



REQUEST FOR PROPOSALS

**CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES
FOR CANNON BEACH ELEMENTARY SCHOOL**

ISSUE DATE: July 15, 2022

CITY OF CANNON BEACH
PO Box 368
163 East Gower Street
Cannon Beach, Oregon 97110
(503) 436-1581

TABLE OF CONTENTS

SECTION 1 – INVITATION.....	3
SECTION 2 – INTRODUCTION AND GENERAL INFORMATION.....	5
SECTION 3 – SCOPE OF WORK.....	13
SECTION 4 – PROPOSAL AND PROPOSER REQUIREMENTS.....	19
SECTION 5 – PROPOSAL SELECTION AND EVALUATION.....	23
SECTION 6 – CONTRACT REQUIREMENTS.....	26

ATTACHMENTS:

A: SAMPLE CONTRACT

**CITY OF CANNON BEACH
REQUEST FOR PROPOSALS (RFP)
CONSTRUCTION MANAGER/GENERAL CONTRACTOR (CM/GC) SERVICES**

Proposals Due by 4:00 p.m., August 12, 2022

Notice to Proposers

The City of Cannon Beach is seeking proposals to provide **Construction Manager/General Contractor (CM/GC) Services** for the renovation of a City-owned property at 268 Beaver Street, known as Cannon Beach Elementary School. The City is requesting proposals in accordance with the Oregon Attorney General's model rules that govern the CM/GC delivery method. The redevelopment of this property includes the classroom building and a gymnasium structure on the property. The site is approximately 1.6 acres in size and site work is expected to occur on the entire site.

Proposals will be accepted by Jennifer Barrett, City Recorder, City of Cannon Beach, 163 E Gower, Cannon Beach, OR until **August 12, 2022 at 4:00 PM**. A record of proposals received will be made and the City will review the proposals in accordance with this RFP.

Project Description

The City's intended use of the property upon redevelopment is to become a tourism related facility that will primarily serve visitors and tourists to Cannon Beach. The City also intends to use the redeveloped property as a space for community-related events when not being used for tourism purposes.

There are two structures to be renovated. The largest is a 7500 square foot wood-construction arch frame structure gymnasium. The second is 5000 square foot, one story concrete masonry unit block and wood-frame structure with four – 1000 square foot classrooms and ancillary office space. The structures have been out of use for at least 8 years and had limited maintenance for several years prior to that. A high grade of restoration of the building's envelopes, structural components and mechanical systems will be critical for the success of the project.

For planning and design purposes the site is approximately 1.6 acres. The city desires to incorporate walking trails, interpretive signs, displays, planted areas, historically accurate structures, and presentation sites into the project, and therefore site work is expected to occur on the entire site.

Prevailing Wage / Public Works

The Oregon BOLI Prevailing Wage Rates applicable to this project are the rates in effect at the time construction begins, either through an amendment establishing early work or an amendment establishing a guaranteed maximum price ("GMP"), whichever occurs first. Those rates will then apply throughout the project.

Solicitation Documents

The Request for Proposals can also be downloaded from the City of Cannon Beach website at www.ci.cannon-beach.or.us. It is imperative that those who download the solicitation document check the City's website regularly for addenda and other notifications that may be pertinent. In addition, addenda will be mailed or delivered to all who are known by the City of Cannon Beach to have received a complete set of the RFP.

RFP documents are also available by contacting Jennifer Barrett at recorder@ci.cannon-beach.or.us. Copies may also be obtained at City Hall, 163 E Gower St., Cannon Beach, Oregon, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m. There is no charge for the RFP documents.

Pre-Proposal Meeting

There will be a **mandatory** pre-proposal meeting held on July 27, 2022 at 2 PM at Cannon Beach Elementary School, 268 Beaver Street. Please contact Jennifer Barrett at recorder@ci.cannon-beach.or.us for meeting access information. The purpose of the meeting is to share information and answer questions about the project. **Anyone or any firm intending to submit a proposal must have a representative at this meeting.**

Single Point of Contact

Address all concerns or questions regarding this solicitation to Jennifer Barrett, Contract Coordinator at recorder@ci.cannon-beach.or.us.

Dated: July 15, 2022

Bruce St. Denis, City Manager

SECTION 2 - INTRODUCTION AND GENERAL INFORMATION

2.1 INTRODUCTION

The City of Cannon Beach ("City") is an Oregon municipal corporation with a 2020 population of approximately 1,489. The City is governed by a City Council comprised of four Councilors and the Mayor.

The City's target completion date for this project is December 2023.

The City is seeking proposals from firms to provide Construction Manager/General Contractor (CM/GC) Services for the renovation of a City-owned property at 268 Beaver, known as Cannon Beach Elementary School. Upon completion of the redevelopment, the property is primarily intended to be a tourism-related facility that focuses on the history of the Clatsop/Nehalem tribe that occupied the site for thousands of years, the natural aspects of the site and the entertainment/education/athletic potential provided by the renovated gym and classrooms. The City also intends to use the redeveloped property to provide community-related activities when not being used for tourism functions.

The scope of services will include assisting the architectural team by providing pre-construction services and expertise through the design process, proposing a guaranteed maximum price ("GMP") for the cost to construct the renovation, managing the process to select subcontractors to perform various aspects of the renovation, and managing the selected subcontractors and the CM/GC's own personnel to complete the renovation at a cost not-to-exceed the GMP. The estimated cost of the work necessary to complete the renovation is approximately \$3.5-4.5 million.

In accordance with ORS 279C.337(2)(g), the City will not pay any amount that exceeds the GMP, unless the increase results from material changes to the agreed upon scope of the work necessary to complete the renovation. If the final cost to complete the renovation is less than the GMP, the savings will accrue solely to the City.

There are two structures to be renovated. The largest is a 7500 square foot wood-framed, gymnasium constructed in a Quonset hut configuration. The second is 5000 square foot, one story concrete masonry unit (CMU) block and wood-frame structure with four – 1000 square foot classrooms and ancillary office space.

For planning and design purposes the site is approximately 1.6 acres. The City desires to incorporate walking trails, interpretive signs, displays, planted areas, historically accurate tribal structures and presentation sites into the project. Therefore, the City anticipates work to be performed across the entirety of the site.

2.2 ISSUING OFFICE AND SUBMITTAL LOCATION

Jennifer Barrett, Contract Coordinator, is the contact for questions, concerns, and protests concerning the RFP. Jennifer Barrett, Contract Coordinator, can be reached at recorder@ci.cannon-beach.or.us.

A Proposal can be submitted in electronic form to Jennifer Barrett, Contract Coordinator at recorder@ci.cannon-beach.or.us. While electronic submission is preferred, paper proposals may also be submitted at the proposer's option. If paper proposals are submitted, the Proposer must provide **six** total copies of their proposal and a USB drive containing the proposal; one copy should be marked "ORIGINAL". **The outside of the sealed envelope should state "CONSTRUCTION MANAGER/GENERAL**

CONTRACTOR SERVICES FOR CANNON BEACH ELEMENTARY REJUVENATION PROJECT” and shall be addressed and submitted to the following location by the closing date and time in Section 2.3:

City of Cannon Beach
Attn: Jennifer Barrett
PO Box 368
163 E Gower
Cannon Beach, OR 97110

Facsimile submitted proposals will not be accepted.

Proposals will be received at the due date and time indicated in the RFP or any extension thereof made by addendum. After proposals are received, the City will notify all Proposers and any other interested parties of who submitted proposals.

2.3 ANTICIPATED RFP SCHEDULE

The City anticipates the following general timeline for receiving and evaluating the proposals and selecting a firm/individual for these CM/GC services. The schedule may be changed if it is in the City’s best interest to do so. Any change to the proposal submittal closing time will be done by an addendum to the RFP.

<u>RFP Process</u>	<u>Date</u>
Publish Notice of RFP/ Send to Interest Parties	July 15 & 20, 2022
Mandatory Pre-Proposal Meeting	July 27, 2022 at 2pm
Deadline to Submit Changes/Solicitation Protests	August 3, 2022
Last Date for an Addenda	August 9, 2022
Closing Date and Time for Proposal Due to City	August 12, 2022 at 4pm
Notification of Short List Finalists	August 19, 2022
Short List Proposal Interviews (optional)	August 24-25, 2022
Notice of Intent to Award	September 23, 2022

2.4 MANDATORY PRE-PROPOSAL MEETING

A mandatory, on-site, pre-proposal meeting is scheduled for July 27, 2022, 2:00 PM. The purpose of the meeting is to share information and answer questions about the project. Statements made by the City’s representatives at the pre-proposal meeting are not binding upon the City unless confirmed by written addendum.

2.5 CHANGES TO THE SOLICITATION BY CITY ADDENDA

The City reserves the right to make changes to the RFP by written addendum, which shall be issued to all prospective Proposers known to the City to have received the Proposal document.

A prospective Proposer may request a change in the RFP by submitting a written request to Jennifer Barrett, Contract Coordinator at recorder@ci.cannon-beach.or.us, or the mailing address set forth above. The request must specify the provision of the RFP in question and contain an explanation for the requested change.

NOTE: All requests for changes or additional information must be submitted to the City no later than the date set in the RFP Schedule for changes and solicitation protests.

The City will evaluate any request submitted but reserves the right to determine whether to accept the requested change. If in the City's opinion, additional information or interpretation is necessary, such information will be supplied in the form of an addendum as stated above.

Any addenda shall have the same binding effect as though contained in the main body of the RFP. Oral instructions or information concerning the scope of work of the project given out by City managers, employees, or agents to the prospective Proposers shall not bind the City.

- a) Addenda will be e-mailed or delivered to all interested Proposers known by the City to have received the RFP Document and will be posted to the Bids/RFP Section of the City's website at ci.cannon-beach.or.us
- b) No addenda will be issued later than the date set in the RFP Schedule, except an addendum, if necessary, postponing the date for receipt of Proposals, withdrawing the invitation, modifying elements of the proposal resulting from a delayed process, or requesting additional information, clarification, or revisions of proposals leading to obtaining best offers or best and final offers.
- c) Each Proposer shall ascertain, prior to submitting a RFP that the Proposer has received all Addenda issued, and receipt of each Addendum shall be acknowledged in the appropriate location on each Addendum and included with the RFP submittal.

2.6 CONFIDENTIALITY

All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act. Proposals are subject to disclosure when the City issues a notice of intent to award a contract, except such portions of the Proposals for which Proposer requests exception from disclosure consistent with Oregon Law. All requests shall be in writing, noting specifically which portion of the Proposal the Proposer requests exception from disclosure. Proposer shall not copyright, or cause to be copyrighted, any portion of any said document submitted to the City as a result of this RFP. Proposer may not mark the entire proposal document "Confidential." The Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only "unless the public interest requires disclosure in the particular instance" under ORS 192.345(2). Therefore, non-disclosure of documents or any portion of a document submitted as part of a proposal may depend upon official or judicial determinations made pursuant to the Public Records Law. The above restrictions may not include cost or price information which must be open to public inspection.

2.7 CANCELLATION

The City reserves the right to cancel this solicitation at any time before execution of the contract by both parties if cancellation is deemed to be in the City's best interest. In no event shall the City have any liability for the cancellation of award.

2.8 LATE PROPOSALS

All Proposals that are not received by the deadline stated in the RFP schedule will be late. Delays due to mail and/or delivery handling, including, but not limited to delays within City's internal distribution systems, do not excuse the Proposer's responsibility for submitting the Proposal to the correct location by the stated deadline. The City may accept a late proposal if the City believes it will serve the public's interest.

2.9 DISPUTES

In case of any doubt or differences of opinions as to the items or service to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the City shall be final and binding upon all parties.

2.10 PROPOSER'S REPRESENTATION

Proposers, by the act of submitting their Proposals, represent that:

- a) They have read and understand the RFP Documents and their Proposal is made in accordance therewith;
- b) They have familiarized themselves with the local conditions under which the work will meet their satisfaction;
- c) Their Proposal is based upon the requirements described in the RFP without exception (unless exceptions are clearly stated in the response).

2.11 CONDITIONS OF SUBMITTAL

By the act of submitting a response to this Invitation, the Proposer certifies that:

- a) The Proposer and each person signing on behalf of any Proposer certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of their knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or in part by the City, has a direct or indirect financial interest in the Proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the Proposer's response to this solicitation.
- b) The Proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and, if its Proposal is accepted, the Proposer shall accept the contract documents thereto unless substantive changes are made in same without the approval of the Proposer.
- c) The Proposer, if an individual, is of lawful age; is the only one interested in this Proposal; and that no person, firm, or corporation, other than that named, has any interest in the Proposal, or in the proposed contract.

- d) The Proposer has quality experience providing services in a capacity similar to the duties outlined within the scope of services.

2.12 PROPOSER REQUESTS INTERPRETATION OF RFP DOCUMENTS

Proposers shall promptly notify the City of any ambiguity, inconsistency or error, which they may discover upon examination of the RFP Documents. Proposers requiring clarification or interpretation of the Proposal Documents shall make a written request for same to the Contract Coordinator at the submittal address located in Section 2.2 or at recorder@ci.cannon-beach.or.us

The City shall make interpretations, corrections, or changes of the RFP Documents in writing by published Addenda. Interpretations, corrections, or changes of the RFP Documents made in any other manner will not be binding, and Proposers shall not rely upon such interpretations, corrections, and changes.

Should any doubt or difference of opinion arise between the City and a Proposer as to the items to be furnished hereunder or the interpretation of the provisions of this solicitation, the decision of the City shall be final and binding upon all parties.

2.13 PROPOSER REQUESTS FOR ADDITIONAL INFORMATION

Requests for information regarding City services, programs, or personnel, or any other information shall be submitted directly to Jennifer Barrett by email at recorder@ci.cannon-beach.or.us or by mail at the address in the Invitation. All requests for additional information shall be submitted in writing. Answers shall be provided to all Proposers of record on the date that answers are available.

2.14 COMPETITION

Respondents are encouraged to comment, either with their Proposals or at any other time, in writing, on any specification or requirement within this RFP, which the respondent believes, will inordinately limit competition.

2.15 COMPLAINTS AND INEQUITIES

Any protest, complaints or perceived inequities related to this RFP or award of work referenced herein shall be in writing and directed to Jennifer Barrett at the address listed in the RFP and shall be received no later than the date listed in the RFP Schedule. Such submittals will be reviewed upon receipt and will be answered in writing. The protest shall be considered if it is timely filed in accordance and contains the following information: 1) sufficient information to identify the solicitation that is the subject of the protest; 2) the grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name; 3) evidence or supporting documentation that supports the grounds on which the protest is based; 4) the relief sought; and 5) a statement of the desired changes to the Procurement process or the Solicitation Document that the prospective Proposer believes will remedy the conditions upon which the prospective Proposer based its protest.

2.16 COST OF RFP AND ASSOCIATED RESPONSES

The City is not liable for any costs incurred by a proposer in the preparation and/or presentation of a proposal. The City is not liable for any cost incurred by a proposer in protesting the solicitation or the City's award decision.

2.17 CITY TO REQUEST CLARIFICATION, ADDITIONAL RESEARCH, & REVISIONS

The City reserves the right to obtain clarification of any point in a Proposal or to obtain additional information necessary to properly evaluate a particular Proposal. Failure of a Proposer to respond to such a request for additional information or clarification could result in a finding that the Proposer is non-responsive and consequent rejection of the Proposal.

The City may obtain information from any legal source for clarification of any Proposal or for information on any Proposer. The City need not to inform the Proposer of any intent to perform additional research in this respect or of any information thereby received.

The City may perform, at its sole option, investigations of the responsible Proposer. Information may include, but shall not necessarily be limited to credit history, recent financial statements, current litigation, bonding capacity and related history, and contacting references. All such documents, if requested by the City, become part of the public records and may be disclosed accordingly.

The City reserves the right to request revisions of Proposals after the submission of proposals and before award for the purpose of obtaining best offers or best and final offers.

