project Director, Fortis Construction, 1705 SW Taylor STE 200, 503.572.5517.)

## **Article 10**

### **Bonds and Insurance**

10.1 Insurance. Design-Builder and Owner shall procure the insurance coverages set forth in the Insurance Exhibit attached hereto and in accordance with Article 5 of the General Conditions of Contract.

10.2 Bonds and Other Performance Security. Design-Builder shall provide the following performance bond and labor and material payment bond or other performance security:

Performance Bond.

☒ Required ☐ Not Required

Payment Bond.

☒ Required

☐ Not Required

## **Article 11**

### **Other Provisions**

11.1 Other provisions, if any, are as follows: (Insert any additional provisions.)

11.2 Listing of Exhibits and documents incorporated herein:

Exhibit A – Owner's Project Criteria

Exhibit B – Scope of Services

DBIA Document No. 535, Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition) ("General Conditions of Contract")

Contract Price Amendment, if any.

## **Article 12**

### **Limitation of Liability**

12.1 Limitation. To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of Design-Builder, its Design Consultants, and Subcontractors, surety (if any) and their respective officers, directors, employees, and agents, and any of them, to Owner and anyone claiming by, through, or under Owner, for any and all claims, losses, liabilities, costs, or damages whatsoever arising out of, resulting from, or in any way related to, the Project or this Agreement from any cause, including but not limited to the negligence, indemnity, professional errors or omissions, strict liability, breach of contract, or warranty (express or implied) shall not exceed Eighty percent (80%) of the Contract Price. The parties agree that specific consideration has been given by Design-Builder for this limitation and that it is deemed adequate.

In executing this Agreement, Owner and Design-Builder each individually represents that it has the necessary financial resources to fulfill its obligations under this Agreement, and each has the necessary corporate approvals to execute this Agreement, and perform the services described herein.

**OWNER:**

\_\_\_\_\_  
(Name of Owner)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

**DESIGN-BUILDER:**

\_\_\_\_\_  
(Name of Design-Builder)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

Date: \_\_\_\_\_

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Questions? We're here to help.

## Contact us



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# Standard Form of General Conditions of Contract Between Owner and Design-Builder

## Document No. 535

Third Edition, 2022

© Design-Build Institute of America  
Washington, D.C.





## Design-Build Institute of America - Contract Documents

### LICENSE AGREEMENT

**By using the DBIA Contract Documents, you agree to and are bound by the terms of this License Agreement.**

- 1. License.** The Design-Build Institute of America ("DBIA") provides DBIA Contract Documents and licenses their use worldwide. You acknowledge that DBIA Contract Documents are protected by the copyright laws of the United States. You have a limited nonexclusive license to: (a) Use DBIA Contract Documents on any number of machines owned, leased or rented by your company or organization; (b) Use DBIA Contract Documents in printed form for bona fide contract purposes; and (c) Copy DBIA Contract Documents into any machine-readable or printed form for backup or modification purposes in support of your permitted use.
- 2. User Responsibility.** You assume sole responsibility for the selection of specific documents or portions thereof to achieve your intended results, and for the installation, use, and results obtained from the DBIA Contract Documents. You acknowledge that you understand that the text of the DBIA Contract Documents has important legal consequences and that consultation with an attorney is recommended with respect to use or modification of the text. You will not represent that any of the contract documents you generate from DBIA Contract Documents are DBIA documents unless (a) the document text is used without alteration or (b) all additions and changes to, and deletions from, the text are clearly shown.
- 3. Copies.** You may not use, copy, modify, or transfer DBIA Contract Documents, or any copy, modification or merged portion, in whole or in part, except as expressly provided for in this license. Reproduction of DBIA Contract Documents in printed or machine-readable format for resale or educational purposes is expressly prohibited. You will reproduce and include DBIA's copyright notice on any printed or machine-readable copy, modification, or portion merged into another document or program.
- 4. Transfers.** You may not transfer possession of any copy, modification or merged portion of DBIA Contract Documents to another party, except that a party with whom you are contracting may receive and use such transferred material solely for purposes of its contract with you. You may not sublicense, assign, or transfer this license except as expressly provided in this Agreement, and any attempt to do so is void.
- 5. Term.** The license is effective for one year from the date of purchase. DBIA may elect to terminate it earlier, by written notice to you, if you fail to comply with any term or condition of this Agreement.
- 6. Limited Warranty.** DBIA warrants the electronic files or other media by which DBIA Contract Documents are furnished to be free from defects in materials and workmanship under normal use during the Term. There is no other warranty of any kind, expressed or implied, including, but not limited to the implied warranties of merchantability and fitness for a particular purpose. Some states do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. This warranty gives you specific legal rights and you may also have other rights which vary from state to state. DBIA does not warrant that the DBIA Contract Documents will meet your requirements or that the operation of DBIA Contract Documents will be uninterrupted or error free.
- 7. Limitations of Remedies.** DBIA's entire liability and your exclusive remedy shall be: the replacement of any document not meeting DBIA's "Limited Warranty" which is returned to DBIA with a copy of your receipt, or at DBIA's election, your money will be refunded. In no event will DBIA be liable to you for any damages, including any lost profits, lost savings or other incidental or consequential damages arising out of the use or inability to use DBIA Contract Documents even if DBIA has been advised of the possibility of such damages, or for any claim by any other party. Some states do not allow the limitation or exclusion of liability for incidental or consequential damages, so the above limitation or exclusion may not apply to you.
- 8. Acknowledgment.** You acknowledge that you have read this agreement, understand it and agree to be bound by its terms and conditions and that it will be governed by the laws of the District of Columbia. You further agree that it is the complete and exclusive statement of your agreement with DBIA which supersedes any proposal or prior agreement, oral or written, and any other communications between the parties relating to the subject matter of this agreement.

# INSTRUCTIONS

For DBIA Document No. 535 Standard Form of General Conditions of Contract Between Owner and Design-Builder (2022 Edition)

## General Instructions

No.	Subject	Instruction
1.	Standard Forms	Standard form contracts have long served an important function in the United States and international construction markets. The common purpose of these forms is to provide an economical and convenient way for parties to contract for design and construction services. As standard forms gain acceptance and are used with increased frequency, parties are able to enter into contracts with greater certainty as to their rights and responsibilities.
2.	DBIA Standard Form Contract Documents	Since its formation in 1993, the Design-Build Institute of America (DBIA) has regularly evaluated the needs of Owners, Design-Builders, and other parties to the design-build process in preparation for developing its own contract forms. Consistent with DBIA's mission of promulgating best design-build practices, DBIA believes that the design-build contract should reflect a balanced approach to risk that considers the legitimate interests of all parties to the design-build process. DBIA's Standard Form Contract Documents reflect a modern risk allocation approach, allocating each risk to the party best equipped to manage and minimize that risk, with the goal of promoting best design-build practices.
3.	Use of Non-DBIA Documents	To avoid inconsistencies among documents used for the same project, DBIA's Standard Form Contract Documents should not be used in conjunction with non-DBIA documents unless the non-DBIA documents are appropriately modified on the advice of legal counsel. Moreover, care should also be taken when using different editions of the DBIA Standard Form Document on the same project to ensure consistency.
4.	Legal Consequences	DBIA Standard Form Contract Documents are legally binding contracts with important legal consequences. Contracting parties are advised and encouraged to seek legal counsel in completing or modifying these Documents.
5.	Reproduction	DBIA hereby grants to purchasers a limited license to reproduce its Documents consistent with the License Agreement accompanying these Documents. At least two original versions of the Agreement should be signed by the parties. Any other reproduction of DBIA Documents is strictly prohibited.
6.	Modifications	<p>Effective contracting is accomplished when the parties give specific thought to their contracting goals and then tailor the contract to meet the unique needs of the project and the design-build team. For that reason, these Documents may require modification for various purposes including, for example, to comply with local codes and laws, or to add special terms. DBIA's latest revisions to its Documents provide the parties an opportunity to customize their contractual relationship by selecting various optional contract clauses that may better reflect the unique needs and risks associated with the project.</p> <p>Any modifications to these Documents should be initialed by the parties. At no time should a document be re-typed in its entirety. Re-creating the document violates copyright laws and destroys one of the advantages of standard forms – familiarity with the terms.</p>
7.	Execution	It is good practice to execute two original copies of the Agreement. Only persons authorized to sign for the contracting parties may execute the Agreement.

## Specific Instructions

Section	Title	Instruction
General	Purpose of This Document	<p>The General Conditions of Contract provide the terms and conditions under which the Work of the Project will be performed.</p> <p>This document accompanies DBIA Document No. 525 and DBIA Document No. 530 (each referred to herein generally as “Agreement”). It may also be incorporated by reference into other related agreements, as between Design-Builder and Design Consultant, and Design-Builder and Subcontractor.</p>
General	Checklist	<p>The following Sections reference documents that are to be attached to the Agreement:</p> <p>Section 3.5.1 Owner’s Permit List Article 5 Insurance and Bonds Section 9.4.2 Unit Prices</p>
2.1.3	Schedule	The parties are encouraged, if possible, to agree to a schedule for the execution of the Work upon execution of the Agreement or upon establishing the GMP.
2.2.1	Design Professional Services	The parties should be aware that in addition to requiring compliance with state licensing laws for design professionals, some states also require that the design professional have a corporate professional license.
2.3.1	Standard of Care for Design Professional’s Services	Design-Builder’s obligation is to deliver a design that meets prevailing industry standards. However, DBIA has provided the parties at Article 11 of the Agreement an optional provision whereby if Owner can identify specific performance standards that can be objectively measured, Design-Builder is obligated to design the Project to satisfy these standards if this optional provision is selected. To avoid any confusion and to ensure that the parties fully understand what their obligations are, the specific performance standards should be clearly identified and should be able to be objectively measured. Design-Builder should recognize that this is a heightened standard of care that has insurance ramifications that should be discussed with Design-Builder’s insurance advisor.
3.5.1	Government Approvals and Permits	Design-Builder is responsible for obtaining all necessary permits, approvals, and licenses, except to the extent specific permits, approvals, and licenses are set forth in an Owner’s Permit List, which must be attached as an exhibit to the Agreement. The parties, prior to execution of the Agreement, should discuss which permits, approvals and licenses need to be obtained for the Project and which party is in the best position to do so.
5.1.1	Design-Builder’s Insurance Requirements	Design-Builder is obligated to provide insurance coverage from insurance carriers that meet the criteria set forth in the Insurance Exhibit attached to Section 10.1 of the Agreement.
5.1.2	Exclusions to Design-Build	Parties are advised that their standard insurance policies may contain exclusions for the design-build delivery method. This Section 5.1.2 requires that any such exclusions be deleted from the policy.
5.2	Owner’s Insurance Requirements	Owner, in addition to providing the insurance set forth in this Section and Section 5.3, is also obligated to procure the insurance coverages for the amounts and consistent with the terms set forth in the Insurance Exhibit made part of the Agreement.
5.4	Bonds and Other Performance Security	Design-Builder is only obligated to provide bonds or other forms of performance security to the extent called for in Section 10.2 of the Agreement.