2.18 REJECTION OF PROPOSALS

The City reserves the right to reject any or all Proposals received as a result of this request. Proposals may be rejected for one or more of the following reasons, including but not limited to:

- a) Failure of the Proposer to adhere to one or more of the provisions established in this RFP.
- b) Failure of the Proposer to submit a Proposal in the format specified herein.
- c) Failure of the Proposer to submit a Proposal within the time requirements established herein.
- d) Failure of the Proposer to adhere to ethical and professional standards before, during, or following the RFP process.

The City may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements, and may reject for good cause any or all Proposals upon a finding of the City that it is in the public interest to do so.

2.19 MODIFICATION OR WITHDRAWAL OF PROPOSAL BY PROPOSER

A Proposal may not be modified, withdrawn, or canceled by the Proposer for 90 (ninety) calendar days following the time and date designated for the receipt of Proposals.

Prior to the time and date designated for receipt of Proposals, Proposals submitted early may be modified or withdrawn only by notice to the City's Contract Coordinator, at the Proposal submittal location, prior to the time designated for receipt of Proposals. Such notice shall be in writing over the signature of the Proposer. All such communications shall be so worded as not to reveal the amount of the original Proposal or any other material contents of the original Proposal.

Withdrawn Proposals may be resubmitted up to the time designated for the receipt of Proposals provided that they are then fully in conformance with these Instructions to Proposers.

2.20 PROPOSAL RETENTION

All Proposals submitted become public records and will remain in the custody of the City in accordance with Oregon public record retention requirements.

2.21 DURATION OF PROPOSAL

Proposal prices, terms and conditions shall be firm for a period of at least ninety (90) days from the deadline for receipt of submittal. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the ninety (90) day period. Price decreases or changes in terms by others after the acceptance of a Proposal will not be considered.

2.22 AFFIRMATIVE ACTION/NONDISCRIMINATION

By submitting a Proposal, the Proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive Order 11246, Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the Proposer specifically certifies, under penalty of perjury, that the Proposer has not discriminated against minority, women or emerging small business enterprises in obtaining any required subcontracts.

2.23 PREVAILING WAGES

The Contract awarded as a result of this solicitation will become a Public Works contract either when the Contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction of an improvement that is a Public Works or when the CM/GC Contract enters the construction phase, whichever occurs first. The prevailing wage rate in effect at that time shall apply and must be included with the construction specifications for the CM/GC contract, incorporated by a written amendment to the Contract. Contractor will be required to consult the then current BOLI publication, Prevailing Wage Rates for Public Works Contracts in Oregon, and must pay at least the prevailing wage as specified in the document. Current documents can be accessed through the following web address: http://www.oregon.gov/boli/WHD/PWR/Pages/pwr_state.aspx. The awarded Contractor shall comply with the provisions of ORS 279C.800 through 279C.870. A Proposal will not be considered unless it states that the Proposer will comply with ORS 279C.838 and 279C.840 or 40 USC 3141 to 3148.

2.24 PERFORMANCE AND PAYMENT BONDS

The Contract awarded as a result of this solicitation will become a Public Works contract either when the Contract first constitutes a binding and enforceable obligation on the part of the CM/GC to perform or arrange for the performance of construction of an improvement that is a Public Works or when the CM/GC Contract enters the construction phase, whichever occurs first. The below requirements will take effect at that time:

Performance Bond. The construction work, whether self-performed by the CM/GC or one of the CM/GC Subcontractors, will require a Performance Bond and a Payment Bond.

Public Works Bond. A contractor or subcontractor, unless exempt under ORS 279C.800 to 279C.870, shall file with the Construction Contractors Board a public works bond with a corporate surety authorized to do business in this state in the amount of \$30,000. Before starting work on a contract for a public works project, the contractor shall provide the City with a written statement certifying contractor and any subcontractor have filed a public works bond as required above.

The City may not consider a proposal unless the proposer is licensed by the Construction Contractors Board. The City will check the Construction Contractors Board (CCB) list of contractors not qualified for Public Improvement contracts to verify that the proposer is eligible for public improvement contracts.

2.25 CITY-FURNISHED FACILITIES

The City will provide a staging-area for Contractor's equipment and supplies.

SECTION 3 - PROJECT SCOPE

The CM/GC awarded the contract under this solicitation will work closely with the City's Project Management Team (PMT). The PMT will consist of select City staff and the design team. The PMT will be expected to meet regularly (no less than monthly) work cooperatively, and coordinate services to deliver the project on time and on budget. The design development phase for both buildings is expected to begin November 1st, 2022.

The anticipated scope of CM/GC services is described in this Section. The City and the selected Proposer will negotiate the final description of the Work and associated deliverables, within the scope of the RFP, for inclusion in the contract. The City is selecting a CM/GC during the Design phase of the Project to assist the City and the Design Team in development of a complete, functional, economical, feasible, and constructible project design. The City is seeking a CM/GC that can manage a technically complex project and best support and fulfill the objectives stated in this RFP. The services requested of the CM/GC will be provided in two phases, generally described as follows:

- a. Preconstruction Services: CM/GC shall consult and collaborate with the Owner Team and the Design Team during the design development stage of the project which includes, but is not limited to, constructability reviews, value engineering, scheduling, estimating costs, and development of a GMP.
- b. Construction Services: CM/GC shall organize, coordinate and manage all project resources (labor, equipment, material, technology, etc.) to complete the project on schedule, within the budget, and in accordance with the standards of quality and performance as specified by the Design Team; services include successful construction of the project of the quality and functionality as designed, project bidding, scheduling, estimating, subcontracting services, work as a general CM/GC, monitoring and control of the building process and budget, provision of general CM/GC expertise, consultation, coordination and collaboration with the City and the Design Team, and other services that may be needed for the successful completion of the project.

These services are more specifically described below:

3.1. Preconstruction Services

The CM/GC agrees that all of the services and work performed by the CM/GC under this phase shall be performed expeditiously and in accordance with the industry standards of care, skill, and diligence normally and customarily performed by a CM/GC on a project of this size and nature.

The Preconstruction Services shall be provided under terms of the Agreement executed by the City and the CM/GC and are anticipated to include, but not be limited to, all services as described below:

3.1.1. Consult with and advise the City and the Design Team orally and with written recommendations to complete an economical and constructible project design that will satisfy project objectives, requirements, and constraints as set forth herein, and with the quality, functionality, and durability required.

3.1.2. Review Drawings, Specifications and other Contract Documents and suggest modifications to improve completeness or clarity. Provide recommendations on constructability, value engineering,

material and systems suitability, availability of materials and labor, time requirements for installation and construction, site use and improvements, and factors related to cost including costs of alternative designs or materials, preliminary budgets, and possible economies; participate in development of deductive and additive alternates.

3.1.3. Advise the City and Design Team in completion of a project design utilizing principles of sustainability and energy conservation and conforming to LEED standards for new construction projects.

3.1.4. The City desires that this project generate the least amount of waste possible and that waste be diverted from the landfill as much as feasible. Contractor shall develop a Waste Management Plan to ensure the employment of processes that result in the generation of as little waste as possible by preventing error, poor planning, breaking, mishandling, contamination or other factors; and shall ensure the reuse, salvage, or recycling of as much waste as economically feasible. The Waste Management Plan shall be submitted to the City prior to the start of construction.

3.1.5. Develop and maintain a detailed schedule for project construction, including realistic activity sequences and durations, allocation of labor and materials, processing of shop drawings, and delivery of products requiring long lead-time procurement; coordinate and integrate Architect's design efforts with project construction schedule.

3.1.6. Provide comprehensive management plan to monitor and control schedule and budget to ensure completion of construction within budget; include detailed schedule for progress payment processing during construction; recommend division of work to facilitate bidding and award of contracts; allow as necessary for phased construction.

3.1.7. Prepare comprehensive cost estimates for major milestones of design, including 100% Schematic Design, 100% Design Development and 60% Construction Documents. At each major milestone, provide estimates to the Owner and reconcile the estimate to produce a single cost estimate for that major milestone that is no greater than the Project budget.

3.1.8. Provide ongoing information and advice on ways to reduce costs of the Project and duration of the Project schedule.

3.1.9. Work with Project Team to develop a Project Site Management Plan consisting of a site plan showing work activity locations, security and safety features, secure materials storage, parking, temporary facilities, cranes and equipment, demolition, recycling, adjacent property access and other various activities.

3.1.10. Develop a construction and contracting plan for completion of all construction; recommend organization and packaging of work to facilitate bidding and award of trade contracts; identify work CM/GC proposes to self-perform, and how competitive bidding for such work will be accomplished.

3.1.11. Participate with the City, Owner's Representative and Architect in regular project management and review meetings and any such additional meetings as the City may request. The City will hold meetings on site, no less than monthly, during the construction phase to meet with the project representatives of the Design Firm and the CM/GC. **A principal of the Design Firm and a principal of the CM/GC will be required to attend the meetings as well.** The purpose will be to discuss progress that was accomplished in the previous month and what is expected in

the next month. Topics include product delivery schedules, potential substitutions, progress and status of RFI's and shop drawing submittals, schedule compliance or changes, status of compilation of as-builts and reviews. The intent is to identify and initiate resolution of any current or upcoming issues that may affect the project quality, schedule or final documentation.

3.1.12. Prepare and submit a proposed Safety Plan.

3.1.13. Participate in a Sustainability Workshop with the City, Owner's Representative and Architect at the beginning of Schematic Design phase.

3.1.14. Develop with the Owner a mutually agreeable list of subcontracting opportunities, including identification of scope of each subcontracting opportunity; estimating cost/value of work; identifying specialty needs and schedule requirements; and identifying subcontracting opportunities and needs that should be addressed or acquired during Pre-Construction Services and before construction commences.

3.1.15. In collaboration with the Owner, develop a mutually agreeable Minority-owned/ Woman-owned/Emerging Small Business (MWESB) Subcontracting Plan to be implemented under the contract with the goal of maximizing the utilization of MWESB Subcontractors. The MWESB Subcontracting Plan will address the following:

- a. Identify all divisions of the Work (including supplies, materials, and services) in a way that offers viable subcontracting opportunities for MWESB companies, regardless of the subcontracting tier in which the division of the Work is to be performed.
- b. Develop outreach procedures designed to generate the submission of competitive bid proposals from MWESB Subcontractors at all subcontracting tiers.
- c. Develop with the Owner mutually agreeable procurement procedures to solicit and award subcontracts at all subcontracting tiers to maximize MWESB Subcontractor participation.

3.1.16 Facilitate the subcontractor bidding process. Provide summary charts of bids received and review bids with Owner and Architect.

3.1.17 If the initial GMP cost estimate exceeds the City's established construction budget, the CM/GC shall notify the City and propose how to complete the work within budget. If the City and the CM/GC cannot agree on a GMP, the City may terminate the Agreement and procure the work in an alternative manner as the City deems appropriate as permitted by law. This includes bidding the design or negotiating with the next most qualified proposer to perform the work.

3.2. Construction Services

An amendment to the Agreement will be executed if the City and the CM/GC are able to agree on a GMP for the required Construction Services. The scope of the Construction Services will include, but not be limited to, the following items:

3.2.1. Implement the contracting plan developed as part of Pre-construction Services work; solicit and conduct competitive sub-contractor bidding for project construction work; include all applicable legal provisions as required for the performance of Public Improvement construction work in the state of Oregon in each subcontract; the City's Project Manager or an appointed City representative shall be present during all bid openings.

3.2.2. Provide overall management and coordination for completion of the project; maintain a qualified, full-time Superintendent with necessary staff on the job site to coordinate and manage project construction; establish on-site organization to carry out overall plan of construction.

3.2.3. Establish effective quality control plan for all construction; inspect the work as it is being performed to assure that material furnished and quality of work performed are in accordance with the project plan and Construction Documents; establish process to manage any sub-contractor that is not performing in accordance with project requirements for budget control, on-time schedule performance, safety and/or quality control.

3.2.4. Monitor and maintain project construction schedule; identify potential variances between scheduled and probable completion dates; recommend adjustments to City; provide summary reports and document all adjustments to schedule; keep the City and the Architect advised of project schedule and construction work status.

3.2.5. Implement and monitor an effective system for project cost control; provide monthly reports of actual costs and work progress as compared to cost estimates and scheduled work progress. Provide supporting information for any variances as requested by the City and the Architect; maintain cost accounting records, provide City access to these records, and preserve for at least three (3) years after final payment.

3.2.6. The Contractor shall implement the Waste Management Plan as detailed in 3.1.14 above. The contractor is to ensure that subcontractors are informed of the established Waste Management Plan and that they make a good-faith effort to reduce the amount of waste generated on the jobsite and recycle material in alignment with the plan.

3.2.7. In order to verify the achievement of the diversion requirements, Contractor shall submit a Construction Material Diversion Report showing the material type, the actual weight of the material, whether the material has been recycled, salvaged or disposed of in the landfill, and what locations took the materials. This report must be submitted to the City concurrent with the final invoice for payment. The City reserves the right to request further information on diversion tactics used, including receipts or other documentation.

3.2.8. Monitor work of sub-contractors and coordinate project work with activities and responsibilities of City, Architect and CM/GC to complete the project in accordance with the City's objectives of budget, schedule and quality.

3.2.9. Review and process all applications for payments by sub-contractors and material suppliers in accordance with terms of their contracts and maintain records of all payment requests as required by law. Review and resolve all sub-contractors' and material suppliers' requests for additional costs.

3.2.10. Participate with the City, Owner's Representative and Architect in meetings no less than monthly.

3.2.11. Implement procedures for timely and accurate processing of shop drawings, submittals and other project documents.

3.2.12. Establish job-site safety program, which shall include an alcohol and drug testing program.

3.2.13. Provide close-out services as construction work is completed including, but not limited to: (1) perform necessary work to satisfy City that project is completed as designed before the project is deemed Substantially Complete; (2) resolve punch list items; (3) coordinate and expedite submittal of record documents; (4) provide final report of all construction costs, and (5) assist the City in final audit of all costs and all supporting documentation.

3.3. Subcontractor Bidding Requirements

The City will monitor the competitive process used to award subcontracts by the CM/GC. The following minimum requirements shall be used:

3.3.1. Advertisements will be placed in the Daily Journal of Commerce and other publications designed to reach MWESB contractors.

3.3.2. Sealed bids will be required and opened at the time specified in the bid advertisements.

3.3.3. For most portions of the work, competition will be required with attempts to obtain at least three (3) bids. If less than three bids are received the City may require that portion of the work to be rebid.

3.3.4. Bids will be awarded to the lowest responsive, responsible bidder, with preference given to resident contractors and subcontractors if all things are equal.

3.3.5. The date that prequalification applications must be filed and the class or classes of work for which bidders must be prequalified, if pre-qualification is a requirement.

3.3.6. Adherence to prevailing wage rates and all other standard terms and conditions of Oregon public works contracts.

3.3.7. Provide pro-active engagement with COBID-Certified firms eligible to complete sub-contracted portions of the work.

3.3.8. The CM/GC may self-perform the work of the "General Conditions" and other minor "pick-up" work but is prohibited from performing portions of the trade work without bidding against other qualified sub-bidders. Bids for portions of the work for which the CM/GC elects to bid will be sent directly to the City and opened publicly by the City's Project Manager. City reserves the right to award portions of the work to the CM/GC even if CM/GC is not the lowest responsive, responsible bidder if the City determines it is in the best interest of the City to do so.

3.4 OTHER SCOPE RELATED INFORMATION

3.4.1 Communications

The City requires the CM/GC to have the communication abilities and skills to provide the City with effective and professional advice and to be available in a timely manner. The City requires the CM/GC to follow all applicable local, state, and federal laws.

3.4.2 Responsibilities

Responsibility of CM/GC – The CM/GC shall identify a qualified Project Manager responsible for administering the contract. The Project Manager will return all calls or other contacts from the City within a reasonable time. If it is not possible for the called or contacted party to respond, the CM/GC will make arrangements for a designated member of the CM/GC to respond to the contact.

Responsibility of the City – The City will provide the CM/GC with a list of designated City employees who are authorized to contact the CM/GC on behalf of the City. The City will also provide a point of contact for all service and billing issues.

Joint Responsibility - If additional services, supplemental to those included herein, are required, both the City and the CM/GC have the responsibility to identify those services, include them as an addendum or amendment to the Contract, and determine fair compensation for the additional and/or amended services.

3.4.3 Administrative Services

For administrative services, the following items will be required:

- A. Proposer will provide a principal or partner-level individual to be the primary point of contact for all service and billing issues.
- B. Proposer will recommend specialist(s) for other services related to the project if the City so requests. The City reserves the right of approval of any specialist(s) and to select service providers of other services.
- C. Concerning the manner in which services are provided, the City expects that the work will be assigned to individuals in the most efficient manner consistent with their experience and training.
- D. If selected Proposer finds it necessary to subcontract with other firms for services, prior written approval must be obtained from the City.
- E. Invoices for services will be submitted on a monthly basis. An annual summary of billing will also be provided when requested by the City. What services and expenses will be billed and the level of detail required will be established by the contract.

SECTION 4 - PROPOSALS AND PROPOSER REQUIREMENTS

4.1 SUBMITTAL OF PROPOSALS

Proposals shall be submitted in accordance with the submission requirements listed in Section 2, Introduction and General Information, and shall contain all of the information requested in this section. A completeness check will be conducted for each proposal; a complete submittal will make the Proposer a “Responsive Proposer” to be further evaluated in accordance with the RFP.

4.2 Proposal Format

Proposals shall not exceed 25 pages in length, including pictures, charts, graphs, tables, and text. Page size is limited to 8½ by 11 inches with basic text information no smaller than 12 point type. Introductory Letter, résumés, Standard Proposal Form, Certificate of Contractor Employee Drug Testing Program form, front and back covers, and blank section/numerical dividers will not be counted against the 25-page limit. No other supplemental information to the 25-page limit will be accepted. Resumes should be appended to the end of the proposal and shall not exceed 2 pages per résumé in length.

Proposals should contain all of the information requested below. Proposers will be scored based on the information provided. To facilitate proposal review, the City may contact Proposers for clarification of proposal responses; however no additions, deletions or substitutions may be made to proposals that cannot be termed as clarifications.

4.3. Proposer Requirements

The following minimum criteria shall apply

- 4.3.1. The CM/GC has participated in a minimum of three (3) projects of 12,000 square feet or larger for which the Proposer’s firm acted as the CM/GC.
- 4.3.2. The CM/GC has constructed a minimum of five (5) public agency projects of 12,000 square feet or larger for which the Proposer’s firm acted as the General Contractor.
- 4.3.3 The CM/GC can demonstrate experience working in a Pacific Northwest coastal environment.
- 4.3.4. The CM/GC has a valid Oregon Contractor’s license.
- 4.3.5 The CM/GC shall not have a record of substandard workmanship. The City may verify this requirement by communication with the Proposer’s clients and references, and as many other references as may be deemed appropriate.

4.4 PROPOSER REPRESENTATIVE

The selected Proposer shall assign a qualified Project Manager acceptable to the City who will represent the Proposer in providing contracted services to the City. If the Project Manager is removed by the Proposer, a new Project Manager must be appointed by the CM/GC and must be acceptable to the City.

4.5 PROPOSAL FORMAT AND REQUIREMENTS – MANDATORY

Each Proposer shall provide the following:

4.5.1 Introductory Letter (One Page Maximum)

Include the name of the proposing Firm or Individual and its principal business address and phone number. The letter should address the Proposer's willingness and commitment, if selected, to provide the services as outlined in the Scope of Work and a description of why the Proposer believes it should be selected. The letter should be addressed to Bruce St. Denis, City Manager and should be signed by an officer of the firm authorized to bind the firm to all comments made in the Proposal. Please provide all contact telephone, fax numbers, e-mail addresses, and addresses of your office(s).

4.5.2. CM/GC Qualifications, Experience, and Project Approach

Please provide a brief overview of the firm, including:

- An overview of the firm's corporate structure and organization including relationship to any parent, subsidiary, or affiliated business entity
- Firm's strengths and any special capabilities that may be particularly relevant for this project
- Number of years in continuous operation and current number of employees
- Annual gross dollar volume of work for last five (5) years and anticipated volume of work for this year
- Bonding capacity (per project and aggregate)
- Current company construction capabilities (types of work in which firm specializes, preferred range of job size, etc.)
- All construction disciplines your firm would be capable of self-performing on this Project
- Current experience modification rate for workers' compensation insurance
- Describe your firm's familiarity with and experience working in the Pacific Northwest Coast. Indicate your firm's familiarity with pertinent state and local code requirements.
- CCB License Number
- Claims History – State whether in the previous ten years, the firm has engaged in arbitration, litigation or other legal actions, either as plaintiff or defendant. State whether, during its last ten years, the firm has made a settlement (without specifying the amount) or been ordered by a court or arbitrator to make a payment to a plaintiff or claimant, or has been found in violation of a regulatory statute which has resulted in

fine, disbarment or other action by regulatory agencies. (Note: Information agreed to be kept confidential in any settlement agreement need not be disclosed in proposal).

- Termination for Default –State whether or not the firm has had a contract terminated for default in the last five years. Termination for default is defined as notice to stop work that was delivered to the Proposer due to the Proposer’s non- performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and determined that the Proposer was in default. If the firm has had a contract terminated for default during this period, submit full details including the other party’s name, address, and telephone number. The City will evaluate the facts and may, at its sole discretion, reject the proposal on the basis of the Proposer’s past performance.

4.5.3 Qualifications and Experience

Describe Proposer’s relevant experience with CM/GC work. Describe relevant experience with projects of similar size, type, and complexity, particularly CM/GC projects with public agencies.

Identify at least five (5) projects completed within the last ten (10) years that most closely meet the criteria described above for which the Proposer had lead responsibility. Please include:

- a. Name of project, location, and completion date
- b. Brief description of project including square footage of project area, sustainability features/certifications, and whether it was new construction and/or a remodel
- c. Brief description of preconstruction services provided, if any
- d. Name and role of personnel proposed for this Project that were involved with the past project
- e. Name of Owner, reference contact person, current phone number
- f. Architect, reference contact person, current phone number
- g. Whether project was completed on schedule and within budget
- h. Final contract sum including total value of change orders
- i. Total value of project claims, if any, going to litigation/arbitration and final disposition of those claims Information obtained in reference checks may be used to score all evaluation criteria.

4.5.4. Project Staffing

Provide project organization chart showing proposed staff for this project, including Project Manager, Superintendent, Project Engineer(s) and Estimator. For all management personnel, identify their

responsibilities on this project, and their primary office location. Indicate their time commitment for this project during the pre-construction and construction phases.

Identify qualifications and experience of proposed team members with emphasis on projects of similar or greater size and scope as the project subject to this RFP. List education, current registrations, length of employment with your firm and any other relevant information. You may refer evaluators to résumés appended to the end of your proposal in responding to this portion of the evaluation criteria.

Provide the names and phone numbers of at least three (3) references for each of the key proposed personnel. The references should represent at least one Owner and one Architect. These references should be from projects of a size and scope similar to or greater than the Project subject to this RFP. Results obtained in reference checks may be used to score all evaluation criteria.

4.5.5 Project Approach

General CMGC Approach. Describe how your firm will administer this project in both the preconstruction and construction phases to ensure the project is completed on time and within budget. Detail your firm's planning, scheduling, phasing and project management expertise and methodology.

Pre-Construction Services/Cost and Quality Control. Describe how the firm will manage the work to control costs and maximize quality during the pre- construction phase. Describe your firm's cost estimating and value engineering methodology and discuss any experience you have implementing collaborative budgeting methods.

Bidding and MWESB Participation. Describe how the firm will manage bidding for this project consistent with responsible bidding procedures and incorporating all Oregon contractor requirements for competitive bidding. Identify strategies the firm will use to promote the participation of Minority, Women, Emerging Small Businesses (M/W/ESB), and local businesses.

4.5.6 Sustainability

Describe the firm's experience with construction of facilities incorporating principles of sustainability. Indicate how the firm would collaborate with the Design Team to promote the selection of materials that meet budget parameters and have sustainable qualities.

4.5.7 Fee Proposal

The City will request fee proposals from Proposers that are selected for interviews.

4.5.8. Certificate of Contractor Employee Drug Testing Program

Proposers must certify in the proposal they have and enforce a drug testing program for their employees and require the same of subcontractors and suppliers.

SECTION 5 – PROPOSAL SELECTION AND EVALUATION

5.1 GENERAL INFORMATION

The City reserves the right to reject any or all Proposals and is not liable for any costs the Proposer incurs while preparing or presenting the Proposal. All Proposals will become part of the public file, without obligation to the City. Upon the completion of the evaluations, the City intends to negotiate a contract with the Proposer whose Proposal is deemed to be most advantageous to the City.

Each Proposal submitted in response to this RFP that conforms in all material respects with the requirements set forth in the Solicitation Documents and all requirements of the Oregon Public Contracting Code shall be deemed a “Responsive Proposal”. The City will notify any Proposers who submitted a Non-Responsive Proposal to inform them that it did not meet the requirements and will therefore not be considered for contract Award.

5.2 SELECTION REVIEW COMMITTEE

The Selection Review Committee may be comprised of up to six members appointed by the City Manager. The role of the Selection Review Committee is to evaluate the Proposals submitted and make a recommendation of award. The City Manager will make the final decision. The selection committee will evaluate each Responsive Proposal according to the criteria described in this RFP on a point system.

The City may also seek expert advice to help review Proposals. Such advisors to the Selection Review Committee may attend evaluation meetings, Proposer presentations, evaluate the Proposals, and lend any such expertise to the process as requested by the City. However, any such person that is contacted by the City for their expert advice shall not, from first being contacted until the Proposal process is completed, have communications with any Proposers regarding their Proposal or the process.

Scoring will be completed covering all areas listed below in the Evaluation Criteria. Proposals will be scored independently and then scores for each Proposer shall be added together to arrive at a final score. Proposals will then be ranked in descending order by the total Proposal score.

The City is seeking value from the service requested. While cost is important to the overall evaluation process, the services to be provided and the experience/qualifications of the persons to provide the services will be assigned a higher value. If additional information is deemed necessary as part of the evaluations, such information will be solicited in order to allow the committee to complete the evaluation process.

City reserves the right to negotiate with any of these Proposers or may elect to negotiate a contract using best and final offers.

5.3 INTERVIEWS

At the City’s option, interviews may be conducted with the top Proposers after the Proposals are evaluated and scored. If the City elects to have interviews, the City anticipates interviewing the top three Proposers, but the actual number will depend in part on the number of proposals received and the range of scores. If held, a possible 80 points will be attributed to interviews and the fee proposals

received during the interview process. The interview scores will be added to the proposal scores, and the list re-ordered.

Such interviews shall provide an opportunity for Proposers to clarify their Proposal to ensure thorough mutual understanding. The Selection Review Committee may interview the Proposers and ask additional questions related to the Proposal and the scope of work. The City will schedule the time and locations of the interviews, if required, on the dates indicated in the Proposal Schedule. In-person interviews are required and will take place in the City if conditions allow for such interviews. Proper social distancing will be maintained at all times and the City will provide a room that will make proper social distancing possible. Firms invited to the interview will be responsible for making and paying for their own travel.

5.4 SCORING AND EVALUATION CRITERIA

The criteria listed below will be used to evaluate the Proposers and rank the proposals. **Total possible points prior to an interview will be 100. If City conducts interviews, another possible 80 additional points will be available, that will include the results of an interview and consideration of the proposed fees.**

5.4.1 Scoring Criteria Point System

5.4.1.1 Proposals will be evaluated by a selection committee based on a point system. The maximum possible point values are listed below by each evaluation category. The Point System is as follows:

Firm History	10
Qualifications and Experience	30
Project Staffing	25
Project Approach	25
Quality of Proposal	10
Total Possible Points Prior to Interviews	100

Quality of Proposal - Overall quality, responsiveness, and creativity of the Proposal in addressing the scope of work and likelihood of achieving the RFP's objectives. Also to be considered is professionalism of the Proposal with respect to look, organization, and completeness.

5.4.5 Reference Check

The City reserves the right to contact references as part of the decision making process and prior to making a final selection. No points will be awarded for reference checks.

5.5 BEST AND FINAL OFFERS

In its discretion, the City may conduct private discussions with qualified Proposers in order to seek best and final offers.

5.6 RANKING OF PROPOSALS

Respondent's scores will be totaled and ranked. The City may establish a Competitive Range after evaluating all Responsive Proposals in accordance with the evaluation criteria set forth in the RFP. Interviews may be scheduled with the top-ranked proposers in the Competitive Range. The City shall provide written notice to all Proposers identifying Proposers in the Competitive Range. The City may provide an opportunity for Proposers excluded from the Competitive Range to protest the City's evaluation and determination of the Competitive Range.

Proposals may be ranked by the Selection Review Committee based on evaluation of responses and interviews (if any), with the first-ranked Proposer being that Proposer which is deemed to be the most appropriate and fully able to perform the services, and the second ranked Proposer being the next most appropriate, all in the sole judgment of the Selection Review Committee.

Any Proposer's response to this RFP shall be considered de facto permission to the City to disclose the results, when completed, to selected viewers at the sole discretion of the City.

SECTION 6 – CONTRACT REQUIREMENTS

6.1 CONTRACT AWARD

The City shall provide written notice by email or facsimile of the City's intent to award the contract. Notice of the intent to award will only be given to the Competitive Range Proposers. Award shall not be final until the later of the following:

- a) Seven (7) calendar days after the date of the Notice of Intent to Award; or
- b) City provides a written response to any timely filed protest that denies the protest and affirms the award. Any protest must clearly state the reason(s) for the protest.

The award of a contract is accomplished by executing a written agreement that incorporates the entire RFP, Proposer's response, clarifications, addenda, and additions. All such materials constitute the contract documents.

Final award will depend upon the execution of an acceptable contract and delivery of required bonds and evidence of insurance, and may be withdrawn by the City at any time prior to execution of the contract by the City.

6.2 FORM OF CONTRACT

The form of contract is attached to this RFP and will be the agreement that will be used to award the project. Requested changes to this agreement are to be submitted as part of the response to the RFP. The Proposer agrees to accept the contract terms of the attached contract if modifications are not requested at the time the proposal is submitted.

6.3 REQUIREMENTS

The firm must be covered by Workers' Compensation Insurance, which will extend to and include work in Oregon. In addition, the firm must also submit documents addressing general liability insurance, automobile and collision insurance, professional liability insurance, and indication that there is no conflict of interest on the part of the Contractor's submission of a proposal for the services being solicited under this RFP.

6.4 CONTRACT ADMINISTRATOR

Jennifer Barrett shall be the Contract Administrator throughout the RFP process and during the contract period. Submittal of a proposal evidences proposer's intent to execute and be bound by the terms of the attached contract. The City intends to award a contract to the responsible proposer submitting the most advantageous proposal, based on evaluation factors contained in the proposal, provided the proposal has been submitted in accordance with the requirements of the RFP documents, and does not exceed the funds available. The City will enter into contract negotiations regarding any open terms. During negotiations, the City may require any additional information it deems necessary to clarify Proposer's approach and City's understanding of the requested goods or services. Any changes agreed upon during Contract negotiations will become part of the final Contract.

**PROPOSAL SUBMITTAL FORM
CITY OF CANNON BEACH
CONSTRUCTION MANAGER/GENERAL CONTRACTOR SERVICES
FOR CANNON BEACH ELEMENTARY SCHOOL REJUVENATION**

I, the undersigned, and authorized representative of _____
(Company Name)

certify the following:

Acknowledgement of terms, conditions and specifications

1. The proposer represents that proposer is properly licensed and adequately experienced, equipped, organized and financed to furnish and deliver the equipment specified and perform the services required.
2. The proposer has carefully checked the figures entered in all forms, has carefully reviewed for accuracy all statements in this proposal and attachments, and agrees that the City will not be responsible for any errors or omissions of the proposer in preparing this proposal. The proposer agrees that this proposal may not be revoked or withdrawn for 90 calendars days after the date on which proposals are received.
3. Contract Execution; The proposer agrees that if this proposal is accepted it will, within ten (10) calendar days after having received the Notice of Award, execute and return to the City the Contract in the form included in the Contract Documents and will, at or before that time, provide insurance documentation as required.
4. Addenda. The proposer acknowledges that it has received the following Addenda No(s): ____ and ____, and agrees that all addenda issued are a part of the Contract Documents and have been considered in preparing this proposal. (Proposer: insert the number of each addendum received; if no addenda were received, write "NONE" in the space.)