Section	Title	Instruction
8.2.2	Compensability for Force Majeure Events	The parties are provided the option in the Agreement of negotiating whether Design-Builder is entitled to compensation for Force Majeure Events.
9.4.1	Contract Price Adjustments	Unit prices, if established, shall be attached pursuant to Article 2 of the Agreement.
9.4.3	Payment/ Performance of Disputed Services	When Owner disputes Design-Builder's entitlement to a change order or disagrees with Design-Builder regarding the scope of Work, and nevertheless expects Design-Builder to perform the services, Design-Builder's cash flow and ability to complete the Work will be hampered if Owner fails to pay Design-Builder for the disputed services. This Section provides a balanced approach whereby Design-Builder is required to perform the services, but Owner is required to pay fifty percent (50%) of Design-Builder's reasonable estimated direct costs of performing such services until the dispute is settled. By so doing, Owner does not forfeit its right to deny total responsibility for payment, and Design-Builder does not give up its right to demand full payment. The dispute shall be resolved according to Article 10.
Article 10	Contract Adjustments and Disputes	DBIA endorses the use of partnering, negotiation, mediation and arbitration for the prevention and resolution of disputes. The General Conditions of Contract provides for the parties' Representatives and Senior Representatives to attempt to negotiate the dispute or disagreement. If this attempt fails, the dispute shall be submitted to mandatory, non-binding mediation. Any dispute that cannot be resolved by mediation shall then be submitted to binding arbitration, unless the parties elect in the Agreement to submit their dispute to a court of competent jurisdiction.
10.3.4	Arbitration	The prevailing party in any arbitration shall receive reasonable attorneys' fees from the other party. DBIA supports this "loser pays" provision to encourage parties to negotiate or mediate their differences and to minimize the number of frivolous disputes.
10.4	Duty to Continue Performance	Pending the resolution of any dispute or disagreement, both Owner and Design-Builder shall continue to perform their respective duties under the Contract Documents, unless the parties provide otherwise in the Contract Documents.
10.5	Consequential Damages	DBIA believes that it is inappropriate for either Owner or Design-Builder to be responsible to the other for consequential damages arising from the Project. This limitation on consequential damages in no way restricts, however, the payment of liquidated damages, if any, under Article 5 of the Agreement.
11.4	Design-Builder's Right to Terminate for Cause	If Design-Builder properly terminates the Agreement for cause, it shall recover from Owner in the same way as if Owner had terminated the Agreement for convenience under Section 11.6 of the General Conditions. Owner shall pay to Design-Builder its costs, reasonable overhead and profit on the costs, and an additional payment based on a percentage of the remaining balance of the Contract Price, all as set forth in Article 8 of the Agreement.
11.6.2	Termination for Convenience: Owner's Use of Work Product	Owner should not use the Termination for Convenience clause to obtain Design-Builder's valuable design concepts and then seek lower bids from another design-builder. If Owner terminates this Agreement for its own convenience, and chooses to proceed with the Project using Design-Builder's Work Product, Owner should pay an additional sum for the use of Design-Builder's Work Product pursuant to Section 4.3 of the Agreement.
Article 12	Electronic Data	Design-Builder and Owner shall agree on the software and format for the transmission of Electronic Data. Ownership of Work Product in electronic form is governed by Article 4 of the Agreement. The transmitting party disclaims all warranties with respect to the media transmitting the Electronic Data, but nothing in this Article is intended to negate duties with respect to the standard of care in creating the Electronic Data.

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# **Article 1**

## **General**

### **1.1 Mutual Obligations.**

**1.1.1** *Owner and Design-Builder* commit at all times to cooperate fully with each other and proceed on the basis of trust and good faith, to permit each party to realize the benefits afforded under the Contract Documents.

### **1.2 Basic Definitions.**

**1.2.1** *Agreement* refers to the executed contract between Owner and Design-Builder under either DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum* (2022 Edition); DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price* (2022 Edition); DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement* (2022 Edition); or DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects* (2022 Edition).

**1.2.2** *Basis of Design Documents* are as follows: For DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, the Basis of Design Documents are those documents specifically listed in, as applicable, the GMP Exhibit or GMP Proposal as being the “Basis of Design Documents.” For DBIA Document No. 525, *Standard Form of Agreement Between Owner and Design-Builder – Lump Sum*, for DBIA Document No. 544, *Standard Form of Progressive Design-Build Agreement*, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal, and the Deviation List, if any. For DBIA Document No. 545, *Standard Form of Progressive Design-Build Agreement for Water and Wastewater Projects*, the Basis of Design Documents are Owner’s Project Criteria, Design-Builder’s Proposal and the Deviation List, if any.

**1.2.3** *Construction Documents* are the documents, consisting of Drawings and Specifications, to be prepared or assembled by Design-Builder consistent with the Basis of Design Documents unless a deviation from the Basis of Design Documents is specifically set forth in a Change Order executed by both Owner and Design-Builder, as part of the design review process contemplated by Section 2.4 of these General Conditions of Contract.

**1.2.4** *Day or Days* shall mean calendar days unless otherwise specifically noted in the Contract Documents.

**1.2.5** *Design-Build Team* is comprised of Design-Builder, Design Consultant, and key Subcontractors identified by Design-Builder.

**1.2.6** *Design Consultant* is a qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder, to furnish design services required under the Contract Documents. A Design Sub-Consultant is a qualified, licensed design professional who is not an employee of Design Consultant but is retained by Design Consultant or employed or retained by anyone under contract to Design Consultant, to furnish design services required under the Contract Documents.

**1.2.7** *Design Submission* means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, drawings, sketches, illustrations, specifications, descriptions, models, and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design-Builder.

**1.2.8** *Final Completion* is the date on which all Work is complete in accordance with the Contract Documents, including but not limited to, any items identified in the punch list prepared under

Section 6.6.1 and the submission of all documents set forth in Section 6.7.2.

**1.2.9** *Force Majeure Events* are those events that are beyond the control of both Design-Builder and Owner, including the events of war, floods, labor disputes, earthquakes, epidemics, adverse weather conditions not reasonably anticipated, and other acts of God.

**1.2.10** *General Conditions of Contract* refer to this DBIA Document No. 535, *Standard Form of General Conditions of Contract Between Owner and Design-Builder* (2022 Edition).

~~**1.2.11** *GMP Exhibit* means that exhibit attached to DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*, which exhibit will have been agreed upon by Owner and Design-Builder prior to the execution of the Agreement.~~

**1.2.12** *GMP Proposal* or *Proposal* means that proposal developed by Design-Builder in accordance with Section 6.6 of DBIA Document No. 530, *Standard Form of Agreement Between Owner and Design-Builder*, with Section 2.3 of DBIA Document No. 544, *Progressive Design-Build Agreement*.

**1.2.13** *Hazardous Conditions* are any materials, wastes, substances and chemicals deemed to be hazardous under applicable Legal Requirements, or the handling, storage, remediation, or disposal of which are regulated by applicable Legal Requirements.

**1.2.14** *Legal Requirements* are all applicable federal, state and local laws, codes, ordinances, rules, regulations, orders and decrees of any government or quasi-government entity having jurisdiction over the Project or Site, the practices involved in the Project or Site, or any Work.

**1.2.15** *Owner's Project Criteria* are developed by or for Owner to describe Owner's program requirements and objectives for the Project, including use, space, price, time, site and expandability requirements, as well as submittal requirements and other requirements governing Design-Builder's performance of the Work. Owner's Project Criteria may include conceptual documents, design criteria, design performance specifications, design specifications, and LEED® or other sustainable design criteria and other Project-specific technical materials and requirements.

**1.2.16** *Site* is the land or premises on which the Project is located.

**1.2.17** *Subcontractor* is any person or entity retained by Design-Builder as an independent contractor to perform a portion of the Work and shall include materialmen and suppliers.

**1.2.18** *Sub-Subcontractor* is any person or entity retained by a Subcontractor as an independent contractor to perform any portion of a Subcontractor's Work and shall include materialmen and suppliers.

**1.2.19** *Substantial Completion* or *Substantially Complete* means the date on which the Work, or an agreed upon portion of the Work, is sufficiently complete in accordance with the Contract Documents so that Owner can occupy and use the Project or a portion thereof for its intended purposes.

**1.2.20** *Work* is comprised of all Design-Builder's design, construction and other services required by the Contract Documents, including procuring and furnishing all materials, equipment, services and labor reasonably inferable from the Contract Documents.

## **Article 2**

### **Design-Builder's Services and Responsibilities**

#### **2.1 General Services.**

**2.1.1** Design-Builder's Representative shall be reasonably available to Owner and shall have the necessary expertise and experience required to supervise the Work. Design-Builder's Representative shall communicate regularly with Owner and shall be vested with the authority to act on behalf of Design-Builder. Design-Builder's Representative may be replaced only with the mutual agreement of Owner and Design-Builder.

**2.1.2** Unless the parties agree on a different time period for submission of a status report, Design-Builder shall provide Owner with a monthly status report detailing the progress of the Work, including (i) whether the Work is proceeding according to schedule; (ii) whether discrepancies, conflicts, or ambiguities exist in the Contract Documents that require resolution; (iii) whether health and safety issues exist in connection with the Work; (iv) status of the contingency account to the extent provided for in the *Standard Form of Agreement Between Owner and Design-Builder – Cost Plus Fee With an Option for a Guaranteed Maximum Price*; and (v) other items that require resolution so as not to jeopardize Design-Builder's ability to complete the Work for the Contract Price and within the Contract Time(s). Status reports shall be submitted with Design-Builder's draft Payment Applications as a pre-requisite to payment.

**2.1.3** Unless a schedule for the execution of the Work has been attached to the Agreement as an exhibit at the time the Agreement is executed, Design-Builder shall prepare and submit, at least three (3) days prior to the meeting contemplated by Section 2.1.4 hereof, a schedule for the execution of the Work for Owner's review and response. The schedule shall indicate the dates for the start and completion of the various stages of Work, including the dates when Owner information and approvals are required to enable Design-Builder to achieve the Contract Time(s). The schedule shall be revised as required by conditions and progress of the Work, but such revisions shall not relieve Design-Builder of its obligations to complete the Work within the Contract Time(s), as such dates may be adjusted in accordance with the Contract Documents. Owner's review of, and response to, the schedule shall not be construed as relieving Design-Builder of its complete and exclusive control over the means, methods, sequences and techniques for executing the Work.

**2.1.4** The parties will meet within seven (7) days after execution of the Agreement to discuss issues affecting the administration of the Work and to implement the necessary procedures, including those relating to submittals and payment, to facilitate the ability of the parties to perform their obligations under the Contract Documents.

#### **2.2 Design Professional Services.**

**2.2.1** Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independent licensed Design Consultants, the necessary design services, including architectural, engineering and other design professional services, for the preparation of the required drawings, specifications and other design submittals to permit Design-Builder to complete the Work consistent with the Contract Documents. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant.

**2.2.2** Design-Builder shall employ only Design Consultants and/or Design Subconsultants who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Design Consultants and/or Design Subconsultants perform Work on the Project, Design-Builder shall identify in writing to Owner all Design Consultants and Design Subconsultants. To the extent that Design-Builder has not selected a Design Consultant or Design Subconsultant prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Design Consultants and/or Design Subconsultants and their scope of Work

prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Design Consultant or Design Subconsultant, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder shall not substitute a listed Design Consultant or Subconsultant without obtaining Owner's prior written consent; such consent shall not be unreasonably withheld. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Design Consultant or Design Subconsultant, including but not limited to any third-party beneficiary rights.

## **2.3 Standard of Care for Design Professional Services.**

**2.3.1** The standard of care for all design professional services performed to execute the Work shall be the care and skill ordinarily used by members of the applicable profession practicing under similar conditions at the same time and locality of the Project.