Compliance with Laws

Proposer hereby agrees to comply with all applicable laws and regulations, including Oregon's public contracting laws.

Access to Plant or Place of Business

Proposer agrees that the City may enter a contractor's or subcontractor's plant or place of business during normal business hours for the following purposes: inspect and/or test supplies or services for acceptance by the City pursuant to the terms of the Contract, and investigate the proposer's minority business certification or other proposer qualifications.

Certification of Nondiscrimination

Proposer has not and will not discriminate against a subcontractor in the awarding of a subcontract because a subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055, or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

Non-collusion

The proposer certifies that the proposal has been arrived at by the proposer, independently, and has been submitted without collusion with, and without any agreement, understanding or planned course of action with, any other contractor, proposer, or vendor on materials, supplies, equipment or services, described in the solicitation documents, designed to limit independent offers or competition. The contents of the proposal herein presented and made have not been communicated by the proposer or their employees or agents to any person not an employee or agent of the proposer or its surety on any bond furnished with the solicitation, and will not be communicated to any such person prior the closing time of the solicitation.

Required Submittals

We therefore offer the following proposal fulfillment of the requirements and specifications contained within the solicitation documents and all addenda.

Required Submittal	Initials
Signed Standard Proposal Form	
Letter of Introduction	
CM/GC Qualifications, Experience, Approach	
Contract Agreement Statement or Addendum containing contract exceptions.	

Signature: _____

Date: _____

Company: _____

Title: _____

Name (Print): _____

Phone: _____

Address: _____

Email: _____

Company contact for this project (if different from above):

Name (Print): _____

Phone: _____

Title: _____

Email: _____

ATTACHMENT A
SAMPLE CONTRACT

AIA[®] Document A133[™] – 2019

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

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

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

City of Cannon Beach an Oregon municipal corporation

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

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

Cannon Beach Elementary School Renovation

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

CIDA, Inc

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

AIA Document A201[™]–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

EXHIBIT C SUBCONTRACTOR RELATIONS

ARTICLE 1 INITIAL INFORMATION

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

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") "TBD" means to be determined prior to award. Depending on the context, the issue will be determined through negotiation between Owner and Construction Manager, or Owner will determine in its discretion whether or not to include the matter in the Project. "TBA" means to be added prior to award. These are facts or figures that are not certain to Owner at the time Owner requests proposals but will be included prior to award.

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

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

TBA

§ 1.1.2 The Project's physical characteristics:

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

TBA

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

TBA

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

TBD

.4 Other milestone dates:

TBD

§ 1.1.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:
(Identify any requirements for fast-track scheduling or phased construction.)

TBD

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

TBD

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere.)

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:
(List name, address, and other contact information.)

Rusty Barrett
IT Director
rbarrett@ci.cannon-beach.or.us

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

(List name, address and other contact information.)

§ 1.1.10 The Owner may retain the following consultants and contractors:

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

.1 Geotechnical Engineer:

.2 Civil Engineer:

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

§ 1.1.11 The Architect's representative:

(List name, address, and other contact information.)

TBA

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3, who is authorized to act on behalf of the Construction Manager with respect to the Project in all instances, unless expressly stated otherwise in this Agreement:

(List name, address, and other contact information.)

TBD

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

(List any Owner-specific requirements to be included in the staffing plan.)

TBD

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

(List any Owner-specific requirements for subcontractor procurement.)

See Exhibit C (Owner reserves right to add or delete requirements prior to awarding contract)

§ 1.1.15 Other Initial Information on which this Agreement is based:

TBD

§ 1.2 [INTENTIONALLY OMITTED]

§ 1.3 Construction Manager may only change its representative with good cause and only after securing Owner's written approval. Examples of "good cause" include the representative no longer being employed by Construction Manager, or if representative is on a leave of absence, or if Owner requests the Construction Manager to change its representative. "Good cause" does not include Construction Manager's desire to change its representative for a business-related purpose of Construction Manager.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the best interests of the Owner; to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; to furnish the Construction Manager's services, experienced personnel and perform the Work with the skill and care of a Construction Manager and general contractor with experience in projects similar to the Project in the Pacific Northwest coastal environment; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a reasonably timely manner and as required by the Contract Documents, information requested by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement.

§ 2.3.2 For the Construction Phase, all sections of the A201-2007 will apply.

§ 2.3.3 The terms "A201-2007" or "A201-2017" or "General Conditions of the Contract for Construction" mean AIA Document A201-2007, as modified by Owner. The term "Contractor" as used in A201-2007 means the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager.

(Paragraph deleted)

§ 3.1.2. The Construction Manager shall provide Preconstruction Phase services identified in the Owner's request for proposals ("RFP"). In addition, Construction Manager shall provide the following services during the Preconstruction Phase:

1. The Construction Manager will provide an evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.
2. The Construction Manager will provide in writing and acceptable to Owner: (1) a detailed evaluation of the construction costs for the project, Project schedule and phasing of bid packages, if any, including estimate of construction costs savings; (2) a review of information provided by the Owner and the Architect and information the Construction Manager obtains from field observations and other sources; (3) a pre-bid cost estimate to determine if probable construction cost estimates will meet or exceed the Project budget; and (4) recommended changes to the Owner's design for the Project that the Construction Manager reasonably expects will reconcile the program, Project budget and Project Schedule or will reduce costs, provide a higher quality Project without exceeding the Project budget or will otherwise benefit Owner.
3. If the Construction Manager recommends changes to the Owner's program or its preliminary design, the Construction Manager will explain why the proposed changes, if Owner accepts them, will: (1) reduce costs; (2) provide a higher quality Project without exceeding the Project budget; or (3) otherwise provide benefits to the Owner or the Project.
4. The Construction Manager will provide a written contract document review report of any apparent errors, omissions, or inconsistencies in the contract documents and other information obtained by the Construction Manager from any source, including the Owner, the Architect or the Construction Manager's observations, together with the Construction Manager's recommendations for resolving any apparent errors, omissions, or inconsistencies.
5. The Construction Manager will identify critical elements of the Work that may require special procurement processes, such as prequalification of offers or alternative contracting methods.
6. The Construction Manager will advise Owner and Architect of current construction market bidding climate, status of key subcontract markets, and other economic conditions relevant to the Project.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct weekly meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment based upon the design work as it progresses. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding any professional services to be provided by the Construction Manager during the Construction Phase.

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and update no less than monthly a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the

Project's timely completion. Each updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner, including any portions of the Project having occupancy priority. Each updated Project Schedule will indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager will explain why and make appropriate recommendations to the Owner and Architect.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

§ 3.1.6 Cost Estimates

§ 3.1.6.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall promptly inform the Owner and Architect if the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates or those of a cost estimator that Owner retains, the Construction Manager, the Architect and the Owner's cost estimator shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 The Construction Manager shall review Exhibit C, and advise Owner on any recommended changes.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. Owner in consultation with Architect may require Construction Manager to inform one or more specific Subcontractors of the Project

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction in order to meet the approved Project schedule. The Construction Manager will submit the procurement schedule for long-lead-time items. The Owner may require the Construction Manager to order and procure long-lead-time items before the Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, pursuant to Drawings and Specifications prepared by the Architect and A201-2007. The Construction Manager will provide the Owner with a proposal for such procurement that will be for no more than the actual cost of the long-lead-time item, and will identify a restocking charge or charge of a similar nature, if any, payable to the supplier of the long-lead-time item if the Owner cancels the order. The Construction Manager shall incorporate any long-lead-time-items in the Guaranteed Maximum Price proposal. If the Owner accepts the Guaranteed Maximum Price proposal, any long-lead-time items must be included in the Cost of the Work. The Owner will provide funds for payment of any amounts that become due for long-lead-time items before commencement of the Construction Phase, subject to a credit against the Guaranteed Maximum Price. If the Owner cancels the order for a long-lead time item for any reason other than default by the Construction Manager or the supplier, Owner will be responsible for any restocking charge or charge of a similar nature if but only to the extent the Construction Manager disclosed the charge in its proposal. The Construction Manager shall expedite the delivery of long-lead-time items. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities, including any public utilities.

§ 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)

TBD

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price (or "GMP") in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. By submitting the Guaranteed Maximum Price proposal to the Owner, the Construction Manager warrants that: (1) the Construction Manager has reviewed the Drawings and Specifications and other information provided by the Owner and obtained such additional information from the Owner, direct observation of the site and other sources that the Construction Manager deemed necessary and sufficient to prepare the Guaranteed Maximum Price proposal; (2) the Guaranteed Maximum Price proposal is consistent with the Drawings and Specifications, and (3) the Drawings and Specifications provide sufficient information to commit to a Guaranteed Maximum Price to complete the Work within the Contract Time.

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

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

- 3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- 4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- 5 A date by which the Owner must accept the Guaranteed Maximum Price, which shall be no less than twenty (20) days from the date the Owner receives the written statement.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's use to cover those costs that are included in the Guaranteed Maximum Price but not subject to or eligible for a Change Order. The amount shall be approved by the Owner. The Construction Manager shall seek authorization for individual contingency expenditures exceeding \$10,000. The Owner shall be allowed to review the contingency expenditures on a weekly basis and advise against those not in the best interest of the Project and reject those not in compliance with the Contract Documents.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. If the Owner or Architect discover any apparent inconsistencies or inaccuracies in the information included in the Guaranteed Maximum Price proposal or between that information and the Plans and Specifications, they will promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, to the extent necessary to reconcile such apparent inconsistencies or inaccuracies to the Owner's satisfaction. Nothing in this Agreement imposes a duty on Owner or Architect to determine or discover inconsistencies, inaccuracies or any other deficiency in Construction Manager's work product, including the GMP proposal.

§ 3.2.6 The Owner will review the Guaranteed Maximum Price proposal and accept, reject or request modification of the Guaranteed Maximum Price proposal by written notice to the Construction Manager. If the Owner requests modification of the Guaranteed Maximum Price proposal, the Owner and the Construction Manager shall cooperate with each other to arrive at and agree upon such modification as expeditiously as possible, provided, however, that the Owner may at any time elect to reject the Guaranteed Maximum Price proposal, as presented or as may be later modified, and terminate this Agreement for convenience pursuant to A201-2007. If Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, the Owner and Construction Manager will execute a Guaranteed Maximum Price Amendment amending this Agreement, a copy of which Owner will provide to the Architect. The Guaranteed Maximum Price Amendment will be substantially in the form attached to this Agreement as Exhibit A and set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed, including Oregon's commercial activity tax (or "CAT").

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase will commence when the Owner's issues a Notice to Proceed, unless the Owner authorizes early work in shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written

agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.2 Administration

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings at least every two weeks with Owner and Architect to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2007, which must be consistent with the Guaranteed Maximum Price proposal accepted by Owner.

§ 3.3.2.3 Monthly Report

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information reasonably requested by the Owner.

§ 3.3.2.4 Daily Logs

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information reasonably requested by the Owner.

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs, report the variances to the Owner and Architect and propose how Construction Manager will account for the variances within the GMP. Construction Manager shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project. Such information may include a written program that generally sets forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 [INTENTIONALLY OMITTED]

§ 4.1.3 If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, to the extent Owner is required by law to secure such documentation. Owner shall furnish other documentation as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 Subject to the second sentence of this subsection, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site.

Owner alternatively may require Construction Manager to produce such surveys and a legal description as preconstruction service.

§ 4.1.4.3 The Owner, if such services are necessary or such services are not included in the preconstruction services that Construction Manager will provide, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 The Owner may, in its discretion, provide the Construction Manager access to Owner's records that may contain information about the Project site and adjacent land and improvements, where such information was not collected specifically for the Project. The Owner makes no representations or warranties as to the relevance, accuracy or completeness of information in the Owner's records made available to the Construction Manager.

§ 4.1.6 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

§ 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner may furnish all legal, insurance and accounting services, including auditing services, that Owner in its discretion may believe are reasonably necessary for the Project to meet the Owner's needs and interests.

§ 4.3 Architect

The Owner has retained an Architect to provide services, duties and responsibilities as described in an agreement between Owner and Architect. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

TBD

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

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

TBD

Individual or Position

Rate

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes (including but not limited to Oregon's CAT), insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 The Construction Manager will include the sum for Preconstruction Phase Services, including Reimbursable Expenses to be incurred in the Preconstruction Phase, in its Guaranteed Maximum Price proposal. For Reimbursable Expenses, the compensation will be the actual expenses incurred by the Construction Manager without mark-up.

§ 5.1.4 The Construction Manager will accept compensation under Section 5.1 as payment for all services rendered and Reimbursable Expenses incurred during the Preconstruction Phase, except as Owner may otherwise specifically agree in writing.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts not in dispute and unpaid thirty (30) days after the invoice date shall bear interest

(Paragraphs deleted)

in accordance with ORS 279C.570.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

TBD

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

TBD

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

TBD

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

TBD

§ 6.1.7 Other:

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

Upon completion of the Work, if the total Cost of the Work is less than the GMP, 100% of the savings will accrue to Owner

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Notwithstanding any language to the contrary in the Contract Documents, Owner will not pay Construction Manager any amount that exceeds the GMP, unless: (1) the amount results from material changes to the Work; and (2) Owner and Construction Manager agree in writing to the material changes. In every other instance, costs which would cause the Guaranteed Maximum Price to be exceeded, including but not limited to the costs of supplies,

materials and labor, shall be borne and paid by the Construction Manager without reimbursement or additional compensation by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.3.2 Subject to the limitations in Section 6.2, adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2007, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2007 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work without markup to Owner. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7 and shall be clearly identified in the GMP proposal.

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

§ 7.1.3 Costs shall be at rates not higher than those stated in the Guaranteed Maximum Price Proposal or, if not stated for good cause, the fair market value at the place of the Project, subject to the Owner's prior written consent.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 With the Owner's prior approval, wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

TBD

§ 7.2.3 With the Owner's prior approval, wages and salaries of the Construction Manager's supervisory or administrative personnel engaged in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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

§ 7.2.5 Prevailing wages required by this Agreement shall remain unchanged throughout the duration of this Agreement.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the Contract Documents.

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

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

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

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

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

§ 7.5.2 Subject to Owner's prior approval, rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval and Section 6.5.1. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Those portions of costs of the Construction Manager's site office, including general office equipment and supplies, that are directly related to the Work.

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

§ 7.6 Miscellaneous Costs

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

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable, except for an amount attributable to Oregon's CAT.

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents, unless such royalties, fees or costs are excluded from the Cost of the Work elsewhere in the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's prior approval, unless the Construction Manager knew or should have known that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2007. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval.

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

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

§ 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2007.

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

§ 7.7.4 The costs described in Sections 7.1 through 7.7 are the entire Costs of the Work, and all other costs are deemed excluded, regardless of whether such costs are listed in the provisions of Section 7.9.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7, notwithstanding any language to the contrary in the Contract Documents;
- .8 Costs, other than costs included in Change Orders that are consistent with Section 6.2 and approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .9 Costs for services incurred during the Preconstruction Phase;
- .10 Any fines, penalties, sanctions, levied against Construction Manager or Owner due to Construction Manager's (or any Subcontractor and their subs) violation of any federal, state, or local laws, regulation or ordinances. If Owner pays such amounts, in addition to any other legal or equitable remedy, Owner is entitled to a set-off in that amount against monies otherwise owed Construction Manager.
- .11 Any liquidated damages provided for under this Agreement. Owner is entitled to set-off the amount of liquidated damages from monies otherwise owed Construction Manager.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

§ 8.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 8.2 Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager, subject to Oregon law and Exhibit C. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents.