## **2.4 Design Development Services.**

**2.4.1** Design-Builder and Owner shall, consistent with any applicable provision of the Contract Documents, agree upon any interim Design Submissions that Owner may wish to review, which interim Design Submissions may include design criteria, drawings, diagrams and specifications setting forth the Project requirements.

**2.4.1.1** Design Submissions shall be consistent with the Owner's Project Criteria as well as the Basis of Design Documents, as the Basis of Design Documents may have been changed or supplemented through the design process set forth in this Section 2.4.1. By submitting Design Submissions, Design-Builder represents to the Owner that the Work depicted and otherwise shown, contained, or reflected in Design Submissions may be constructed in compliance with the then current Contract Price and Contract Time. Notwithstanding the above, Design-Builder may propose Design Submissions that may alter the Basis of Design Documents, the Contract Price and/or Contract Time; however, Design-Builder must provide notice thereof in accordance with Article 10 of the General Conditions and obtain a Change Order before such proposed Design Submissions are incorporated into the Construction Documents.

**2.4.1.2** On or about the time of the Design Submissions, Design-Builder and Owner shall meet and confer about the Design Submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any changes to the Basis of Design Documents, or, if applicable, previously submitted Design Submissions. Changes to the Basis of Design Documents, including those that are deemed minor changes under Section 9.3.1, shall be processed in accordance with Article 9. Minutes of the meetings, including a full listing of all changes, will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim Design Submissions and meeting minutes in a time that is consistent with the turnaround times set forth in Design-Builder's schedule.

**2.4.1.3** Owner shall review and respond to Design Submissions, providing any comments and/or concerns about the Design Submissions. Owner shall provide all comments on the Design Submissions within the time provided by the Contract Documents. Design-Builder shall revise the Design Submissions (and any other deliverables) in response to Owner's comments and incorporate said responses into the next submission of Design Submissions.

**2.4.1.4** If incorporation of Owner's comments results in a design that is inconsistent with or otherwise gives rise to a change in Owner's Project Criteria, the Basis of Design Documents, the Contract Price and/or the Contract Time, Design-Builder shall provide notice thereof in accordance with Articles 9 and 10 of the General Conditions. Changes to the Basis of Design Documents, the Contract Price and/or the Contract Time, including

those that are deemed minor changes, shall be processed in accordance with Article 9 of the General Conditions.

**2.4.2** Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings and specifications describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim Design Submissions, as such submissions may have been modified in a design review meeting and recorded in the meeting minutes. The parties shall have a design review meeting to discuss, and Owner shall review and approve, the Construction Documents in accordance with the procedures set forth in Section 2.4.1 above. Design-Builder shall proceed with construction in accordance with the approved Construction Documents and shall submit one set of approved Construction Documents to Owner prior to commencement of construction.

**2.4.3** Owner's review and approval of interim Design Submissions, meeting minutes, and the Construction Documents is for the purpose of mutually establishing a conformed set of Contract Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim Design Submissions, meeting minutes, and Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner. Design-Builder shall provide Owner with sufficient time in the Project Schedule to review and approve the Design Submissions.

**2.4.4** To the extent not prohibited by the Contract Documents or Legal Requirements, Design-Builder may prepare interim Design Submissions and Construction Documents for a portion of the Work to permit construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

## **2.5 Legal Requirements.**

**2.5.1** Design-Builder shall perform the Work in accordance with all Legal Requirements and shall provide all notices applicable to the Work as required by the Legal Requirements.

**2.5.2** The Contract Price and/or Contract Time(s) shall be adjusted to compensate Design-Builder for the effects of any changes in the Legal Requirements enacted after the date of the Agreement affecting the performance of the Work, or if a Guaranteed Maximum Price is established after the date of the Agreement, the date the parties agree upon the Guaranteed Maximum Price. Such effects may include, without limitation, revisions Design-Builder is required to make to the Construction Documents because of changes in Legal Requirements.

## **2.6 Government Approvals and Permits.**

**2.6.1** Except as identified in an Owner's Permit List attached as an exhibit to the Agreement, Design-Builder shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees required for the prosecution of the Work by any government or quasi-government entity having jurisdiction over the Project.

**2.6.2** Design-Builder shall provide reasonable assistance to Owner in obtaining those permits, approvals and licenses that are Owner's responsibility.

## **2.7 Design-Builder's Construction Phase Services.**

**2.7.1** Unless otherwise provided in the Contract Documents to be the responsibility of Owner or a separate contractor, Design-Builder shall provide through itself or Subcontractors the necessary supervision, labor, inspection, testing, start-up, material, equipment, machinery, temporary utilities and other temporary facilities to permit Design-Builder to complete construction of the Project consistent with the Contract Documents.

**2.7.2** Design-Builder shall perform all construction activities efficiently and with the requisite expertise, skill and competence to satisfy the requirements of the Contract Documents. Design-

Builder shall at all times exercise complete and exclusive control over the means, methods, sequences and techniques of construction.

**2.7.3** Design-Builder shall employ only Subcontractors who are duly licensed and qualified to perform the Work consistent with the Contract Documents. Prior to the date that Subcontractors perform Work on the Project, Design-Builder shall identify in writing to Owner all Subcontractors. To the extent that Design-Builder has not selected a Subcontractor prior to performing the Work, Design-Builder shall provide Owner in writing a list of any subsequently added Subcontractors prior to their performing Work on the Project. Owner may reasonably object to Design-Builder's selection of any Subcontractor, provided that the Contract Price and/or Contract Time(s) shall be adjusted to the extent that Owner's decision impacts Design-Builder's cost and/or time of performance. Design-Builder may not substitute listed Subcontractors without Owner's prior written consent; such consent shall not be unreasonably withheld.

**2.7.4** Design-Builder assumes responsibility to Owner for the proper performance of the Work of Subcontractors and any acts and omissions in connection with such performance. Nothing in the Contract Documents is intended or deemed to create any legal or contractual relationship between Owner and any Subcontractor or Sub-Subcontractor, including but not limited to any third-party beneficiary rights.

**2.7.5** Design-Builder shall coordinate the activities of all Subcontractors. If Owner performs other work on the Project or at the Site with separate contractors under Owner's control, Design-Builder agrees to reasonably cooperate and coordinate its activities with those of such separate contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

**2.7.6** Design-Builder shall keep the Site reasonably free from debris, trash and construction wastes to permit Design-Builder to perform its construction services efficiently, safely and without interfering with the use of adjacent land areas. Upon Substantial Completion of the Work, or a portion of the Work, Design-Builder shall remove all debris, trash, construction wastes, materials, equipment, machinery and tools arising from the Work or applicable portions thereof to permit Owner to occupy the Project or a portion of the Project for its intended use.

## **2.8 Design-Builder's Responsibility for Project Safety.**

**2.8.1** Design-Builder recognizes the importance of performing the Work in a safe manner so as to prevent damage, injury or loss to (i) all individuals at the Site, whether working or visiting; (ii) the Work, including materials and equipment incorporated into the Work or stored on-Site or off-Site; and (iii) all other property at the Site or adjacent thereto. Design-Builder assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work. Design-Builder shall, prior to commencing construction, designate a Safety Representative with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work. Unless otherwise required by the Contract Documents, Design-Builder's Safety Representative shall be an individual stationed at the Site who may have responsibilities on the Project in addition to safety. The Safety Representative shall make routine daily inspections of the Site and shall hold weekly safety meetings with Design-Builder's personnel, Subcontractors and others as applicable.

**2.8.2** Design-Builder and Subcontractors shall comply with all Legal Requirements relating to safety, as well as any Owner-specific safety requirements set forth in the Contract Documents, provided that such Owner-specific requirements do not violate any applicable Legal Requirement. Design-Builder will immediately report in writing any safety-related injury, loss, damage or accident arising from the Work to Owner's Representative and, to the extent mandated by Legal Requirements, to all government or quasi-government authorities having jurisdiction over safety-related matters involving the Project or the Work.

**2.8.3** Design-Builder's responsibility for safety under this Section 2.8 is not intended in any way

to relieve Subcontractors and Sub-Subcontractors of their own contractual and legal obligations and responsibility for (i) complying with all Legal Requirements, including those related to health and safety matters; and (ii) taking all necessary measures to implement and monitor all safety precautions and programs to guard against injuries, losses, damages or accidents resulting from their performance of the Work.

## **2.9 Design-Builder's Warranty.**

**2.9.1** Design-Builder warrants to Owner that the construction, including all materials and equipment furnished as part of the construction, shall be new unless otherwise specified in the Contract Documents, of good quality, in conformance with the Contract Documents and free of defects in materials and workmanship. ~~If the parties have opted in Section \_\_\_\_ of the Agreement to establish a limited time frame for the warranty set forth in this Section, the warranty in this section shall be limited to the time frame set forth in Section \_\_\_\_ of the Agreement.~~ Design-Builder's warranty obligation excludes defects caused by abuse, alterations, or failure to maintain the Work in a commercially reasonable manner. Nothing in this warranty is intended to limit any manufacturer's warranty which provides Owner with greater warranty rights than set forth in this Section 2.9 or the Contract Documents. Design-Builder will provide Owner with all manufacturers' warranties upon Substantial Completion.

## **2.10 Correction of Defective Work.**

**2.10.1** Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including that part of the Work subject to Section 2.9 hereof, within a period of one year from the date of Substantial Completion of the Work or any portion of the Work, or within such longer period to the extent required by any specific warranty included in the Contract Documents.

**2.10.2** Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take meaningful steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day period identified herein shall be deemed inapplicable.

**2.10.3** The one-year period referenced in Section 2.10.1 above applies only to Design-Builder's obligation to correct nonconforming Work and is not intended to constitute a period of limitations for any other rights or remedies Owner may have regarding Design-Builder's other obligations under the Contract Documents.

# **Article 3**

## **Owner's Services and Responsibilities**

### **3.1 Duty to Cooperate.**

**3.1.1** Owner shall, throughout the performance of the Work, cooperate with Design-Builder and perform its responsibilities, obligations and services in a timely manner to facilitate Design-Builder's timely and efficient performance of the Work and so as not to delay or interfere with Design-

Builder's performance of its obligations under the Contract Documents.

**3.1.2** Owner shall provide timely reviews and approvals of interim Design Submissions and Construction Documents consistent with the turnaround times set forth in Design-Builder's schedule.

**3.1.3** Owner shall give Design-Builder timely notice of any Work that Owner notices to be defective or not in compliance with the Contract Documents.

## **3.2 Furnishing of Services and Information.**

**3.2.1** Unless expressly stated to the contrary in the Contract Documents, Owner shall provide, at its own cost and expense, for Design-Builder's information and use the following, all of which Design-Builder is entitled to rely upon in performing the Work:

**3.2.1.1** Surveys describing the property, boundaries, topography and reference points for use during construction, including existing service and utility lines;

**3.2.1.2** Geotechnical studies describing subsurface conditions, and other surveys describing other latent or concealed physical conditions at the Site;

**3.2.1.3** Temporary and permanent easements, zoning and other requirements and encumbrances affecting land use, or necessary to permit the proper design and construction of the Project and enable Design-Builder to perform the Work;

**3.2.1.4** A legal description of the Site;

**3.2.1.5** To the extent available, record drawings of any existing structures at the Site; and

**3.2.1.6** To the extent available, environmental studies, reports and impact statements describing the environmental conditions, including Hazardous Conditions, in existence at the Site.