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

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

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

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

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of each month following the applicable payment period and the Architect certifies the application for payment, the Owner shall make payment of the amount certified to the Construction Manager not later than the 5th day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls showing hours worked, petty cash accounts, receipted invoices or invoices with check vouchers attached, certified statements on forms provided by BOLI that laborers have been paid prevailing wages and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

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

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

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

§ 11.1.7 In accordance with AIA Document A201–2007 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2007;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2007;

- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment the Owner shall withhold the following amount, as retainage, from the payment otherwise due:

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

Five percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for *(Paragraphs deleted)*

Payment. Owner may in its discretion release retainage after Substantial Completion, unless it is otherwise required to release it or prohibited from releasing it pursuant to Oregon law.

§ 11.1.9 [INTENTIONALLY OMITTED].

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts accordingly.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 releases and waivers from all Subcontractors, in a form acceptable to Owner, that demonstrate the Subcontractor has no claims against Construction Manager or Owner, including any claims regarding payment.
- .3 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .4 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2007. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated
(Paragraphs deleted)
in ORS 279C.570.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

TBD

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Article 15 of AIA Document A201–2007
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 At any time prior to the Owner accepting a GMP proposal and the Owner executing a GMP amendment, the Owner may terminate this Agreement for its convenience and without cause upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 If Owner terminates this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for those Preconstruction Phase services performed and any Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. Such compensation will not include any consequential damages, including loss profits or loss of anticipated profits.

§ 13.1.3 [INTENTIONALLY OMITTED].

§ 13.1.4 [INTENTIONALLY OMITTED].

§ 13.1.5 If the Owner terminates the Contract after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be exclusive for such early Work and in addition to any compensation paid to the Construction Manager under Section 13.1.2:

1. Take the Cost of the Work incurred by the Construction Manager to the date of termination;
2. Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
3. Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 If the Owner elects to take legal assignment of some or all subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

§ 13.1.6.1 If the Owner accepts assignment of some or all subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated.

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2007.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2007.

§ 13.2.2.2 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2007, then the Owner shall pay the Construction Manager

(Paragraphs deleted)

in accordance with Article 14 of A201–2007.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2007. Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and four million dollars (\$ 4,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than two million dollars (\$ 2,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits. Employers Liability with policy limits not less than one million dollars (\$ 1,000,000) each employee, and not less than a two million dollar (\$ 2,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate. **TBD**

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2007, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as amended.
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 Subcontractor Relations, Exhibit C
- .5 AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended
- .6 **AIA Document E203™-2013**, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

- .6 Other Exhibits:

(Check all boxes that apply.)

- ☐ **AIA Document E234™-2019**, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:
(Insert the date of the E234-2019 incorporated into this Agreement.)

- ☐ Supplementary and other Conditions of the Contract:

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

- .7 Other documents, if any, listed below:

(Paragraph deleted)

Owner's Request for Proposals dated ____, 2022 and all addenda to the RFP, if any.
Construction Manager's Proposal dated ____, 2022.

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

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

Additions and Deletions Report for AIA® Document A133™ – 2019

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:24:56 ET on 07/05/2022.

PAGE 1

City of Cannon Beach an Oregon municipal corporation

...

Cannon Beach Elementary School Renovation

...

CIDA, Inc

PAGE 2

EXHIBIT B INSURANCE AND BONDS

EXHIBIT C SUBCONTRACTOR RELATIONS

...

(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.") "TBD" means to be determined prior to award. Depending on the context, the issue will be determined through negotiation between Owner and Construction Manager, or Owner will determine in its discretion whether or not to include the matter in the Project. "TBA" means to be added prior to award. These are facts or figures that are not certain to Owner at the time Owner requests proposals but will be included prior to award.

...

TBA

...

TBA

PAGE 3

TBA

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TBD

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TBD

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TBD

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TBD

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TBD

...

Rusty Barrett

IT Director

rbarrett@ci.cannon-beach.or.us

PAGE 4

§ 1.1.10 The Owner ~~shall~~may retain the following consultants and contractors:

...

TBA

...

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article ~~3.3~~, who is authorized to act on behalf of the Construction Manager with respect to the Project in all instances, unless expressly stated otherwise in this Agreement:

...

TBD

...

TBD

PAGE 5

See Exhibit C (Owner reserves right to add or delete requirements prior to awarding contract)

...

TBD

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall appropriately adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information. [INTENTIONALLY OMITTED].

~~§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party. Construction Manager may only change its representative with good cause and only after securing Owner's written approval. Examples of "good cause" include the representative no longer being employed by Construction Manager, or if representative is on a leave of absence, or if Owner requests the Construction Manager to change its representative. "Good cause" does not include Construction Manager's desire to change its representative for a business-related purpose of Construction Manager.~~

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the best interests of the Owner. ~~Owner~~; to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; to furnish the Construction Manager's services, experienced personnel and perform the Work with the skill and care of a Construction Manager and general contractor with experience in projects similar to the Project in the Pacific Northwest coastal environment; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a ~~timely manner, information required reasonably~~ timely manner and as required by the Contract Documents, information requested by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

...

~~§ 2.3.1 For the Preconstruction Phase, AIA Document A201TM 2017, A201TM 2007, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201 2017 shall mean the Construction Manager only as specifically provided in this Agreement.~~

~~§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201 2017, which document is incorporated herein by reference. The term "Contractor" as used in A201 2017 shall mean the Construction Manager. All sections of the A201-2007 will apply.~~

~~§ 2.3.3 The terms "A201-2007" or "A201-2017" or "General Conditions of the Contract for Construction" mean AIA Document A201-2007, as modified by Owner. The term "Contractor" as used in A201-2007 means the Construction Manager.~~

...

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, ~~and in the applicable provisions of A201 2017 referenced in Section 2.3.1, 3.2.~~ The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. ~~The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.~~

PAGE 6

~~The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.~~

~~§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.~~

§ 3.1.2. The Construction Manager shall provide Preconstruction Phase services identified in the Owner's request for proposals ("RFP"). In addition, Construction Manager shall provide the following services during the Preconstruction Phase:

- .1 The Construction Manager will provide an evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.
- .2 The Construction Manager will provide in writing and acceptable to Owner: (1) a detailed evaluation of the construction costs for the project, Project schedule and phasing of bid packages, if any, including estimate of construction costs savings; (2) a review of information provided by the Owner and the Architect and information the Construction Manager obtains from field observations and other sources; (3) a pre-bid cost estimate to determine if probable construction cost estimates will meet or exceed the Project budget; and (4) recommended changes to the Owner's design for the Project that the Construction Manager reasonably expects will reconcile the program, Project budget and Project Schedule or will reduce costs, provide a higher quality Project without exceeding the Project budget or will otherwise benefit Owner.
- .3 If the Construction Manager recommends changes to the Owner's program or its preliminary design, the Construction Manager will explain why the proposed changes, if Owner accepts them, will: (1) reduce costs; (2) provide a higher quality Project without exceeding the Project budget; or (3) otherwise provide benefits to the Owner or the Project.
- .4 The Construction Manager will provide a written contract document review report of any apparent errors, omissions, or inconsistencies in the contract documents and other information obtained by the Construction Manager from any source, including the Owner, the Architect or the Construction Manager's observations, together with the Construction Manager's recommendations for resolving any apparent errors, omissions, or inconsistencies.
- .5 The Construction Manager will identify critical elements of the Work that may require special procurement processes, such as prequalification of offers or alternative contracting methods.
- .6 The Construction Manager will advise Owner and Architect of current construction market bidding climate, status of key subcontract markets, and other economic conditions relevant to the Project.

~~§ 3.1.3.1 The Construction Manager shall schedule and conduct weekly meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.~~

~~§ 3.1.3.2 The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment—equipment based upon the design work as it progresses. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding any professional services to be provided by the Construction Manager during the Construction Phase.~~

~~§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.~~

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and ~~periodically update~~ update no less than monthly a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. ~~The Each~~ updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times

of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the ~~Owner~~. Owner, including any portions of the Project having occupancy priority. Each updated Project Schedule will indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, preparation and processing of shop drawings and samples and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager will explain why and make appropriate recommendations to the Owner and Architect.

PAGE 7

§ 3.1.6.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall promptly inform the Owner and Architect ~~in the event that if~~ the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 ~~If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect estimates or those of a cost estimator that Owner retains, the Construction Manager, the Architect and the Owner's cost estimator shall work together to reconcile the cost estimates.~~

...

§ 3.1.11.1 ~~If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval. The Construction Manager shall review Exhibit C, and advise Owner on any recommended changes.~~

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. Owner in consultation with Architect may require Construction Manager to inform one or more specific Subcontractors of the Project

PAGE 8

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. ~~The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager, construction in order to meet the approved Project schedule. The Construction Manager will submit the procurement schedule for long-lead-time items. The Owner may require the Construction Manager to order and procure long-lead-time items before the Owner accepts the Construction Manager's Guaranteed Maximum Price proposal, pursuant to Drawings and Specifications prepared by the Architect and A201- 2007. The Construction Manager will provide the Owner with a proposal for such procurement that will be for no more than the actual cost of the long-lead-time item, and will identify a restocking charge or charge of a similar nature, if any, payable to the supplier of the long-lead-time item if the Owner cancels the order. The Construction Manager shall incorporate any long-lead-time-items in the Guaranteed Maximum Price proposal. If the Owner accepts the Guaranteed Maximum Price proposal, any long-lead-time items must be included in the Cost of the Work. The Owner will provide funds for payment of any amounts that become due for long-lead-time items before commencement of the Construction Phase, subject to a credit against the Guaranteed Maximum Price. If the Owner cancels the order for a long-lead time item for any reason other than default by the Construction Manager or the supplier, Owner will be responsible for any restocking charge or charge of a similar nature if but only to the extent the Construction Manger disclosed the charge in its proposal. The Construction Manager shall expedite the delivery of long-lead-time items. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.~~

...

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental ~~authorities~~ authorities, including any public utilities.

...

TBD

...

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price (or "GMP") in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. By submitting the Guaranteed Maximum Price proposal to the Owner, the Construction Manager warrants that: (1) the Construction Manager has reviewed the Drawings and Specifications and other information provided by the Owner and obtained such additional information from the Owner, direct observation of the site and other sources that the Construction Manager deemed necessary and sufficient to prepare the Guaranteed Maximum Price proposal; (2) the Guaranteed Maximum Price proposal is consistent with the Drawings and Specifications, and (3) the Drawings and Specifications provide sufficient information to commit to a Guaranteed Maximum Price to complete the Work within the Contract Time.

PAGE 9

- .5 A date by which the Owner must accept the Guaranteed Maximum ~~Price~~ Price, which shall be no less than twenty (20) days from the date the Owner receives the written statement.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order subject to or eligible for a Change Order. The amount shall be approved by the Owner. The Construction Manager shall seek authorization for individual contingency expenditures exceeding \$10,000. The Owner shall be allowed to review the contingency expenditures on a weekly basis and advise against those not in the best interest of the Project and reject those not in compliance with the Contract Documents.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that If the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall apparent inconsistencies or inaccuracies in the information included in the Guaranteed Maximum Price proposal or between that information and the Plans and Specifications, they will promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both or both, to the extent necessary to reconcile such apparent inconsistencies or inaccuracies to the Owner's satisfaction. Nothing in this Agreement imposes a duty on Owner or Architect to determine or discover inconsistencies, inaccuracies or any other deficiency in Construction Manager's work product, including the GMP proposal.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the The Owner will review the Guaranteed Maximum Price proposal and accept, reject or request modification of the Guaranteed Maximum Price proposal by written notice to the Construction Manager. If the Owner requests modification of the Guaranteed Maximum Price proposal, the Owner and the Construction Manager shall cooperate with each other to arrive at and agree upon such modification as expeditiously as possible, provided, however, that the Owner may at any time elect to reject the Guaranteed Maximum Price proposal, as presented or as may be later modified, and terminate this Agreement for convenience pursuant to A201-2007. If Owner accepts the Construction Manager's Guaranteed

Maximum Price proposal, the Owner and Construction Manager will execute a Guaranteed Maximum Price Amendment amending this Agreement, a copy of which ~~the Owner shall~~ Owner will provide to the Architect. The Guaranteed Maximum Price Amendment ~~shall~~ will be substantially in the form attached to this Agreement as Exhibit A and set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

...

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is ~~executed~~ executed, including Oregon's commercial activity tax (or "CAT").

...

§ 3.3.1.1 For purposes of Section 8.1.2 of ~~A201-2017, A201-2007~~, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase will commence when the Owner's issues a Notice to Proceed, unless the Owner authorizes early work in shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

PAGE 10

§ 3.3.2.1 The Construction Manager shall schedule and conduct meetings at least every two weeks with Owner and Architect to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of ~~A201-2017, A201-2007~~, which must be consistent with the Guaranteed Maximum Price proposal accepted by Owner.

...

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information ~~required~~ reasonably requested by the Owner.

...

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information ~~required~~ reasonably requested by the Owner.

...

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated ~~costs and costs~~, report the variances to the Owner and ~~Architect and Architect~~ and propose how Construction Manager will account for the variances within the GMP. Construction Manager shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

...

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, ~~including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.~~ Such information may include a written program that generally sets forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 ~~Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.~~ [INTENTIONALLY OMITTED]

§ 4.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

...

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, ~~required by law and to the extent Owner is required by law to secure such documentation.~~ Owner shall furnish other documentation as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 ~~The Subject to the second sentence of this subsection, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights of way; restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Owner alternatively may require Construction Manager to produce such surveys and a legal description as preconstruction service.~~

§ 4.1.4.3 The Owner, ~~when such services are requested, if such services are necessary or such services are not included in the preconstruction services that Construction Manager will provide,~~ shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Owner may, in its discretion, provide the Construction Manager access to Owner's records that may contain information about the Project site and adjacent land and improvements, where such information was not collected specifically for the Project. The Owner makes no representations or warranties as to the relevance, accuracy or completeness of information in the Owner's records made available to the Construction Manager.

PAGE 11

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of ~~A201-2017~~, A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 Legal Requirements. The Owner ~~shall~~ may furnish all legal, insurance and accounting services, including auditing services, that ~~may be reasonably necessary at any time~~ Owner in its discretion may believe are reasonably necessary for the Project to meet the Owner's needs and interests.

...

The Owner ~~shall retain~~ has retained an Architect to provide services, duties and responsibilities as described in AIA Document B133™ 2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. ~~an agreement between Owner and Architect.~~ The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

...

TBD

...

TBD

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§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for ~~taxes, taxes (including but not limited to Oregon's CAT),~~ insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 ~~If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted. The Construction Manager will include the sum for Preconstruction Phase Services, including Reimbursable Expenses to be incurred in the Preconstruction Phase, in its Guaranteed Maximum Price proposal. For Reimbursable Expenses, the compensation will be the actual expenses incurred by the Construction Manager without mark-up.~~

§ 5.1.4 The Construction Manager will accept compensation under Section 5.1 as payment for all services rendered and Reimbursable Expenses incurred during the Preconstruction Phase, except as Owner may otherwise specifically agree in writing.

PAGE 12

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts not in dispute and unpaid thirty (30) days after the invoice date shall bear interest ~~at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.~~

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

~~—%~~ in accordance with ORS 279C.570.

...

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

TBD

...

TBD

...

TBD

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed one hundred percent (100 %) of the standard rental rate paid at the place of the Project.

...

TBD

...

Upon completion of the Work, if the total Cost of the Work is less than the GMP, 100% of the savings will accrue to Owner

...

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs Notwithstanding any language to the contrary in the Contract Documents, Owner will not pay Construction Manager any amount that exceeds the GMP, unless: (1) the amount results from material changes to the Work; and (2) Owner and Construction Manager agree in writing to the material changes. In every other instance, costs which would cause the Guaranteed Maximum Price to be exceeded shall be exceeded, including but not limited to the costs of supplies, materials and labor, shall be borne and paid by the Construction Manager without reimbursement or additional compensation by the Owner.

PAGE 13

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, A201-2007, General Conditions of the Contract for Construction.

§ 6.3.2 ~~Adjustments~~ Subject to the limitations in Section 6.2, adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document ~~A201-2017, A201-2007, General Conditions of the Contract for Construction.~~

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of ~~A201-2017, A201-2007,~~ as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document ~~A201-2017, A201-2007~~ shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

...

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the ~~Work.~~ Work without markup to Owner. The Cost of the Work shall include only the items set forth in Sections 7.1 through ~~7.7.7.7~~ and shall be clearly identified in the GMP proposal.

...

~~§ 7.1.3~~ Costs shall be at rates not higher than ~~the standard rates paid~~ those stated in the Guaranteed Maximum Price Proposal or, if not stated for good cause, the fair market value at the place of the Project, ~~except with prior approval of the Owner subject to the Owner's prior written consent.~~

...

~~§ 7.2.2.1~~ Wages With the Owner's prior approval, wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

...

TBD

~~§ 7.2.3~~ Wages With the Owner's prior approval, wages and salaries of the Construction Manager's supervisory or administrative personnel engaged ~~at factories, workshops or while traveling,~~ in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

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

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

PAGE 14

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts and this Agreement.~~ Contract Documents.

...

~~§ 7.5.2~~ Rental Subject to Owner's prior approval, rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior ~~approval~~ approval and Section 6.5.1. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

...

~~§ 7.5.4~~ Costs ~~Those portions of costs of the Construction Manager's site office, including general office equipment and supplies~~ supplies, that are directly related to the Work.

PAGE 15

~~§ 7.6.2~~ Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is ~~liable~~ liable, except for an amount attributable to Oregon's CAT.

...

~~§ 7.6.4~~ Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document ~~A201-2017~~ A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents, unless such royalties, fees or costs are excluded from the Cost of the Work elsewhere in the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's ~~consent, prior approval,~~ unless the Construction Manager had reason to believe knew or should have known that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017, A201-2007. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

...

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

...

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document ~~A201-2017, A201-2007.~~

...

§ 7.7.4 The costs described in Sections 7.1 through 7.7 ~~shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by are the entire Costs of the Work, and all other costs are deemed excluded, regardless of whether such costs are listed in the provisions of Section 7.9.~~

PAGE 16

- .6 ~~Except as provided in Section 7.7.3 of this Agreement, costs~~ Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 ~~to 7.7 to 7.7,~~ notwithstanding any language to the contrary in the Contract Documents;
- .8 Costs, other than costs included in Change Orders that are consistent with Section 6.2 and approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction ~~Phase-Phase;~~
- .10 Any fines, penalties, sanctions, levied against Construction Manager or Owner due to Construction Manager's (or any Subcontractor and their subs) violation of any federal, state, or local laws, regulation or ordinances. If Owner pays such amounts, in addition to any other legal or equitable remedy, Owner is entitled to a set-off in that amount against monies otherwise owed Construction Manager.
- .11 Any liquidated damages provided for under this Agreement. Owner is entitled to set-off the amount of liquidated damages from monies otherwise owed Construction Manager.

PAGE 17

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction ~~Manager-Manager,~~ subject to Oregon law and Exhibit C. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who

are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. ~~The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.~~

~~§ 9.1.1 When~~ If the Owner and Construction Manager have executed the GMP Amendment and if a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

...

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the ~~day of a month, 5th~~ day of each month following the applicable payment period and the Architect certifies the application for payment, the Owner shall make payment of the amount certified to the Construction Manager not later than the 5th day of the next month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than ~~(—thirty (30)~~ days after the Architect receives the Application for Payment.

PAGE 18

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit ~~payrolls,~~ payrolls showing hours worked, petty cash accounts, receipted invoices or invoices with check vouchers attached, certified statements on forms provided by BOLI that laborers have been paid prevailing wages and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

...

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

...

§ 11.1.7 In accordance with AIA Document ~~A201-2017~~ A201-2007 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

...

- 2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document ~~A201-2017~~ A201-2007;

...

- 4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document ~~A201-2017~~ A201-2007;

PAGE 19

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

...

Five percent (5%)

...

N/A

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

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

Payment. Owner may in its discretion release retainage after Substantial Completion, unless it is otherwise required to release it or prohibited from releasing it pursuant to Oregon law.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017. [INTENTIONALLY OMITTED].

...

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

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner. Manager.

...

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 releases and waivers from all Subcontractors, in a form acceptable to Owner, that demonstrate the Subcontractor has no claims against Construction Manager or Owner, including any claims regarding payment.
- .3 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- ~~.3~~ .4 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

PAGE 20

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as

provided in Article 9 of AIA Document ~~A201-2017~~-A201-2007. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document ~~A201-2017~~-A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document ~~A201-2017~~-A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

...

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

~~—%—~~ in ORS 279C.570.

...

§ 12.1.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of ~~A201-2017~~-A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document ~~A201-2017~~-A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

...

TBD

PAGE 21

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document ~~A201-2017~~-A201-2007, the method of binding dispute resolution shall be as follows:

...

☒ [X] Arbitration pursuant to Article 15 of AIA Document ~~A201-2017~~-A201-2007

...

§ 13.1.1 ~~If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, At any time prior to the Owner accepting a GMP proposal and the Owner executing a GMP amendment, the Owner may terminate this Agreement for its convenience and without cause upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.~~

§ 13.1.2 ~~In the event of termination of~~ If Owner terminates this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for those Preconstruction Phase services performed and any Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall

the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1. Such compensation will not include any consequential damages, including loss profits or loss of anticipated profits.

~~§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201-2017.~~ [INTENTIONALLY OMITTED].

~~§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.~~ [INTENTIONALLY OMITTED].

~~§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be exclusive for such early Work and in addition to any compensation paid to the Construction Manager under Section 13.1.4:~~ 13.1.2:

...

~~§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of~~ If the Owner elects to take legal assignment of some or all subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

~~§ 13.1.6.1 If the Owner accepts assignment of some or all subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.~~

PAGE 22

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document ~~A201-2017~~ A201-2007.

...

~~§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, A201-2007, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201-2017-A201-2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:~~

...

- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document ~~A201-2017~~ A201-2007.

...

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document ~~A201-2017~~, A201-2007, then the Owner shall pay the Construction Manager a ~~termination fee as follows:~~
~~(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)~~

in accordance with Article 14 of A201-2007.

...

The Work may be suspended by the Owner as provided in Article 14 of AIA Document ~~A201-2017~~, A201-2007; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document ~~A201-2017~~, A201-2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

...

§ 14.1 Terms in this Agreement shall have the same meaning as those in ~~A201-2017~~, A201-2007. Where reference is made in this Agreement to a provision of AIA Document ~~A201-2017~~, A201-2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

...

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of ~~A201-2017~~, A201-2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

PAGE 23

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and four million dollars (\$ 4,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than two million dollars (\$ 2,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory ~~limits and limits~~. Employers Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$ one million dollars (\$ 1,000,000) each employee, and not less than a two million dollar (\$ 2,000,000) policy limit.~~

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate. TBD

...

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document ~~A201-2017~~, A201-2007, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

PAGE 24

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum ~~Price~~Price, as amended.

...

- .4 ~~AIA Document A201™–2017, Subcontractor Relations, Exhibit C~~
- .5 ~~AIA Document A201™–2007, General Conditions of the Contract for Construction~~ Construction, as amended
- ~~5~~ 6 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:

...

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

Owner's Request for Proposals dated _____, 2022 and all addenda to the RFP, if any.
Construction Manager's Proposal dated _____, 2022.

AIA® Document A201® – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Cannon Beach Elementary School Renovation

THE OWNER:

(Name, legal status and address)

City of Cannon Beach an Oregon municipal corporation

THE ARCHITECT:

(Name, legal status and address)

CIDA Architects

TABLE OF ARTICLES

- | | |
|----|--|
| 1 | GENERAL PROVISIONS |
| 2 | OWNER |
| 3 | CONTRACTOR |
| 4 | ARCHITECT |
| 5 | SUBCONTRACTORS |
| 6 | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7 | CHANGES IN THE WORK |
| 8 | TIME |
| 9 | PAYMENTS AND COMPLETION |
| 10 | PROTECTION OF PERSONS AND PROPERTY |
| 11 | INSURANCE AND BONDS |
| 12 | UNCOVERING AND CORRECTION OF WORK |
| 13 | MISCELLANEOUS PROVISIONS |
| 14 | TERMINATION OR SUSPENSION OF THE CONTRACT |
| 15 | CLAIMS AND DISPUTES |

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

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INDEX

(Topics and numbers in bold are section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

Access to Work

3.16, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,
10.2.8, 13.4.2, 13.7, 14.1, **15.2**

Addenda

1.1.1, 3.11

Additional Costs, Claims for

3.7.4, 3.7.5, 6.1.1, 7.3.7.5, 10.3, **15.1.4**

Additional Inspections and Testing

9.4.2, 9.8.3, **12.2.1**, **13.5**

Additional Insured

11.1.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.5**

Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8, 7.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.6.3, 9.7, 9.10, 11.1.3

Approvals

2.1.1, 2.2.2, 2.4, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10,
4.2.7, 9.3.2, **13.5.1**

Arbitration

8.3.1, 11.3.10, 13.1, **15.3.2**, **15.4**

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.4, 3.12.7, 4.1, 4.2, 5.2, 6.3, 7.1.2, 7.3.7, 7.4, 9.2,
9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, **12.1**, **12.2.1**,
13.5.1, **13.5.2**, **14.2.2**, **14.2.4**, **15.1.3**, **15.2.1**

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3,
4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2,
9.5.3, 9.6.4, **15.1.3**, **15.2**

Architect's Additional Services and Expenses

2.4, 11.3.1.1, **12.2.1**, **13.5.2**, **13.5.3**, **14.2.4**

Architect's Administration of the Contract

3.1.3, 4.2, 3.7.4, **15.2**, 9.4.1, 9.5

Architect's Approvals

2.4, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, **12.1.2**, **12.2.1**

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,
7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,
13.5.2, **15.2**, **15.3**

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, **13.5**

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, **13.5.2**

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5,
3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18,
4.1.2, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,
9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.4.2, **13.5**, **15.2**

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, **11.3.7**

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, **13.5**

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1, 5.2.1, 11.4.1

Binding Dispute Resolution

9.7, 11.3.9, 11.3.10, 13.1, **15.2.5**, **15.2.6.1**, **15.3.1**,
15.3.2, **15.4.1**

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

7.3.7.4, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.7.4, 9.6.7, 9.10.3, 11.3.9, **11.4**

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Certificates for Payment

4.2.1, 4.2.5, 4.2.9, 9.3.3, 9.4, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.3

Certificates of Inspection, Testing or Approval
13.5.4

Certificates of Insurance

9.10.2, 11.1.3

Change Orders

1.1.1, 2.4, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, 7.2, 7.3.2, 7.3.6, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.3.1.2, 11.3.4, 11.3.9, 12.1.2, 15.1.3

Change Orders, Definition of

7.2.1

CHANGES IN THE WORK

2.2.1, 3.11, 4.2.8, 7, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.3.9

Claims, Definition of

15.1.1

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4

Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

3.2.4, 3.7.4, 6.1.1, 7.3.9, 10.3.2, 15.1.4

Claims for Additional Time

3.2.4, 3.7.4, 6.1.1, 8.3.2, 10.3.2, 15.1.5

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Claims Subject to Arbitration

15.3.1, 15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to
2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 15.1.4

Commencement of the Work, Definition of

8.1.2

Communications Facilitating Contract

Administration

3.9.1, 4.2.4

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 13.7, 14.1.2

COMPLETION, PAYMENTS AND

9

Completion, Substantial

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 13.7

Compliance with Laws

1.6, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 10.2.2, 11.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.3.1, 13.2, 13.4.2, 15.4.4.2

Consolidation or Joinder

15.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.1.4, 6

Construction Change Directive, Definition of

7.3.1

Construction Change Directives

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, 7.3, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.3

Contract, Definition of

1.1.2

CONTRACT, TERMINATION OR SUSPENSION OF THE

5.4.1.1, 11.3.9, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, Copies Furnished and Use of
1.5.2, 2.2.5, 5.3

Contract Documents, Definition of

1.1.1

Contract Sum

3.7.4, 3.8, 5.2.3, 7.2, 7.3, 7.4, 9.1, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.3.1, 14.2.4, 14.3.2, 15.1.4, 15.2.5

Contract Sum, Definition of

9.1

Contract Time

3.7.4, 3.7.5, 3.10.2, 5.2.3, 7.2.1.3, 7.3.1, 7.3.5, 7.4, 8.1.1, 8.2.1, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 14.3.2, 15.1.5.1, 15.2.5

Contract Time, Definition of

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction Schedules

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Contractor's Employees

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

3.12.5, 3.14.2, 4.2.4, 6, 11.3.7, 12.1.2, 12.2.4

Contractor's Relationship with Subcontractors

1.2.2, 3.3.2, 3.18.1, 3.18.2, 5, 9.6.2, 9.6.7, 9.10.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.1.2, 1.5, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.3, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3.7, 12, 13.5, 15.1.2, 15.2.1

Contractor's Representations

3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2

Contractor's Responsibility for Those Performing the Work

3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8

Contractor's Review of Contract Documents

3.2

Contractor's Right to Stop the Work

9.7

Contractor's Right to Terminate the Contract

14.1, 15.1.6

Contractor's Submittals

3.10, 3.11, 3.12.4, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3, 11.1.3, 11.4.2

Contractor's Superintendent

3.9, 10.2.6

Contractor's Supervision and Construction

Procedures

1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.5, 7.3.7, 8.2, 10, 12, 14, 15.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination and Correlation

1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1

Copies Furnished of Drawings and Specifications

1.5, 2.2.5, 3.11

Copyrights

1.5, 3.17

Correction of Work

2.3, 2.4, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2

Correlation and Intent of the Contract Documents

1.2

Cost, Definition of

7.3.7

Costs

2.4, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.7, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.3, 12.1.2, 12.2.1, 12.2.4, 13.5, 14

Cutting and Patching

3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors

3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 11.1.1, 11.3, 12.2.4

Damage to the Work

3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 11.3.1, 12.2.4

Damages, Claims for

3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.1.1, 11.3.5, 11.3.7, 14.1.3, 14.2.4, 15.1.6

Damages for Delay

6.1.1, 8.3.3, 9.5.1.6, 9.7, 10.3.2

Date of Commencement of the Work, Definition of

8.1.2

Date of Substantial Completion, Definition of

8.1.3

Day, Definition of

8.1.4

Decisions of the Architect

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 15.2, 6.3, 7.3.7, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.5.2, 14.2.2, 14.2.4, 15.1, 15.2

Decisions to Withhold Certification

9.4.1, 9.5, 9.7, 14.1.1.3

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

2.3, 2.4, 3.5, 4.2.6, 6.2.5, 9.5.1, 9.5.2, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1

Definitions

1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 15.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1

Delays and Extensions of Time

3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Disputes

6.3, 7.3.9, 15.1, 15.2

Documents and Samples at the Site

3.11

Drawings, Definition of

1.1.5

Drawings and Specifications, Use and Ownership of

3.11

Effective Date of Insurance

8.2.2, 11.1.2

Emergencies

10.4, 14.1.1.2, 15.1.4

Employees, Contractor's

3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.1.1, 11.3.7, 14.1, 14.2.1.1