**3.2.2** Owner is responsible for securing and executing all necessary agreements with adjacent land or property owners that are necessary to enable Design-Builder to perform the Work. Owner is further responsible for all costs, including attorneys' fees, incurred in securing these necessary agreements.

## **3.3 Financial Information.**

**3.3.1** At Design-Builder's written request, Owner shall promptly furnish reasonable evidence satisfactory to Design-Builder that Owner has adequate funds available and committed to fulfill all of Owner's contractual obligations under the Contract Documents. If Owner fails to furnish such financial information in a timely manner, Design-Builder may stop Work under Section 11.3 hereof or exercise any other right permitted under the Contract Documents.

**3.3.2** Design-Builder shall cooperate with the reasonable requirements of Owner's lenders or other financial sources. Notwithstanding the preceding sentence, after execution of the Agreement Design-Builder shall have no obligation to execute for Owner or Owner's lenders or other financial sources any documents or agreements that require Design-Builder to assume obligations or responsibilities greater than those existing obligations Design-Builder has under the Contract Documents.

## **3.4 Owner's Representative.**

**3.4.1** Owner's Representative shall be responsible for providing Owner-supplied information and approvals in a timely manner to permit Design-Builder to fulfill its obligations under the Contract

Documents. Owner's Representative shall also provide Design-Builder with prompt notice if it observes any failure on the part of Design-Builder to fulfill its contractual obligations, including any errors, omissions or defects in the performance of the Work. Owner's Representative shall communicate regularly with Design-Builder and shall be vested with the authority to act on behalf of Owner.

### **3.5 Government Approvals and Permits.**

**3.5.1** Owner shall obtain and pay for all necessary permits, approvals, licenses, government charges and inspection fees set forth in Owner's Permit List attached as an exhibit to the Agreement.

**3.5.2** Owner shall provide reasonable assistance to Design-Builder in obtaining those permits, approvals and licenses that are Design-Builder's responsibility.

### **3.6 Owner's Separate Contractors.**

**3.6.1** Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner shall contractually require its separate contractors to cooperate with and coordinate their activities so as not to interfere with Design-Builder in order to enable Design-Builder to timely complete the Work consistent with the Contract Documents.

## **Article 4**

### **Hazardous Conditions and Differing Site Conditions**

#### **4.1 Hazardous Conditions.**

**4.1.1** Unless otherwise expressly provided in the Contract Documents to be part of the Work, Design-Builder is not responsible for any Hazardous Conditions encountered at the Site. Upon encountering any Hazardous Conditions, Design-Builder will stop Work immediately in the affected area and duly notify Owner and, if required by Legal Requirements, all government or quasi-government entities with jurisdiction over the Project or Site.

**4.1.2** Upon receiving notice of the presence of suspected Hazardous Conditions, Owner shall take the necessary measures required to ensure that the Hazardous Conditions are remediated or rendered harmless. Such necessary measures shall include Owner retaining qualified independent experts to (i) ascertain whether Hazardous Conditions have actually been encountered, and, if they have been encountered, (ii) prescribe the remedial measures that Owner must take either to remove the Hazardous Conditions or render the Hazardous Conditions harmless.

**4.1.3** Design-Builder shall be obligated to resume Work at the affected area of the Project only after Owner's expert provides it with written certification that (i) the Hazardous Conditions have been removed or rendered harmless; and (ii) all necessary approvals have been obtained from all government and quasi-government entities having jurisdiction over the Project or Site.

**4.1.4** Design-Builder will be entitled, in accordance with these General Conditions of Contract, to an adjustment in its Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance have been adversely impacted by the presence of Hazardous Conditions.

**4.1.5** To the fullest extent permitted by law, Owner shall indemnify, defend and hold harmless Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents, from and against any and all claims,

losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the presence, removal or remediation of Hazardous Conditions at the Site.

**4.1.6** Notwithstanding the preceding provisions of this Section 4.1, Owner is not responsible for Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable. To the fullest extent permitted by law, Design-Builder shall indemnify, defend and hold harmless Owner and Owner's officers, directors, employees and agents from and against all claims, losses, damages, liabilities and expenses, including attorneys' fees and expenses, arising out of or resulting from those Hazardous Conditions introduced to the Site by Design-Builder, Subcontractors or anyone for whose acts they may be liable.

## **4.2 Differing Site Conditions.**

**4.2.1** Concealed or latent physical conditions or subsurface conditions at the Site that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work, are collectively referred to herein as "Differing Site Conditions." If Design-Builder encounters a Differing Site Condition, Design-Builder will be entitled to an adjustment in the Contract Price and/or Contract Time(s) to the extent Design-Builder's cost and/or time of performance are adversely impacted by the Differing Site Condition.

**4.2.2** Upon encountering a Differing Site Condition, Design-Builder shall provide prompt written notice to Owner of such condition, which notice shall not be later than fourteen (14) days after such condition has been encountered. Design-Builder shall, to the extent reasonably possible, provide such notice before the Differing Site Condition has been substantially disturbed or altered.

# **Article 5**

## **Insurance and Bonds**

### **5.1 Design-Builder's Insurance Requirements.**

**5.1.1** Design-Builder is responsible for procuring and maintaining the insurance for the coverage amounts all as set forth in the Insurance Exhibit to the Agreement. Coverage shall be secured from insurance companies authorized to do business in the state in which the Project is located, and with a minimum rating set forth in the Agreement.

**5.1.2** Design-Builder's insurance shall specifically delete any design-build or similar exclusions that could compromise coverages because of the design-build delivery of the Project.

**5.1.3** Prior to commencing any construction services hereunder, Design-Builder shall provide Owner with certificates evidencing that (i) all insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect for the duration required by the Contract Documents; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Owner. If any of the foregoing insurance coverages are required to remain in force after final payment is reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the Final Application for Payment. If any information concerning reduction of coverage is not furnished by the insurer, it shall be furnished by Design-Builder with reasonable promptness according to Design-Builder's information and belief.

### **5.2 Owner's Liability Insurance.**

**5.2.1** Owner shall procure and maintain from insurance companies authorized to do business in

the state in which the Project is located such liability insurance as set forth in the Insurance Exhibit to the Agreement to protect Owner from claims which may arise from the performance of Owner's obligations under the Contract Documents or Owner's conduct during the course of the Project.

### **5.3 Owner's Property Insurance.**

**5.3.1** Unless otherwise provided in the Contract Documents, Owner shall procure and maintain from insurance companies authorized to do business in the state in which the Project is located property insurance upon the entire Project to the full insurable value of the Project, including professional fees, overtime premiums and all other expenses incurred to replace or repair the insured property. The property insurance obtained by Owner shall be the broadest coverage commercially available, and shall include as additional insureds the interests of Owner, Design-Builder, Design Consultants and Subcontractors of any tier. Such insurance shall include but not be limited to the perils of fire and extended coverage, theft, vandalism, malicious mischief, collapse, flood, earthquake, debris removal and other perils or causes of loss as called for in the Contract Documents. The property insurance shall include physical loss or damage to the Work, including materials and equipment in transit, at the Site or at another location as may be indicated in Design-Builder's Application for Payment and approved by Owner. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.1.

**5.3.2** Unless the Contract Documents provide otherwise, Owner shall procure and maintain boiler and machinery insurance that will include the interests of Owner, Design-Builder, Design Consultants, and Subcontractors of any tier. Owner is responsible for the payment of any deductibles under the insurance required by this Section 5.3.2.

**5.3.3** Prior to Design-Builder commencing any Work, Owner shall provide Design-Builder with certificates evidencing that (i) all Owner's insurance obligations required by the Contract Documents are in full force and in effect and will remain in effect until Design-Builder has completed all of the Work and has received final payment from Owner; and (ii) no insurance coverage will be canceled, renewal refused, or materially changed unless at least thirty (30) days' prior written notice is given to Design-Builder. Owner's property insurance shall not lapse or be canceled if Owner occupies a portion of the Work pursuant to Section 6.6.3 hereof. Owner shall provide Design-Builder with the necessary endorsements from the insurance company prior to occupying a portion of the Work.

**5.3.4** Any loss covered under Owner's property insurance shall be adjusted with Owner and Design-Builder and made payable to both of them as trustees for the insureds as their interests may appear, subject to any applicable mortgage clause. All insurance proceeds received as a result of any loss will be placed in a separate account and distributed in accordance with such agreement as the interested parties may reach. Any disagreement concerning the distribution of any proceeds will be resolved in accordance with Article 10 hereof.

**5.3.5** Owner and Design-Builder waive against each other and Owner's separate contractors, Design Consultants, Subcontractors, agents and employees of each and all of them, all damages covered by property insurance provided herein, except such rights as they may have to the proceeds of such insurance. Design-Builder and Owner shall, where appropriate, require similar waivers of subrogation from Owner's separate contractors, Design Consultants and Subcontractors and shall require each of them to include similar waivers in their contracts. These waivers of subrogation shall not contain any restriction or limitation that will impair the full and complete extent of its applicability to any person or entity unless agreed to in writing prior to the execution of this Agreement.

### **5.4 Bonds and Other Performance Security.**

**5.4.1** If Owner requires Design-Builder to obtain performance and labor and material payment bonds, or other forms of performance security, the amount, form and other conditions of such security shall be as set forth in the Agreement.

**5.4.2** All bonds furnished by Design-Builder shall be in a form satisfactory to Owner. The surety shall be a company qualified and registered to conduct business in the state in which the Project is located.

## **Article 6**

### **Payment**

#### **6.1 Schedule of Values.**

**6.1.1** Unless required by Owner upon execution of this Agreement, within ten (10) days of execution of the Agreement, Design-Builder shall submit for Owner's review and approval a schedule of values for all of the Work. The Schedule of Values will (i) subdivide the Work into its respective parts; (ii) include values for all items comprising the Work; and (iii) serve as the basis for monthly progress payments made to Design-Builder throughout the Work.

**6.1.2** Owner will timely review and approve the schedule of values so as not to delay the submission of Design-Builder's first application for payment. Owner and Design-Builder shall timely resolve any differences so as not to delay Design-Builder's submission of its first application for payment.

#### **6.2 Monthly Progress Payments.**

**6.2.1** On or before the date established in the Agreement, Design-Builder shall submit for Owner's review and approval its Application for Payment requesting payment for all Work performed as of the date of the Application for Payment. The Application for Payment shall be accompanied by all supporting documentation required by the Contract Documents and/or established at the meeting required by Section 2.1.4 hereof.

**6.2.2** The Application for Payment may request payment for equipment and materials not yet incorporated into the Project, provided that (i) Owner is satisfied that the equipment and materials are suitably stored at either the Site or another acceptable location; (ii) the equipment and materials are protected by suitable insurance; and (iii) upon payment, Owner will receive the equipment and materials free and clear of all liens and encumbrances.

**6.2.3** All discounts offered by Subcontractors, Sub-Subcontractors, and suppliers to Design-Builder for early payment shall accrue one hundred percent to Design-Builder to the extent Design-Builder advances payment. Unless Owner advances payment to Design-Builder specifically to receive the discount, Design-Builder may include in its Application for Payment the full undiscounted cost of the item for which payment is sought.

**6.2.4** The Application for Payment shall constitute Design-Builder's representation that the Work described therein has been performed consistent with the Contract Documents, has progressed to the point indicated in the Application for Payment, and that title to all Work will pass to Owner free and clear of all claims, liens, encumbrances, and security interests upon the incorporation of the Work into the Project, or upon Design-Builder's receipt of payment, whichever occurs earlier.