Equipment, Labor, Materials or

1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2

Execution and Progress of the Work
 1.1.3, 1.2.1, 1.2.2, 2.2.3, 2.2.5, 3.1, 3.3.1, 3.4.1, 3.5,
 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.5, 8.2,
 9.5.1, 9.9.1, 10.2, 10.3, 12.2, 14.2, 14.3.1, 15.1.3
 Extensions of Time
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
 10.4, 14.3, 15.1.5, 15.2.5
Failure of Payment
 9.5.1.3, 9.7, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
 Faulty Work
 (See Defective or Nonconforming Work)
Final Completion and Final Payment
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.3.1, 11.3.5,
 12.3, 14.2.4, 14.4.3
 Financial Arrangements, Owner's
 2.2.1, 13.2.2, 14.1.1.4
 Fire and Extended Coverage Insurance
 11.3.1.1
GENERAL PROVISIONS
1
Governing Law
13.1
 Guarantees (See Warranty)
Hazardous Materials
 10.2.4, 10.3
 Identification of Subcontractors and Suppliers
 5.2.1
Indemnification
 3.17, 3.18, 9.10.2, 10.3.3, 10.3.5, 10.3.6, 11.3.1.2,
 11.3.7
Information and Services Required of the Owner
 2.1.2, 2.2, 3.2.2, 3.12.4, 3.12.10, 6.1.3, 6.1.4, 6.2.5,
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.4, 13.5.1,
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3
Initial Decision
15.2
Initial Decision Maker, Definition of
 1.1.8
 Initial Decision Maker, Decisions
 14.2.2, 14.2.4, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
 Initial Decision Maker, Extent of Authority
 14.2.2, 14.2.4, 15.1.3, 15.2.1, 15.2.2, 15.2.3, 15.2.4,
 15.2.5
Injury or Damage to Person or Property
10.2.8, 10.4
 Inspections
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
 9.9.2, 9.10.1, 12.2.1, 13.5
 Instructions to Bidders
 1.1.1
 Instructions to the Contractor
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.5.2
Instruments of Service, Definition of
1.1.7
 Insurance
 3.18.1, 6.1.1, 7.3.7, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 11

Insurance, Boiler and Machinery
11.3.2
Insurance, Contractor's Liability
11.1
 Insurance, Effective Date of
 8.2.2, 11.1.2
Insurance, Loss of Use
11.3.3
Insurance, Owner's Liability
11.2
Insurance, Property
 10.2.5, 11.3
 Insurance, Stored Materials
 9.3.2
INSURANCE AND BONDS
11
 Insurance Companies, Consent to Partial Occupancy
 9.9.1
 Intent of the Contract Documents
 1.2.1, 4.2.7, 4.2.12, 4.2.13, 7.4
Interest
13.6
Interpretation
 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
 Interpretations, Written
 4.2.11, 4.2.12, 15.1.4
 Judgment on Final Award
 15.4.2
Labor and Materials, Equipment
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3, 9.5.1.3,
 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
 Labor Disputes
 8.3.1
 Laws and Regulations
 1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1,
 10.2.2, 11.1.1, 11.3, 13.1, 13.4, 13.5.1, 13.5.2, 13.6,
 14, 15.2.8, 15.4
 Liens
 2.1.2, 9.3.3, 9.10.2, 9.10.4, 15.2.8
 Limitations, Statutes of
 12.2.5, 13.7, 15.4.1.1
 Limitations of Liability
 2.3, 3.2.2, 3.5, 3.12.10, 3.17, 3.18.1, 4.2.6, 4.2.7,
 4.2.12, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 10.2.5, 10.3.3, 11.1.2,
 11.2, 11.3.7, 12.2.5, 13.4.2
 Limitations of Time
 2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.3.1.5,
 11.3.6, 11.3.10, 12.2, 13.5, 13.7, 14, 15
Loss of Use Insurance
11.3.3
 Material Suppliers
 1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.6, 9.10.5
Materials, Hazardous
 10.2.4, 10.3

Materials, Labor, Equipment and
 1.1.3, 1.1.6, 1.5.1, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13,
 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.7, 9.3.2, 9.3.3,
 9.5.1.3, 9.10.2, 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
 Means, Methods, Techniques, Sequences and
 Procedures of Construction
 3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
 Mechanic's Lien
 2.1.2, 15.2.8
Mediation
 8.3.1, 10.3.5, 10.3.6, 15.2.1, 15.2.5, 15.2.6, **15.3**,
 15.4.1
Minor Changes in the Work
 1.1.1, 3.12.8, 4.2.8, 7.1, **7.4**
MISCELLANEOUS PROVISIONS
13
Modifications, Definition of
1.1.1
 Modifications to the Contract
 1.1.1, 1.1.2, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7,
 10.3.2, 11.3.1
Mutual Responsibility
6.2
Nonconforming Work, Acceptance of
 9.6.6, 9.9.3, **12.3**
 Nonconforming Work, Rejection and Correction of
 2.3, 2.4, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4,
 12.2.1
 Notice
 2.2.1, 2.3, 2.4, 3.2.4, 3.3.1, 3.7.2, 3.12.9, 5.2.1, 9.7,
 9.10, 10.2.2, 11.1.3, 12.2.2.1, 13.3, 13.5.1, 13.5.2,
 14.1, 14.2, 15.2.8, 15.4.1
Notice, Written
 2.3, 2.4, 3.3.1, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 9.7, 9.10,
 10.2.2, 10.3, 11.1.3, 11.3.6, 12.2.2.1, **13.3**, 14, 15.2.8,
 15.4.1
Notice of Claims
 3.7.4, 10.2.8, **15.1.2**, 15.4
 Notice of Testing and Inspections
 13.5.1, 13.5.2
 Observations, Contractor's
 3.2, 3.7.4
 Occupancy
 2.2.2, 9.6.6, 9.8, 11.3.1.5
 Orders, Written
 1.1.1, 2.3, 3.9.2, 7, 8.2.2, 11.3.9, 12.1, 12.2.2.1, 13.5.2,
 14.3.1
OWNER
2
Owner, Definition of
2.1.1
Owner, Information and Services Required of the
 2.1.2, **2.2**, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2,
 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 11.3, 13.5.1,
 13.5.2, 14.1.1.4, 14.1.4, 15.1.3

Owner's Authority
 1.5, 2.1.1, 2.3, 2.4, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2,
 4.1.3, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1,
 7.3.1, 8.2.2, 8.3.1, 9.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1,
 9.10.2, 10.3.2, 11.1.3, 11.3.3, 11.3.10, 12.2.2, 12.3,
 13.2.2, 14.3, 14.4, 15.2.7
Owner's Financial Capability
 2.2.1, 13.2.2, 14.1.1.4
Owner's Liability Insurance
11.2
Owner's Relationship with Subcontractors
 1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2
Owner's Right to Carry Out the Work
 2.4, 14.2.2
Owner's Right to Clean Up
6.3
Owner's Right to Perform Construction and to
Award Separate Contracts
6.1
Owner's Right to Stop the Work
2.3
Owner's Right to Suspend the Work
 14.3
Owner's Right to Terminate the Contract
 14.2
Ownership and Use of Drawings, Specifications
and Other Instruments of Service
 1.1.1, 1.1.6, 1.1.7, **1.5**, 2.2.5, 3.2.2, 3.11, 3.17, 4.2.12,
 5.3
Partial Occupancy or Use
 9.6.6, **9.9**, 11.3.1.5
Patching, Cutting and
3.14, 6.2.5
 Patents
 3.17
Payment, Applications for
 4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1,
 14.2.3, 14.2.4, 14.4.3
Payment, Certificates for
 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1,
 9.10.3, 13.7, 14.1.1.3, 14.2.4
Payment, Failure of
 9.5.1.3, **9.7**, 9.10.2, 13.6, 14.1.1.3, 14.2.1.2
Payment, Final
 4.2.1, 4.2.9, 9.8.2, 9.10, 11.1.2, 11.1.3, 11.4.1, 12.3,
 13.7, 14.2.4, 14.4.3
Payment Bond, Performance Bond and
 7.3.7.4, 9.6.7, 9.10.3, **11.4**
Payments, Progress
 9.3, **9.6**, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3
PAYMENTS AND COMPLETION
9
Payments to Subcontractors
 5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2
 PCB
 10.3.1

Performance Bond and Payment Bond

7.3.7.4, 9.6.7, 9.10.3, 11.4

Permits, Fees, Notices and Compliance with Laws

2.2.2, 3.7, 3.13, 7.3.7.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.3

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 13.6, 14.2.3, 15.1.3

Project, Definition of

1.1.4

Project Representatives

4.2.10

Property Insurance

10.2.5, 11.3

PROTECTION OF PERSONS AND PROPERTY

10

Regulations and Laws

1.5, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 4.1.1, 9.6.4, 9.9.1, 10.2.2, 11.1, 11.4, 13.1, 13.4, 13.5.1, 13.5.2, 13.6, 14, 15.2.8, 15.4

Rejection of Work

3.5, 4.2.6, 12.2.1

Releases and Waivers of Liens

9.10.2

Representations

3.2.1, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.8.2, 9.10.1

Representatives

2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.1, 4.2.2, 4.2.10, 5.1.1, 5.1.2, 13.2.1

Responsibility for Those Performing the Work

3.3.2, 3.18, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10

Retainage

9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3

Review of Contract Documents and Field

Conditions by Contractor

3.2, 3.12.7, 6.1.3

Review of Contractor's Submittals by Owner and Architect

3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2

Review of Shop Drawings, Product Data and Samples by Contractor

3.12

Rights and Remedies

1.1.2, 2.3, 2.4, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1, 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.2, 12.2.4, 13.4, 14, 15.4

Royalties, Patents and Copyrights

3.17

Rules and Notices for Arbitration

15.4.1

Safety of Persons and Property

10.2, 10.4

Safety Precautions and Programs

3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4

Samples, Definition of

3.12.3

Samples, Shop Drawings, Product Data and

3.11, 3.12, 4.2.7

Samples at the Site, Documents and

3.11

Schedule of Values

9.2, 9.3.1

Schedules, Construction

3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.5.2

Separate Contracts and Contractors

1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

Shop Drawings, Definition of

3.12.1

Shop Drawings, Product Data and Samples

3.11, 3.12, 4.2.7

Site, Use of

3.13, 6.1.1, 6.2.1

Site Inspections

3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.4.2, 9.10.1, 13.5

Site Visits, Architect's

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.5

Special Inspections and Testing

4.2.6, 12.2.1, 13.5

Specifications, Definition of

1.1.6

Specifications

1.1.1, 1.1.6, 1.2.2, 1.5, 3.11, 3.12.10, 3.17, 4.2.14

Statute of Limitations

13.7, 15.4.1.1

Stopping the Work

2.3, 9.7, 10.3, 14.1

Stored Materials

6.2.1, 9.3.2, 10.2.1.2, 10.2.4

Subcontractor, Definition of

5.1.1

SUBCONTRACTORS

5

Subcontractors, Work by

1.2.2, 3.3.2, 3.12.1, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2, 9.6.7

Subcontractual Relations

5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1

Submittals

3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.7, 9.2, 9.3, 9.8, 9.9.1, 9.10.2, 9.10.3, 11.1.3

Submittal Schedule

3.10.2, 3.12.5, 4.2.7

Subrogation, Waivers of

6.1.1, 11.3.7

Substantial Completion

4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, **9.8**, 9.9.1, 9.10.3, 12.2, 13.7

Substantial Completion, Definition of

9.8.1

Substitution of Subcontractors

5.2.3, 5.2.4

Substitution of Architect

4.1.3

Substitutions of Materials

3.4.2, 3.5, 7.3.8

Sub-subcontractor, Definition of

5.1.2

Subsurface Conditions

3.7.4

Successors and Assigns

13.2

Superintendent

3.9, 10.2.6

Supervision and Construction Procedures

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.7, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.3

Surety

5.4.1.2, 9.8.5, 9.10.2, 9.10.3, 14.2.2, 15.2.7

Surety, Consent of

9.10.2, 9.10.3

Surveys

2.2.3

Suspension by the Owner for Convenience

14.3

Suspension of the Work

5.4.2, 14.3

Suspension or Termination of the Contract

5.4.1.1, 14

Taxes

3.6, 3.8.2.1, 7.3.7.4

Termination by the Contractor

14.1, 15.1.6

Termination by the Owner for Cause

5.4.1.1, **14.2**, 15.1.6

Termination by the Owner for Convenience

14.4

Termination of the Architect

4.1.3

Termination of the Contractor

14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT

14

Tests and Inspections

3.1.3, 3.3.3, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 11.4.1, 12.2.1, **13.5**

TIME

8

Time, Delays and Extensions of

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.5, 15.2.5

Time Limits

2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

Time Limits on Claims

3.7.4, 10.2.8, **13.7**, 15.1.2

Title to Work

9.3.2, 9.3.3

Transmission of Data in Digital Form

1.6

UNCOVERING AND CORRECTION OF WORK

12

Uncovering of Work

12.1

Unforeseen Conditions, Concealed or Unknown

3.7.4, 8.3.1, 10.3

Unit Prices

7.3.3.2, 7.3.4

Use of Documents

1.1.1, 1.5, 2.2.5, 3.12.6, 5.3

Use of Site

3.13, 6.1.1, 6.2.1

Values, Schedule of

9.2, 9.3.1

Waiver of Claims by the Architect

13.4.2

Waiver of Claims by the Contractor

9.10.5, 13.4.2, 15.1.6

Waiver of Claims by the Owner

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

Waiver of Consequential Damages

14.2.4, 15.1.6

Waiver of Liens

9.10.2, 9.10.4

Waivers of Subrogation

6.1.1, **11.3.7**

Warranty

3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, 13.7

Weather Delays

15.1.5.2

Work, Definition of

1.1.3

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 11.4.1, 13.2, 13.4.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Notice

2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

Written Orders

1.1.1, 2.3, 3.9, 7, 8.2.2, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 Terms used in the Specifications, such as "approval" or "approved" and "review" or "reviewed" shall be interpreted to mean "written approval" or "stamped review" or equal; "approved," "acceptable," "similar to," "directed," "required," "selected," "ordered," "reviewed," or like words shall be interpreted to mean that reference is made to the ruling and judgment of the A/E.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.4.1 These Specifications are of the abbreviated type and include incomplete sentences. Omissions of words or phrases, such as "the Contractor shall," "shall be," etc., are intentional. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the drawings.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 Except as provided to the contrary or otherwise in the Owner's agreement with the Architect, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Furnish, when requested, samples of equipment proposed or specified for use. Sample submitted shall be the exact sample of the material or product to be incorporated into the Work.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to

provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend and hold harmless the Owner, Architect, Architect's consultants, and the officers, agents and employees of any of them from and against claims,

damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), to the extent caused by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 Wherever herein the term "Architect" is used, it shall mean A/E, defined as follows: The A/E is the person or organization licensed to practice architecture/engineering and identified as such in the Contract. The term A/E or Architect/Engineer as used in the Contract Documents shall be taken to mean Mackenzie or A/E's authorized representative.

§ 4.1.2 Duties, responsibilities and limitations of authority of the A/E as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner and A/E.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall communicate through the Architect. Communications by and with the A/E's consultants shall be through the A/E. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 4.2.15 In general, in the event of conflict between Drawings and Specifications, the Specifications take precedence; in conflicts between General Requirements and General Conditions, General Requirements take precedence. In conflicts between large scale drawings and small scale drawings, the large scale drawings take precedence. Immediately notify A/E of any error, omission, or discrepancy appearing on the Contract Documents. In the event of a

conflict or discrepancy on the Drawings or Specifications, the larger quantity and the highest quality shall govern unless approval for the lower quality and the smaller quantity has been given in writing by the A/E.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 [INTENTIONALLY OMITTED]

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 5.4.4 Each subcontract must specifically provide in writing that Owner will only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

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

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.1.5 Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor is responsible for any pre-purchased materials and equipment as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation and testing of items covered in any assigned purchase orders and agreements. All warranty and correction of the Work obligations under the Contract Documents also apply to any pre-purchased materials and equipment, unless the Contract Documents specifically provide otherwise.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the

Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.1.4 Before implementing a change in the Work, the Owner may request the Contractor to propose the amount of change in the Contract Sum, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Section 7.5 for the Contractor and major Subcontractors. If the Contractor fails to respond within this time, the Owner may withhold amounts in dispute of a progress payment otherwise due until the tardy proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included in the next available Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not implement the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Architect may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Agreement on any Change Order constitutes a final settlement of all matters relating to the change in Work that is the subject of the Change Order, including but not limited to all direct and indirect costs and damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties (accompanied by an itemized estimate of probably cost) and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the Architect in writing of the Contractor's agreement or disagreement with the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the larger amount submitted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be incorporated into a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, or if cost is to be determined under Section 7.3.3.3, the Contractor shall keep and present, itemized in categories in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data.