#### **6.3 Withholding of Payments.**

**6.3.1** On or before the date established in the Agreement, Owner shall pay Design-Builder all amounts properly due. If Owner determines that Design-Builder is not entitled to all or part of an Application for Payment as a result of Design-Builder's failure to meet its obligations hereunder, it will notify Design-Builder in writing at least five (5) days prior to the date payment is due. The notice shall indicate the specific amounts Owner intends to withhold, the reasons and contractual basis

for the withholding, and the specific measures Design-Builder must take to rectify Owner's concerns. Design-Builder and Owner will attempt to resolve Owner's concerns prior to the date payment is due. If the parties cannot resolve such concerns, Design-Builder may pursue its rights under the Contract Documents, including those under Article 10 hereof.

**6.3.2** Notwithstanding anything to the contrary in the Contract Documents, Owner shall pay Design-Builder all undisputed amounts in an Application for Payment within the times required by the Agreement.

#### **6.4 Right to Stop Work and Interest.**

**6.4.1** If Owner fails to pay timely Design-Builder any undisputed amount that becomes due, Design-Builder, in addition to all other remedies provided in the Contract Documents, may stop Work pursuant to Section 11.3 hereof. All payments due and unpaid shall bear interest at the rate set forth in the Agreement.

#### **6.5 Design-Builder's Payment Obligations.**

**6.5.1** Design-Builder will pay Design Consultants and Subcontractors, in accordance with its contractual obligations to such parties, all the amounts Design-Builder has received from Owner on account of their work. Design-Builder will impose similar requirements on Design Consultants and Subcontractors to pay those parties with whom they have contracted. Design-Builder will indemnify and defend Owner against any claims for payment and mechanic's liens as set forth in Section 7.3 hereof.

#### **6.6 Substantial Completion.**

**6.6.1** Design-Builder shall notify Owner when it believes the Work, or to the extent permitted in the Contract Documents, a portion of the Work, is Substantially Complete. Within five (5) days of Owner's receipt of Design-Builder's notice, Owner and Design-Builder will jointly inspect such Work to verify that it is Substantially Complete in accordance with the requirements of the Contract Documents. If such Work is Substantially Complete, Owner shall prepare and issue a Certificate of Substantial Completion that will set forth (i) the date of Substantial Completion of the Work or portion thereof; (ii) the remaining items of Work that have to be completed before final payment; (iii) provisions (to the extent not already provided in the Contract Documents) establishing Owner's and Design-Builder's responsibility for the Project's security, maintenance, utilities and insurance pending final payment; and (iv) an acknowledgment that warranties commence to run on the date of Substantial Completion, except as may otherwise be noted in the Certificate of Substantial Completion.

**6.6.2** Upon Substantial Completion of the entire Work or, if applicable, any portion of the Work, Owner shall release to Design-Builder all retained amounts relating, as applicable, to the entire Work or completed portion of the Work, less an amount equal to the reasonable value of all remaining or incomplete items of Work as noted in the Certificate of Substantial Completion.

**6.6.3** Owner, at its option, may use a portion of the Work which has been determined to be Substantially Complete, provided, however, that (i) a Certificate of Substantial Completion has been issued for the portion of Work addressing the items set forth in Section 6.6.1 above; (ii) Design-Builder and Owner have obtained the consent of their sureties and insurers, and to the extent applicable, the appropriate government authorities having jurisdiction over the Project; and (iii) Owner and Design-Builder agree that Owner's use or occupancy will not interfere with Design-Builder's completion of the remaining Work.

#### **6.7 Final Payment.**

**6.7.1** After receipt of a Final Application for Payment from Design-Builder, Owner shall make final payment by the time required in the Agreement, provided that Design-Builder has achieved

Final Completion.

**6.7.2** At the time of submission of its Final Application for Payment, Design-Builder shall provide the following information:

**6.7.2.1** An affidavit that there are no claims, obligations or liens outstanding or unsatisfied for labor, services, material, equipment, taxes or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;

**6.7.2.2** A general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims previously made in writing to Owner and remaining unsettled at the time of final payment;

**6.7.2.3** Consent of Design-Builder's surety, if any, to final payment;

**6.7.2.4** All operating manuals, warranties and other deliverables required by the Contract Documents; and

**6.7.2.5** Certificates of insurance confirming that required coverages will remain in effect consistent with the requirements of the Contract Documents.

**6.7.3** Upon making final payment, Owner waives all claims against Design-Builder except claims relating to (i) Design-Builder's failure to satisfy its payment obligations, if such failure affects Owner's interests; (ii) Design-Builder's failure to complete the Work consistent with the Contract Documents, including defects appearing after Substantial Completion; and (iii) the terms of any special warranties required by the Contract Documents.

**6.7.4** Deficiencies in the Work discovered after Substantial Completion, whether or not such deficiencies would have been included on the punch list if discovered earlier, shall be deemed warranty Work. Such deficiencies shall be corrected by Design-Builder under Sections 2.9 and 2.10 herein and shall not be a reason to withhold final payment from Design-Builder, provided, however, that Owner shall be entitled to withhold from the Final Payment the reasonable value of completion of such deficient work until such work is completed.

## **Article 7**

### **Indemnification**

#### **7.1 Patent and Copyright Infringement.**

**7.1.1** Design-Builder shall defend any action or proceeding brought against Owner based on any claim that the Work, or any part thereof, or the operation or use of the Work or any part thereof, constitutes infringement of any United States patent or copyright, now or hereafter issued. Owner shall give prompt written notice to Design-Builder of any such action or proceeding and will reasonably provide authority, information and assistance in the defense of same. Design-Builder shall indemnify and hold harmless Owner from and against all damages and costs, including but not limited to attorneys' fees and expenses awarded against Owner or Design-Builder in any such action or proceeding. Design-Builder agrees to keep Owner informed of all developments in the defense of such actions.

**7.1.2** If Owner is enjoined from the operation or use of the Work, or any part thereof, as the result of any patent or copyright suit, claim, or proceeding, Design-Builder shall at its sole expense take reasonable steps to procure the right to operate or use the Work. If Design-Builder cannot so procure such right within a reasonable time, Design-Builder shall promptly, at Design-Builder's

option and at Design-Builder's expense, (i) modify the Work so as to avoid infringement of any such patent or copyright; or (ii) replace said Work with Work that does not infringe or violate any such patent or copyright.

**7.1.3** Sections 7.1.1 and 7.1.2 above shall not be applicable to any suit, claim or proceeding based on infringement or violation of a patent or copyright (i) relating solely to a particular process or product of a particular manufacturer specified by Owner and not offered or recommended by Design-Builder to Owner; or (ii) arising from modifications to the Work by Owner or its agents after acceptance of the Work. If the suit, claim or proceeding is based upon events set forth in the preceding sentence, Owner shall defend, indemnify and hold harmless Design-Builder to the same extent Design-Builder is obligated to defend, indemnify and hold harmless Owner in Section 7.1.1 above.

**7.1.4** The obligations set forth in this Section 7.1 shall constitute the sole agreement between the parties relating to liability for infringement or violation of any patent or copyright.

## **7.2 Tax Claim Indemnification.**

**7.2.1** If, in accordance with Owner's direction, an exemption for all or part of the Work is claimed for taxes, Owner shall indemnify, defend and hold harmless Design-Builder from and against any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expenses or costs incurred by Design-Builder as a result of any action taken by Design-Builder in accordance with Owner's directive. Owner shall furnish Design-Builder with any applicable tax exemption certificates necessary to obtain such exemption, upon which Design-Builder may rely.

## **7.3 Payment Claim Indemnification.**

**7.3.1** Provided that Owner is not in breach of its contractual obligation to make payments to Design-Builder for the Work, Design-Builder shall indemnify, defend and hold harmless Owner from any claims or mechanic's liens brought against Owner or against the Project as a result of the failure of Design-Builder, or those for whose acts it is responsible, to pay for any services, materials, labor, equipment, taxes or other items or obligations furnished or incurred for or in connection with the Work. Within three (3) days of receiving written notice from Owner that such a claim or mechanic's lien has been filed, Design-Builder shall commence to take the steps necessary to discharge said claim or lien, including, if necessary, the furnishing of a mechanic's lien bond. If Design-Builder fails to do so, Owner will have the right to discharge the claim or lien and hold Design-Builder liable for costs and expenses incurred, including attorneys' fees.

## **7.4 Design-Builder's General Indemnification.**

**7.4.1** Except as set forth in Section 7.4.2 below, Design-Builder, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.2** For indemnity obligations that arise from professional errors and omissions, Design-Builder, to the fullest extent permitted by law, shall indemnify Owner, its officers, directors, and employees from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for non-party bodily injury, sickness, or death and non-party property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Design-Builder, Design Consultants, Subcontractors, anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable.

**7.4.3** If an employee of Design-Builder, Design Consultants, Subcontractors, anyone employed

directly or indirectly by any of them or anyone for whose acts any of them may be liable has a claim against Owner, its officers, directors, employees, or agents, Design-Builder's indemnity obligations set forth in Sections 7.4.1 and 7.4.2 above shall not be limited by any limitation on the amount of damages, compensation or benefits payable by or for Design-Builder, Design Consultants, Subcontractors, or other entity under any employee benefit acts, including workers' compensation or disability acts.

## **7.5 Owner's General Indemnification.**

**7.5.1** Owner, to the fullest extent permitted by law, shall indemnify, hold harmless and defend Design-Builder and any of Design-Builder's officers, directors, and employees, from and against claims, losses, damages, liabilities, including attorneys' fees and expenses, for bodily injury, sickness or death, and property damage or destruction (other than to the Work itself) but only to the extent resulting from the negligent acts or omissions of Owner, Owner's separate contractors or anyone for whose acts any of them may be liable.

## **7.6 Limited Recourse.**

**7.6.1** None of the obligations set forth in this Agreement (on behalf of any party) constitute personal obligations of any natural persons who are the officers, shareholders, members, partners, employees, or agents of any party unless the natural person is expressly identified as a contracting party. All Parties to this Agreement shall not seek recourse against any natural person described herein. This provision, however, shall not protect such natural persons from liability for willful misconduct, illegal acts or intentional violation of any duty of corporate loyalty.

# **Article 8**

## **Time**

### **8.1 Obligation to Achieve the Contract Times.**

**8.1.1** Design-Builder agrees that it will commence performance of the Work and achieve the Contract Time(s) in accordance with Article 5 of the Agreement.

### **8.2 Delays to the Work.**

**8.2.1** If Design-Builder is delayed on the critical path in the performance of the Work due to acts, omissions, conditions, events, or circumstances beyond its control and due to no fault of its own or those for whom Design-Builder is responsible, the Contract Time(s) for performance shall be reasonably extended by Change Order. By way of example, events that will entitle Design-Builder to an extension of the Contract Time(s) include acts or omissions of Owner or anyone under Owner's control (including separate contractors), changes in the Work, Differing Site Conditions, Hazardous Conditions, and Force Majeure Events.

**8.2.2** In addition to Design-Builder's right to a time extension for those events set forth in Section 8.2.1 above, Design-Builder shall also be entitled to an appropriate adjustment of the Contract Price provided, however, that the Contract Price shall not be adjusted for Force Majeure Events unless otherwise provided in the Agreement.

## **Article 9**

### **Changes to the Contract Price and Time**

#### **9.1 Change Orders.**

**9.1.1** A Change Order is a written instrument issued after execution of the Agreement signed by Owner and Design-Builder, stating their agreement upon all of the following:

**9.1.1.1** The scope of the change in the Work;

**9.1.1.2** The amount of the adjustment to the Contract Price; and

**9.1.1.3** The extent of the adjustment to the Contract Time(s).

**9.1.2** All changes in the Work authorized by applicable Change Order shall be performed under the applicable conditions of the Contract Documents. Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for such changes.

**9.1.3** If Owner requests a proposal for a change in the Work from Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse Design-Builder for reasonable costs incurred for estimating services, design services and services involved in the preparation of proposed revisions to the Contract Documents.

#### **9.2 Work Change Directives.**

**9.2.1** A Work Change Directive is a written order prepared and signed by Owner directing a change in the Work prior to agreement on an adjustment in the Contract Price and/or the Contract Time(s).

**9.2.2** Owner and Design-Builder shall negotiate in good faith and as expeditiously as possible the appropriate adjustments for the Work Change Directive. Upon reaching an agreement, the parties shall prepare and execute an appropriate Change Order reflecting the terms of the agreement.

#### **9.3 Minor Changes in the Work.**

**9.3.1** Minor changes in the Work do not involve an adjustment in the Contract Price and/or Contract Time(s) and do not materially and adversely affect the Work, including the design, quality, performance and workmanship required by the Contract Documents. Design-Builder may make minor changes in the Work consistent with the intent of the Contract Documents, provided, however, that Design-Builder shall promptly inform Owner, in writing, of any such changes and record such changes on the documents maintained by Design-Builder.

#### **9.4 Contract Price Adjustments.**

**9.4.1** The increase or decrease in Contract Price resulting from a change in the Work shall be determined by one or more of the following methods:

**9.4.1.1** Unit prices set forth in the Agreement or as subsequently agreed to between the parties;

**9.4.1.2** A mutually accepted lump sum, properly itemized and supported by sufficient substantiating data to permit evaluation by Owner;

**9.4.1.3** Costs, fees and any other markups set forth in the Agreement; or

**9.4.1.4** If an increase or decrease cannot be agreed to as set forth in items 9.4.1.1 through 9.4.1.3 above and Owner issues a Work Change Directive, the cost of the change of the Work shall be determined by the reasonable expense and savings in the performance of the Work resulting from the change, including a reasonable overhead and profit, as may be set forth in the Agreement.

**9.4.2** If unit prices are set forth in the Contract Documents or are subsequently agreed to by the parties, but application of such unit prices will cause substantial inequity to Owner or Design-Builder because of differences in the character or quantity of such unit items as originally contemplated, such unit prices shall be equitably adjusted.

**9.4.3** If Owner and Design-Builder disagree upon whether Design-Builder is entitled to be paid for any services required by Owner, or if there are any other disagreements over the scope of Work or proposed changes to the Work, Owner and Design-Builder shall resolve the disagreement pursuant to Article 10 hereof. As part of the negotiation process, Design-Builder shall furnish Owner with a good faith estimate of the costs to perform the disputed services in accordance with Owner's interpretations. If the parties are unable to agree and Owner expects Design-Builder to perform the services in accordance with Owner's interpretations, Design-Builder shall proceed to perform the disputed services, conditioned upon Owner issuing a written order to Design-Builder (i) directing Design-Builder to proceed; and (ii) specifying Owner's interpretation of the services that are to be performed. If this occurs, Design-Builder shall be entitled to submit in its Applications for Payment an amount equal to fifty percent (50%) of its reasonable estimated direct cost to perform the services, and Owner agrees to pay such amounts, with the express understanding that (i) such payment by Owner does not prejudice Owner's right to argue that it has no responsibility to pay for such services; and (ii) receipt of such payment by Design-Builder does not prejudice Design-Builder's right to seek full payment of the disputed services if Owner's order is deemed to be a change to the Work.

## **9.5 Emergencies.**

**9.5.1** In any emergency affecting the safety of persons and/or property, Design-Builder shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the Contract Price and/or Contract Time(s) on account of emergency work shall be determined as provided in this Article 9.

# **Article 10**

## **Contract Adjustments and Disputes**

### **10.1 Requests for Contract Adjustments and Relief.**

**10.1.1** If either Design-Builder or Owner believes that it is entitled to relief against the other for any event arising out of or related to the Work or Project, such party shall provide written notice to the other party of the basis for its claim for relief. Such notice shall, if possible, be made prior to incurring any cost or expense and in accordance with any specific notice requirements contained in applicable sections of these General Conditions of Contract. In the absence of any specific notice requirement, written notice shall be given within a reasonable time, not to exceed twenty-one (21) days, after the occurrence giving rise to the claim for relief or after the claiming party reasonably should have recognized the event or condition giving rise to the request, whichever is later. The claimant shall provide more complete information with respect to the claim within fourteen (14) days of the initial notice. The more complete information shall include sufficient information to advise the other party of the circumstances giving rise to the claim for relief, the specific contractual adjustment or relief requested and the basis of such request.

## **10.2 Dispute Avoidance and Resolution.**

**10.2.1** The parties are fully committed to working with each other throughout the Project and agree to communicate regularly with each other at all times so as to avoid or minimize disputes or disagreements. If disputes or disagreements do arise, Design-Builder and Owner each commit to resolving such disputes or disagreements in an amicable, professional and expeditious manner so as to avoid unnecessary losses, delays and disruptions to the Work.

**10.2.2** Design-Builder and Owner will first attempt to resolve disputes or disagreements at the field level through discussions between Design-Builder's Representative and Owner's Representative which shall conclude within fourteen (14) days of the written notice provided for in Section 10.1.1 unless Owner and Design-Builder mutually agree otherwise.

**10.2.3** If a dispute or disagreement cannot be resolved through Design-Builder's Representative and Owner's Representative, Design-Builder's Senior Representative and Owner's Senior Representative, upon the request of either party, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve such dispute or disagreement. Five (5) days prior to any meetings between the Senior Representatives, the parties will exchange relevant information that will assist the parties in resolving their dispute or disagreement.

**10.2.4** If after meeting the Senior Representatives determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, the parties shall submit within thirty (30) days of the conclusion of the meeting of Senior Representatives the dispute or disagreement to non-binding mediation. The mediation shall be conducted by a mutually agreeable impartial mediator, or if the parties cannot so agree, a mediator designated by the American Arbitration Association ("AAA") pursuant to its Construction Industry Mediation Rules. The mediation will be governed by and conducted pursuant to a mediation agreement negotiated by the parties or, if the parties cannot so agree, by procedures established by the mediator. Unless otherwise mutually agreed by Owner and Design-Builder and consistent with the mediator's schedule, the mediation shall commence within ninety (90) days of the submission of the dispute to mediation. Representatives of the parties with authority to resolve the dispute shall be present at any mediation.

## **10.3 Arbitration.**

**10.3.1** Any claims, disputes or controversies between the parties arising out of or relating to the Agreement, or the breach thereof, which have not been resolved in accordance with the procedures set forth in Section 10.2 above, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the AAA then in effect, unless the parties mutually agree otherwise.

**10.3.2** The award of the arbitrator(s) shall be final and binding upon the parties without the right of appeal to the courts. Judgment may be entered upon it in accordance with applicable law by any court having jurisdiction thereof.

**10.3.3** Design-Builder and Owner expressly agree that any arbitration pursuant to this Section 10.3 may be joined or consolidated with any arbitration involving any other person or entity (i) necessary to resolve the claim, dispute or controversy; or (ii) substantially involved in or affected by such claim, dispute or controversy. Both Design-Builder and Owner will include appropriate provisions in all contracts they execute with other parties in connection with the Project to require such joinder or consolidation.

**10.3.4** The prevailing party in any arbitration, or any other final, binding dispute proceeding upon which the parties may agree, shall be entitled to recover from the other party reasonable attorneys' fees and expenses incurred by the prevailing party. The prevailing party, if any, shall be determined by the applicable binding dispute tribunal.

#### **10.4 Duty to Continue Performance.**

**10.4.1** Unless provided to the contrary in the Contract Documents, Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations for undisputed amounts to Design-Builder as well as any further amounts pursuant to Section 9.4.3, pending the final resolution of any dispute or disagreement between Design-Builder and Owner.

#### **10.5 CONSEQUENTIAL DAMAGES.**

**10.5.1** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT AS SET FORTH IN SECTION 10.5.2 BELOW), NEITHER DESIGN-BUILDER NOR OWNER SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, PROFITS, BUSINESS, REPUTATION OR FINANCING.

**10.5.2** The consequential damages limitation set forth in Section 10.5.1 above is not intended to affect the payment of liquidated damages or lost early completion bonus, if any, set forth in Article 5 of the Agreement, which both parties recognize has been established, in part, to reimburse Owner or reward Design-Builder for some damages that might otherwise be deemed to be consequential.

## **Article 11**

### **Stop Work and Termination**

#### **11.1 Owner's Right to Stop Work.**

**11.1.1** Owner may, without cause and for its convenience, order Design-Builder in writing to stop and suspend the Work. Such suspension shall not exceed sixty (60) consecutive days or aggregate more than ninety (90) days during the duration of the Project.

**11.1.2** Design-Builder is entitled to seek an adjustment of the Contract Price and/or Contract Time(s) if its cost or time to perform the Work has been adversely impacted by any suspension of stoppage of the Work by Owner.

#### **11.2 Owner's Right to Perform and Terminate for Cause.**

**11.2.1** If Design-Builder persistently fails to (i) provide a sufficient number of skilled workers, (ii) supply the materials required by the Contract Documents, (iii) comply with applicable Legal Requirements, (iv) timely pay, without cause, Design Consultants or Subcontractors, (v) prosecute the Work with promptness and diligence to ensure that the Work is completed by the Contract Time(s), as such times may be adjusted, or (vi) perform material obligations under the Contract Documents, then Owner, in addition to any other rights and remedies provided in the Contract Documents or by law, shall have the rights set forth in Sections 11.2.2 and 11.2.3 below.

**11.2.2** Upon the occurrence of an event set forth in Section 11.2.1 above, Owner may provide written notice to Design-Builder that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Design-Builder's receipt of such notice. If Design-Builder fails to cure, or reasonably commence to cure, such problem, then Owner may give a second written notice to Design-Builder of its intent to terminate within an additional seven (7) day period. If Design-Builder, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Owner may declare the Agreement terminated for default by providing written notice to Design-Builder of such declaration.

**11.2.3** Upon declaring the Agreement terminated pursuant to Section 11.2.2 above, Owner may enter upon the premises and take possession, for the purpose of completing the Work, of all materials, equipment, scaffolds, tools, appliances and other items thereon, which have been purchased or provided for the performance of the Work, all of which Design-Builder hereby transfers, assigns and sets over to Owner for such purpose, and to employ any person or persons to complete the Work and provide all of the required labor, services, materials, equipment and other items. In the event of such termination, Design-Builder shall not be entitled to receive any further payments under the Contract Documents until the Work shall be finally completed in accordance with the Contract Documents. At such time, if the unpaid balance of the Contract Price exceeds the cost and expense incurred by Owner in completing the Work, such excess shall be paid by Owner to Design-Builder. Notwithstanding the preceding sentence, if the Agreement establishes a Guaranteed Maximum Price, Design-Builder will only be entitled to be paid for Work performed prior to its default. If Owner's cost and expense of completing the Work exceeds the unpaid balance of the Contract Price, then Design-Builder shall be obligated to pay the difference to Owner. Such costs and expense shall include not only the cost of completing the Work, but also losses, damages, costs and expense, including attorneys' fees and expenses, incurred by Owner in connection with the procurement and defense of claims arising from Design-Builder's default, subject to the waiver of consequential damages set forth in Section 10.5 hereof.

**11.2.4** If Owner improperly terminates the Agreement for cause, the termination for cause will be converted to a termination for convenience in accordance with the provisions of Section 11.6 hereof.

### **11.3 Design-Builder's Right to Stop Work.**

**11.3.1** Design-Builder may, in addition to any other rights afforded under the Contract Documents or at law, stop the Work for the following reasons:

**11.3.1.1** Owner's failure to provide financial assurances as required under Section 3.3 hereof; or

**11.3.1.2** Owner's failure to pay amounts properly due under Design-Builder's Application for Payment.

**11.3.2** Should any of the events set forth in Section 11.3.1 above occur, Design-Builder has the right to provide Owner with written notice that Design-Builder will stop the Work unless said event is cured within seven (7) days from Owner's receipt of Design-Builder's notice. Design-Builder shall not stop work unless it provides such written notice and Owner has failed to cure the reason for default within the seven (7) day cure period. If Owner does not cure the problem within such seven (7) day period, Design-Builder may stop the Work. In such case, Design-Builder shall be entitled to make a claim for adjustment to the Contract Price and Contract Time(s) to the extent it has been adversely impacted by such stoppage.

### **11.4 Design-Builder's Right to Terminate for Cause.**

**11.4.1** Design-Builder, in addition to any other rights and remedies provided in the Contract Documents or by law, may terminate the Agreement for cause for the following reasons:

**11.4.1.1** The Work has been stopped for sixty (60) consecutive days, or more than ninety (90) days during the duration of the Project, because of court order, any government authority having jurisdiction over the Work, or orders by Owner under Section 11.1.1 hereof, provided that such stoppages are not due to the acts or omissions of Design-Builder or anyone for whose acts Design-Builder may be responsible.

**11.4.1.2** Owner's failure to provide Design-Builder with any information, permits or approvals that are Owner's responsibility under the Contract Documents which result in the Work being stopped for sixty (60) consecutive days, or more than ninety (90) days during

the duration of the Project, even though Owner has not ordered Design-Builder in writing to stop and suspend the Work pursuant to Section 11.1.1 hereof.

**11.4.1.3** Owner's failure to cure the problems set forth in Section 11.3.1 above after Design-Builder has stopped the Work.

**11.4.2** Upon the occurrence of an event set forth in Section 11.4.1 above, Design-Builder may provide written notice to Owner that it intends to terminate the Agreement unless the problem cited is cured, or commenced to be cured, within seven (7) days of Owner's receipt of such notice. If Owner fails to cure, or reasonably commence to cure, such problem, then Design-Builder may give a second written notice to Owner of its intent to terminate within an additional seven (7) day period. If Owner, within such second seven (7) day period, fails to cure, or reasonably commence to cure, such problem, then Design-Builder may declare the Agreement terminated for default by providing written notice to Owner of such declaration. In such case, Design-Builder shall be entitled to recover in the same manner as if Owner had terminated the Agreement for its convenience under Article 8 of the Agreement.

## **11.5 Bankruptcy of Owner or Design-Builder.**

**11.5.1** If either Owner or Design-Builder institutes or has instituted against it a case under the United States Bankruptcy Code (such party being referred to as the "Bankrupt Party"), such event may impair or frustrate the Bankrupt Party's ability to perform its obligations under the Contract Documents. Accordingly, should such event occur:

**11.5.1.1** The Bankrupt Party, its trustee or other successor, shall furnish, upon request of the non-Bankrupt Party, adequate assurance of the ability of the Bankrupt Party to perform all future material obligations under the Contract Documents, which assurances shall be provided within ten (10) days after receiving notice of the request; and

**11.5.1.2** The Bankrupt Party shall file an appropriate action within the bankruptcy court to seek assumption or rejection of the Agreement within sixty (60) days of the institution of the bankruptcy filing and shall diligently prosecute such action.

If the Bankrupt Party fails to comply with its foregoing obligations, the non-Bankrupt Party shall be entitled to request the bankruptcy court to reject the Agreement, declare the Agreement terminated and pursue any other recourse available to the non-Bankrupt Party under this Article 11.

**11.5.2** The rights and remedies under Section 11.5.1 above shall not be deemed to limit the ability of the non-Bankrupt Party to seek any other rights and remedies provided by the Contract Documents or by law, including its ability to seek relief from any automatic stays under the United States Bankruptcy Code or the right of Design-Builder to stop Work under any applicable provision of these General Conditions of Contract.

## **11.6 Termination for Convenience.**

**11.6.1** Upon ten (10) days' written notice to Design-Builder, Owner may, for its convenience and without cause, elect to terminate this Agreement. In such event, Owner shall pay Design-Builder for the following:

**11.6.1.1** All Work executed and for proven loss, cost or expense in connection with the Work;

**11.6.1.2** The reasonable costs and expenses attributable to such termination, including demobilization costs and amounts due in settlement of terminated contracts with Subcontractors and Design Consultants; and

**11.6.1.3** The amount set forth in Article 8 of the Agreement.

**11.6.2** If Owner terminates this Agreement pursuant to Section 11.6.1 above and proceeds to design and construct the Project through its employees, agents or third parties, Owner's rights to use the Work Product shall be as set forth in Section 4.3 of the Agreement. Such rights may not be transferred or assigned to others without Design-Builder's express written consent and such third parties' agreement to the terms of Article 4 of the Agreement.

## **Article 12**

### **Electronic Data**

#### **12.1 Electronic Data.**

**12.1.1** The parties recognize that Contract Documents, including drawings, specifications and three-dimensional modeling (such as Building Information Models) and other Work Product may be transmitted among Owner, Design-Builder and others in electronic media as an alternative to paper hard copies (collectively "Electronic Data").

#### **12.2 Transmission of Electronic Data.**

**12.2.1** Owner and Design-Builder shall agree upon the software and the format for the transmission of Electronic Data. Each party shall be responsible for securing the legal rights to access the agreed-upon format, including, if necessary, obtaining appropriately licensed copies of the applicable software or electronic program to display, interpret and/or generate the Electronic Data.

**12.2.2** Neither party makes any representations or warranties to the other with respect to the functionality of the software or computer program associated with the electronic transmission of Work Product. Unless specifically set forth in the Agreement, ownership of the Electronic Data does not include ownership of the software or computer program with which it is associated, transmitted, generated or interpreted.

**12.2.3** By transmitting Work Product in electronic form, the transmitting party does not transfer or assign its rights in the Work Product. The rights in the Electronic Data shall be as set forth in Article 4 of the Agreement. Under no circumstances shall the transfer of ownership of Electronic Data be deemed to be a sale by the transmitting party of tangible goods.

#### **12.3 Electronic Data Protocol.**

**12.3.1** The parties acknowledge that Electronic Data may be altered or corrupted, intentionally or otherwise, due to occurrences beyond their reasonable control or knowledge, including but not limited to compatibility issues with user software, manipulation by the recipient, errors in transcription or transmission, machine error, environmental factors, and operator error. Consequently, the parties understand that there is some level of increased risk in the use of Electronic Data for the communication of design and construction information and, in consideration of this, agree, and shall require their independent contractors, Subcontractors and Design Consultants to agree, to the following protocols, terms and conditions set forth in this Section 12.3.

**12.3.2** Electronic Data will be transmitted in the format agreed upon in Section 12.2.1 above, including file conventions and document properties, unless prior arrangements are made in advance in writing.

**12.3.3** The Electronic Data represents the information at a particular point in time and is subject to change. Therefore, the parties shall agree upon protocols for notification by the author to the recipient of any changes which may thereafter be made to the Electronic Data, which protocol shall

also address the duty, if any, to update such information, data or other information contained in the electronic media if such information changes prior to Final Completion of the Project.

**12.3.4** The transmitting party specifically disclaims all warranties, expressed or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose, with respect to the media transmitting the Electronic Data. However, transmission of the Electronic Data via electronic means shall not invalidate or negate any duties pursuant to the applicable standard of care with respect to the creation of the Electronic Data, unless such data is materially changed or altered after it is transmitted to the receiving party, and the transmitting party did not participate in such change or alteration.

## **Article 13**

### **Miscellaneous**

#### **13.1 Confidential Information.**

**13.1.1** Confidential Information is defined as information which is determined by the transmitting party to be of a confidential or proprietary nature and: (i) the transmitting party identifies as either confidential or proprietary; (ii) the transmitting party takes steps to maintain the confidential or proprietary nature of the information; and (iii) the document is not otherwise available in or considered to be in the public domain. The receiving party agrees to maintain the confidentiality of the Confidential Information and agrees to use the Confidential Information solely in connection with the Project.

#### **13.2 Assignment.**

**13.2.1** Neither Design-Builder nor Owner shall, without the written consent of the other assign, transfer or sublet any portion or part of the Work or the obligations required by the Contract Documents.

#### **13.3 Successorship.**

**13.3.1** Design-Builder and Owner intend that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

#### **13.4 Governing Law.**

**13.4.1** The Agreement and all Contract Documents shall be governed by the laws of the location of the Project, without giving effect to its conflict of law principles.

#### **13.5 Severability.**

**13.5.1** If any provision or any part of a provision of the Contract Documents shall be finally determined to be superseded, invalid, illegal, or otherwise unenforceable pursuant to any applicable Legal Requirements, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted.

#### **13.6 No Waiver.**

**13.6.1** The failure of either Design-Builder or Owner to insist, in any one or more instances, on the performance of any of the obligations required by the other under the Contract Documents shall not be construed as a waiver or relinquishment of such obligation or right with respect to future

performance.

### **13.7 Headings.**

**13.7.1** The headings used in these General Conditions of Contract, or any other Contract Document, are for ease of reference only and shall not in any way be construed to limit or alter the meaning of any provision.

### **13.8 Notice.**

**13.8.1** Whenever the Contract Documents require that notice be provided to the other party, notice will be deemed to have been validly given (i) if delivered in person to the individual intended to receive such notice; (ii) four (4) days after being sent by registered or certified mail, postage prepaid to the address indicated in the Agreement; (iii) if transmitted by facsimile, by the time stated in a machine-generated confirmation that notice was received at the facsimile number of the intended recipient; or (iv) by electronic mail, by the time frame stated in the email-generated confirmation that notice was received by the email of the intended recipient.

### **13.9 Amendments.**

**13.9.1** The Contract Documents may not be changed, altered, or amended in any way except in writing signed by a duly authorized representative of each party.

### **13.10 Sexual Conduct and Abuse Provision**

**13.10.1** Contractor acknowledges District's obligations related to abuse and sexual conduct. If there are reports or allegations of sexual conduct or abuse involving one of Contractor's employees, Contractor agrees to immediately remove that employee from providing services to the District. Contractor will follow District's requests for removal of such employees following a report or allegation. Contractor will cooperate in any investigation being conducted by District, law enforcement, DHS, ODE and/or TSPC. Contractor has received information regarding abuse and sexual conduct and District will provide current information to Contractor on an annual basis. Contractor ~~will provide information necessary for district to perform background checks on any employee who may have direct, unsupervised contact with students, in accordance with state law and district policy.~~ All of Contractor's employees who may have direct, unsupervised contact with students, will complete the District's sexual conduct and child abuse training program prior to having direct, unsupervised contact with students.

### **13.12 – Vaccine Requirement**

Contractor attests that it understands that as of October 18, 2021, all of contractor's employees and agents, who are 16 or older and who are "engaged to provide goods or services to or at a school through any formal or informal agreement, whether compensated or uncompensated..." and "providing goods or services at or for a school that includes direct or indirect contact with students" are required to be vaccinated pursuant to OAR 333-019-1030. Contractor attests that any of its employees or agents who are assigned to provide services under the terms of this Agreement has provided Contractor with either proof of vaccination showing they are fully vaccinated, or documentation of a medical or religious exception. "Proof of vaccination" means documentation provided by a tribal, federal, state or local government, or a health care provider, that includes an individual's name, date of birth, type of COVID-19 vaccination given, date or dates given, depending on whether it is one dose or two-dose vaccine, and the name/location of the health care provider or site where the vaccine was administered. Documentation may include but is not limited to a COVID-19 vaccination record card or a copy or digital picture of the vaccination record card, or a print-out form from the Oregon Health Authority's immunization registry. "Documentation of a medical or religious exception" means that Contractor is in receipt of a written request for a medical or religious exception, made on a form prescribed by the Oregon Health Authority, and in

compliance with the requirements set forth in OAR 333-019-1030. Contractor understands that [insert school name] is permitted to require more stringent health and safety protocols than is required under the law. As such, the school retains the ability to deny access to its facilities to any contractor who does not comply with the school's health and safety protocols.

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**KNAPPA SCHOOL DISTRICT #4  
BUSINESS OFFICE  
Phone: 503-458-5993 Fax: 503-458-6979**

**October 19, 2022  
Board Meeting**

**NOTES FROM THE BUSINESS OFFICE:**

**General**

I have enclosed the September 30, 2022 financial report for your review. Total expected State School Fund revenue is adjusted up approximately \$22,000 based on the most recent information from the state. I expect our interest revenue to be higher than budgeted due to increasing interest rates. The \$776 represents six buses that were sold. The audit is scheduled to begin the first week of November.

# Hilda Lahti Elementary/Middle School

## October 2022

### Enrollment Report

Grade	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
PreK	16	17	17								
Kg	22	24	25								
1	28	29	29								
2	36	37	37								
3	33	33	34								
4	35	35	34								
5	37	39	38								
6	35	33	33								
7	38	38	36								
8	39	39	35								
KVA	8	10	10								
Total	311 (16 preK)	317 (17 preK)	311								
21/22	332	316	318	320	323	318	321	321	324	330	327
End of 20/21	<b>346</b>	<u>March 2020</u>	<b>360</b>								

October weather continues to bless us with outside recess time! Middle school PE classes are outside each day, and students are enjoying the hot weather.

Our teachers and staff continue to work on instructional practice. Staff are looking at data and creating interventions according to needs. We also had a majority of faculty trained in medical administration by Katie.

Conferences are upon us! We used Parent Square to schedule conferences. Conferences will be in person this year and virtual if requested.

Our new reading curriculum for K-5 is robust. We are already seeing growth in identifying main ideas and details. The added phonological awareness focus is helping all our students. I am excited to see what the year holds!

We are almost fully staffed. We have a few lean spots, like the after school time; however, over all things are running smoothly. With the addition of a middle school Science teacher, we will rearrange some of our staffing and middle school classes. This will eliminate some discrepancies in class sizes throughout the courses.

A new family moved into the area from Egypt. They are refugees from Yemen. Our team continues to brainstorm how to cover their language skill instruction without a halftime English Second Language teacher. We are hopeful to identify a long term solution soon.

Our volleyball, football, and cross country teams continue to have success. I appreciate our coaches. They are monitoring grades and behaviors in school which in turn help the students succeed as student athletes.

The Leadership class led by Cayla Starr has planned some fun activities the week before Halloween. A few classes at KHS are also in charge of a Trunk or Treat and trick or treating for our kiddos. Fun times for all!

The Hilda Lahti team continues to work hard to reach ALL students!!!



Respectfully submitted,

Tammy McMullen

**September 2022**  
**KSD Board Meeting**  
**Knappa High School**

Grade	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
9	36	37	37								
10	39	35	33								
11	39	35	35								
12	34	36	37								
Total	148	143	142								

**2021-22**

Grade	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	Jun.
9	43/1	44	44	44	43	44	44	44	40	39	39
10	39/1	40/2	40/2	40/2	38/2	38/1	40/1	41/1	38/1	38/1	38/1
11	35	33/1	33/1	34	33	33	33	33	33	33	33
12	34/4	34/4	34/4	34/4	33/4	33/4	33/1	32/2	32/2	32/2	32/2
Total	151/6	151/7	151/7	152/6	153	153	154	153	146	145	145

\*KHS enrollment/KVA enrollment

**2020-21**

Grade	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June
9	30/9	31/11	31/11	36/6	36/6	36/6	36/5	35/5 (1)	35/5	35/5	33/5 (2)
10	31/7	25/13	26/13	32/7	31/7	32/7	32/5	31/5 (1)	31/5	31/5	30/5 (1)
11	34/6	28/10	28/10	30/8	30/8	30/8	28/10	29/9	29/9	29/9	29/9
12	21/8	9/17	9/17	13/14	13/14	13/14	14/13	14/10*1	14/10*1	14/8*3	14/8*3
Total	116/30	93/51	94/51	111/34	110/34	110/34	111/32	109/29 (2)*1	109/29*1	109/27*3	106/27*3 (3)

\*KHS hybrid enrollment/KVA enrollment

() Students in transition; will be enrolling in another SD

\* Early graduation

- KHS had a successful Enchanted Forest Homecoming.
  - Seniors took the class award followed by the juniors, freshman, and sophomores.
  - Josiah Miller and Sara Werner were crowned the Senior Homecoming Royalty.
- The yearbook/journalism classes are hosting a Trunk or Treat for PreK-5 students at HLE.



- The hallways of KHS are Spooktacular!



- KHS Volleyball celebrated their Senior Night, Thursday, 10/13/22



Seniors: Sara Werner, Ava Skipper, Taryn Barendse, Amanda Hellberg

- Football will host their Senior Night on Friday, 10/28/22. XC Senior Night will be on Wednesday, 10/19/22.
- The Great Oregon Shakeout will take place on Thursday, 10/20/22 at 10:20am. KHS students and staff will take part in this earthquake preparedness event.
- KHS will host conferences on Wednesday, 10/19/22 and Thursday, 10/20/22 from 5pm - 8pm. This will be an open house style event. Students will be able to share their experiences and classwork with parents and family.
  - Misty Bateman from Clatsop Works will be on site during Wednesday's open house sharing information with students and families about the Clatsop Works Internship program.
- 1st quarter at KHS ends on Friday, 11/4/22.

**2022-2023 REVENUE AND EXPENDITURES**  
**GENERAL FUND**  
**As of September 30, 2022**

		ACTUAL through September 30, 2022	PROJECTED REV through June 30, 2023	Total Expected Revenue	Balance From Budget	BALANCE as % of BUDGET
REVENUES	BUDGET					
Property Taxes	1,412,000.00	7,523.09	1,533,179.52	1,540,702.61	(128,702.61)	109%
County School Fund	205,000.00	-	205,000.00	205,000.00	-	100%
State School Fund	4,395,756.00	1,472,429.00	2,945,297.00	4,417,726.00	(21,970.00)	100%
Unrestricted Grants (Small High School)	28,000.00	-	28,000.00	28,000.00	-	100%
Common School Fund	51,506.00	-	51,506.00	51,506.00	-	100%
State Managed County Timber	75,000.00	-	75,000.00	75,000.00	-	100%
Asset Recovery	-	776.00	-	776.00	(776.00)	
<b>Total State Support Formula Revenues</b>	<b>6,167,262.00</b>	<b>1,480,728.09</b>	<b>4,837,982.52</b>	<b>6,318,710.61</b>	<b>(151,448.61)</b>	<b>102%</b>
Revenue ESD				-	-	
Other Local Sources	43,000.00	7,154.74	35,545.19	42,699.93	300.07	99%
<b>Total Revenue</b>	<b>6,210,262.00</b>	<b>1,487,882.83</b>	<b>4,873,527.71</b>	<b>6,361,410.54</b>	<b>(151,148.54)</b>	<b>102%</b>
Interfund Transfers	-			-	-	
Beginning Fund Balance	2,050,000.00	-	-	-	2,050,000.00	0%
				-	-	
<b>TOTAL RESOURCES</b>	<b>8,260,262.00</b>	<b>1,487,882.83</b>	<b>4,873,527.71</b>	<b>6,361,410.54</b>	<b>1,898,851.46</b>	<b>77%</b>

		ACTUAL through September 30, 2022	PROJECTED EXP through June 30, 2022	Total Expected Expenditures	BALANCE	BALANCE as % of BUDGET
EXPENDITURES BY OBJECT	BUDGET					
Personal Services	3,838,113.00	603,303.52	3,016,415.97	3,619,719.49	218,393.51	6%
Associated Payroll Costs	1,900,129.00	264,884.64	57,005.19	321,889.83	1,578,239.17	83%
Purchased Services	689,892.00	68,061.13	255,799.59	323,860.72	366,031.28	53%
Supplies & Materials	259,428.00	91,795.81	117,776.03	209,571.84	49,856.16	19%
Capital Outlay				-	-	0%
Other Objects	135,700.00	129,535.44	5,705.00	135,240.44	459.56	0%
Transfers	762,000.00		762,000.00	762,000.00	-	0%
<b>Total Expenditures</b>	<b>7,585,262.00</b>	<b>1,157,580.54</b>	<b>4,214,701.78</b>	<b>5,372,282.32</b>	<b>2,212,979.68</b>	<b>29%</b>
Contingency / Unappropriated	675,000.00	-	-	-	675,000.00	100%
				-	-	
<b>TOTAL EXPENDITURES</b>	<b>8,260,262.00</b>	<b>1,157,580.54</b>	<b>4,214,701.78</b>	<b>5,372,282.32</b>	<b>2,887,979.68</b>	<b>35%</b>

		ACTUAL through September 30, 2022	PROJECTED EXP through June 30, 2022	Total Expected Expenditures	BALANCE	BALANCE as % of BUDGET
EXPENDITURES BY MAJOR FUNCTION	BUDGET					
1000 - Instruction	4,068,929.00	488,467.71	2,051,746.32	2,540,214.03	1,528,714.97	38%
2000 - Support Services	2,754,333.00	669,112.83	1,400,955.46	2,070,068.29	684,264.71	25%
5000 - Other Uses/Debt Services/Transfers	762,000.00	-	762,000.00	762,000.00	-	0%
<b>Total Expenditures</b>	<b>7,585,262.00</b>	<b>1,157,580.54</b>	<b>4,214,701.78</b>	<b>5,372,282.32</b>	<b>2,212,979.68</b>	<b>29%</b>
6000 - Contingency / Unappropriated	675,000.00			-	675,000.00	0%
				-	-	
<b>TOTAL EXPENDITURES</b>	<b>8,260,262.00</b>	<b>1,157,580.54</b>	<b>4,214,701.78</b>	<b>5,372,282.32</b>	<b>2,887,979.68</b>	<b>35%</b>