(Paragraphs deleted)

In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment material and subcontract costs. Labor, equipment and materials shall be itemized in the manner described in Section 7.5. When major cost items arise from Subcontractors of any tier, these items shall also be similarly itemized. Approval may not be given without such itemization. Failure to provide data within twenty-one (21) days of the Owner's request shall constitute waiver of any Claim for changes in the Contract Time or Contract Sum. The total cost of any change, including a Claim under Section 15, shall be limited to the reasonable value, as determined by the Architect (subject to appeal through the dispute resolution procedure of Section 15.2.6), of the items in Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. The Architect and the Owner may communicate directly with Subcontractors concerning costs of any Work included in a Construction Change Directive. If the Contractor disagrees

with the method or the adjustment in the Contract Time, the adjustment or method shall be referred to the Architect for determination, and any adjustment shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be the largest of (i) the reasonable and prevailing value of the deletion or change, (ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, and provided that any reservations of rights in respect to the Construction Change Directive have been initiated by the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.11 Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect and Owner have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.5 The total cost of any Change in the Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components:

§ 7.5.1 Direct labor costs: These are the estimated or actual labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work. The hourly cost shall be based upon the following: (a) Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Contractor as established by the State Bureau of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Contractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable; (b) Workers' insurances: Direct contributions to the State as industrial insurance; medical aid; and supplemental pension by class and rates established by the Oregon Bureau of Labor and Industries; (c) Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Architect. Discounts and rebates based on prompt payment need not be included, however, if the Contractor offered but the Owner declined the opportunity to take advantage of such discount or rebate.

§ 7.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest San Jose, California, or the actual rate paid to unrelated third parties as evidenced by rental receipts. Rates and

quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment which rate and use must be approved by the Architect prior to performing the work. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. When the rate payable does not include fuel, lubricants, standard maintenance and servicing, such operating costs shall be reimbursed based upon actual costs. When rental rates payable do not include fuel, lubrication, maintenance and servicing, as defined as operating costs in the reference, such operating costs shall be reimbursed based on actual costs. The rate for equipment necessarily standing by for future use on the Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright unless pre-approved by the Owner. If equipment is required for which a rental rate is not established by Blue Book, an agreed rental rate shall be established for that equipment which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.4 Cost of change in insurance or bond premium. This is defined as: (a) Contractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under Section 11.7.1, and subject to audit) of any changes in the Contractor's liability insurance arising directly from the changed Work; and (b) Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability under Section 11.5.1, and subject to audit) of the change in the Contractor's premium for the Contractor's statutorily required performance and payment bond arising directly from the changed Work. Upon request, the Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

§ 7.5.5 Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by such Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5 and, among other things, shall not include consultant costs, attorneys' fees, or claim preparation expenses.

§ 7.5.6 Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work. Claim preparation, and delay and impact costs of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements by the Owner of Subcontractor claims. The Fee shall be limited in all cases to the following schedule: (a) The Contractor shall receive 12% of the cost of any materials supplied or work properly performed by the Contractor's own forces; (b) The Contractor shall receive 8% of the amount owed directly to a Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier; (c) Each Subcontractor of any tier shall receive 12% of the cost of any materials properly supplied or work performed by its own forces; (d) Each Subcontractor of any tier shall receive 6% of the amount it properly incurs for materials supplied or work properly performed by its suppliers or subcontractors of any lower tier; (e) The cost to which this Fee is to be applied shall be determined in accordance with Section 7.5.1 through 7.5.4; and (f) The total summed Fee of the Contractor and, all Subcontractors of any tier shall not exceed 25% of any amounts owed to any remote, lower-tier Subcontractors that are within the lines of contractual responsibility but not in privity of contract with such Contractor or Subcontractor(s), for Work performed by that remote, lower-tier Subcontractor. If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section 7.5.6 are substantially greater than the fees and overhead normally included in determining the Contract Sum bid; that these higher percentages are a sufficient amount to compensate the Contractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Contractor for some Changes compensates the Contractor for any Changes for which the Contractor believes the percentage is otherwise insufficient.

§ 7.6 Work shall be accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, fire lanes, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2.4 The Owner will issue a Notice to Proceed. The Notice to Proceed will state the dates: (a) On which the Contractor may begin the Work; (b) By which the Contractor is required to attain Substantial Completion of the Work; and (c) By which the Contractor is required to attain Final Completion of the Work.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 It is hereby understood and mutually agreed, by and between the Contractor and the Owner that the date of beginning and the time of completion of the Work to be done are essential conditions of this Contract; it is further mutually understood and agreed that the Contract Time specified in this Contract shall commence on the date identified in the Owner's Notice to Proceed.

§ 8.3.4 The Contractor agrees that said work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will ensure full completion of the work within the time specified. It is expressly understood and agreed that the Contractor has considered all contingencies and factors affecting the ability to perform all the work within the time specified, including, among others, delays caused by weather (as detailed in 8.3.5 below) and other possible delays caused by the industrial conditions prevailing in this locality, and after consideration of these factors, has made an allowance for such factors before agreeing to completion date specified in the Contract Documents.

§ 8.3.5 Completion time will not be extended for normal bad weather. The time for completion, as stated in the Contract Documents, includes due allowance for calendar days on which work cannot be performed out of doors. For

the purpose of this Contract, the Contractor agrees that calendar days may be lost due to weather, in accordance with the Weather Bureau information or Almanac. The Contractor agrees that the measure of extreme weather during the period covered by this Contract shall be the number of days in excess for each month that exceed the following conditions: (a) The daily precipitation exceeds the average daily precipitation by .10 inch; or (b) Average temperature failed to exceed 40° Fahrenheit; or (c) Maximum temperature failed to exceed 50° Fahrenheit. Temperature and precipitation information will be averaged from three local weather stations over the same time period. In the absence of local weather information, averages will be obtained from historical averages over a five-year period for the area. If the total accumulated number of calendar days lost to weather from the start of work exceeds the total accumulated number to be excepted for the same period, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost.

§ 8.3.6 No change in Contract Sum will be authorized because of adjustment of Contract Time due to normal bad weather.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 A signed release or waiver of liens form will be submitted by the Contractor and all Subcontractors with their monthly Application for Payment. The submittals will be conducted in a manner acceptable to the Owner's lending agency.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Five percent of the amount of the completed work up to 100 percent completion of the Contract, as shown on approved monthly Application and Certificate for Payment Form, will be retained by the Owner.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. If the Contractor has submitted a timely application, the Owner will make payments on account of the Contract on or about the tenth day of each month, based on the value of work estimated by Contractor in the schedule of values (and approved by the A/E) to have been completed on or about the last day of each calendar month. Itemized Application for Payment shall be made in triplicate on an Application and Certificate for Payment Form. Payments shall be made on estimated quantities of Work, completed and acceptable, properly stored, protected and insured. Estimated quantities shall be considered only as approximate and will be subject to A/E's adjustment and correction.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in Article 9 to the contrary, Owner may in its sole discretion elect to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and the Subcontractor. The Contractor and the Subcontractor will be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event will any joint payment be construed to create any: (a) contract between Owner and a Subcontractor; (b) obligations from the Owner to the Subcontractor; or (c) any rights in the Subcontractor against the Owner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Contract Documents entitle Owner to reimbursement or payment from the Contractor then Contractor will promptly make such reimbursement or payment upon Owner's demand. Despite any contrary language in the Contract Documents, if Contractor fails to promptly make any payment due the Owner, or if Owner incurs any costs

and expenses to cure any default of Contractor or to correct defective Work, Owner has an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (a) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor; or (b) issue a written notice to Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

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

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the

Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located possessing a Best's policyholder's rating of B+ or better and a financial rating of no less than VII and reasonably acceptable to the Owner, an occurrence-based Commercial General Liability Insurance Policy, which shall provide personal injury, bodily injury and property damage liability on the Contractor's operations, including Subcontractors and suppliers of any tier; owned, non-owned and hired vehicles; on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Contract, including but not limited to premises, products/completed operations, personal injury, blanket contractual liability, explosion, collapse or underground (XCU) and stopgap employer's liability. This insurance will name the Owner, the Architect, their consultants and employees, and any required governmental agencies as additional insureds and will include a severability of interest (cross liability clause) for Work performed under this Contract. The Contractor's policy shall be designated primary coverage for both defense and indemnify, and any Owner's policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

- a. \$1,000,000 per occurrence for bodily injury liability including sickness, disease or death and \$1,000,000 bodily injury liability for all occurrences (other than automobiles); and
(Paragraph deleted)
- b. \$1,000,000 for property damage liability (other than automobiles) because of damage to or destruction of property of others including loss of use thereof caused by one occurrence and \$1,000,000 property damage liability for all occurrences; and
- c. As an alternate to subparagraphs .1 and .2 above, the Contractor may insure for \$1,000,000 Combined Single Limit protection for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate stop loss; and
- d. \$1,000,000 per accident for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others including loss of use thereof arising out of the operation of automobiles; and

e. \$1,000,000 for claims for damages insured by personal injury liability coverage (included and defined in the Commercial General Liability insurance policy) which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or (2) by another person; and
f. \$1,000,000 for claims involving damages to a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or another employee; and
g. \$1,000,000 for claims involving blanket contractual liability insurance (included and defined in the Commercial General Liability Insurance Policy) applicable to the Contractor's obligations under Paragraph 3.18; and
h. In addition, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer, in an amount not less than \$5,000,000.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages shall be written on an occurrence basis, shall be maintained without interruption from date of commencement of the Work until date of Final Acceptance and termination of any coverage required to be maintained after final payment. Completed operations coverage shall remain in force for three (3) years after Final Acceptance. The insurance described above shall include coverage for underground, collapse and explosion exposures. In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Stop Gap Liability Insurance (Employer's Contingent Liability Insurance) with coverage of at least \$500,000 each occurrence/\$500,000 each accident.

§ 11.1.3 If the Owner is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. THE OWNER MAY WITHHOLD PAYMENT FENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE WITH ENDORSEMENTS ATTACHED. Failure to withhold payment shall not constitute a waiver.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. All policies and certificates must be signed copies and shall contain a provision that written notice by certified mail must be provided to the Owner and Architect 45 days before the policies expire or are cancelled or any coverages afforded under the policies are reduced, limits decreased, or the additional insured's removed. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage or limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion.

§ 11.1.5 The Owner's specification or approval of the insurance in this Contract or of its amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts.

§ 11.1.6 Coverage shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance.

§ 11.1.7 The Contractor shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers in the amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Also, the Subcontractors shall name the Contractor and the Owner as an additional insured giving notice in accordance of their policy provisions.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form to cover the course of construction in the amount of the initial Contract Sum,

less costs of clearing, preparation and excavation of the site under this Agreement, plus the value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Each loss may be subject to a deductible of \$10,000. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor. The policy shall be endorsed to allow complete or partial occupancy by the Owner before or after Substantial Completion without the insurer's approval.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment

property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. In waiving rights of recovery under terms of this Subparagraph, the term "Owner" shall be deemed to include its employees and the A/E and its employees as the Owner's representative, as provided in the Contract Documents.

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The two-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ten (10) days' written notice to the Owner and Architect, terminate the Contract and only recover from the Owner payment for Work executed and reasonable costs incurred by reason of such termination. In no event will Contractor be entitled to any consequential damages as a result of a termination for Owner's convenience, including payment for lost profits, either on the Work not executed or other work on other projects.

§ 14.1.4 [INTENTIONALLY OMITTED].

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs reasonably and directly incurred by reason of such termination. In no event will Contractor be entitled to any consequential damages as a result of a termination for Owner's convenience, including payment for lost profits, either on the Work not executed or other work on other projects.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker, Claims

by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, consistent with the requirements contained in Article 8 of these General Conditions, Contractor must document such Claim with data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction..

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. An initial decision shall be required as a condition precedent to litigation of any Claim. The Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) forward the Claim to Owner with a recommendation that the Claim be approved, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject the Claim or forward the Claim to the owner with recommendation that the claim be approved in whole or part.

§ 15.2.5 The Initial Decision Maker will evaluate claims by written decision and notify parties of any recommended changes to Contract Sum or Contract Time or both.

§ 15.2.6 Either party may request mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, notify the other party in writing of its desire to mediate the initial decision. In that event, the parties agree to defer mediation of the initial decision to a date after Substantial Completion. Mediation shall be administered by the Arbitration Service of Portland, Inc. in accordance with its rules in effect on the date the parties proceed to mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. A party waives its right to object to an initial decision if it does not request mediation in accordance with this subsection.

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

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the Arbitration Service of Portland, Inc. in accordance with its procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 15.4 ARBITRATION

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

notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

§ 15.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

Additions and Deletions Report for AIA® Document A201® – 2007

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PAGE 1

Cannon Beach Elementary School Renovation

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City of Cannon Beach an Oregon municipal corporation

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CIDA Architects

PAGE 9

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. ~~Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.~~

PAGE 10

§ 1.2.4 Terms used in the Specifications, such as "approval" or "approved" and "review" or "reviewed" shall be interpreted to mean "written approval" or "stamped review" or equal; "approved," "acceptable," "similar to," "directed," "required," "selected," "ordered," "reviewed," or like words shall be interpreted to mean that reference is made to the ruling and judgment of the A/E.

...

§ 1.4.1 These Specifications are of the abbreviated type and include incomplete sentences. Omissions of words or phrases, such as "the Contractor shall", "shall be", etc., are intentional. Omitted words or phrases shall be supplied by inference in the same manner as they are when a "note" occurs on the drawings.

§ 1.5.1 The Except as provided to the contrary or otherwise in the Owner's agreement with the Architect, the Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

PAGE 15

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Furnish, when requested, samples of equipment proposed or specified for use. Sample submitted shall be the exact sample of the material or product to be incorporated into the Work.

PAGE 16

§ 3.18.1 To the fullest extent permitted by law the Contractor shall ~~indemnify~~ indemnify, defend and hold harmless the Owner, Architect, Architect's consultants, and the officers, agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

PAGE 17

§ 4.1.1 ~~The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. Wherever herein the term "Architect" is used, it shall mean A/E, defined as follows: The A/E is the person or organization licensed to practice architecture/engineering and identified as such in the Contract. The term A/E or Architect/Engineer as used in the Contract Documents shall be taken to mean Mackenzie or A/E's authorized representative.~~

§ 4.1.2 Duties, responsibilities and limitations of authority of the ~~Architect~~ A/E as set forth in the Contract Documents shall not be restricted, ~~modified~~ modified, or extended without written consent of the ~~Owner, Contractor and Architect. Consent shall not be unreasonably withheld.~~ Owner and A/E.

...

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall ~~endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect.~~ communicate through the Architect. Communications by and with the A/E's consultants shall be through the A/E. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

PAGE 18

§ 4.2.15 In general, in the event of conflict between Drawings and Specifications, the Specifications take precedence; in conflicts between General Requirements and General Conditions, General Requirements take precedence. In conflicts between large scale drawings and small scale drawings, the large scale drawings take precedence. Immediately notify A/E of any error, omission, or discrepancy appearing on the Contract Documents. In the event of a conflict or discrepancy on the Drawings or Specifications, the larger quantity and the highest quality shall govern unless approval for the lower quality and the smaller quantity has been given in writing by the A/E.

PAGE 19

§ 5.2.3 ~~If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~ [INTENTIONALLY OMITTED]

PAGE 20

§ 5.4.4 Each subcontract must specifically provide in writing that Owner will only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

...

§ 6.1.5 Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor is responsible for any pre-purchased materials and equipment as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation and testing of items covered in any assigned purchase orders and agreements. All warranty and correction of the Work obligations under the Contract Documents also apply to any pre-purchased materials and equipment, unless the Contract Documents specifically provide otherwise.

PAGE 21

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, solely by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

...

§ 7.1.4 Before implementing a change in the Work, the Owner may request the Contractor to propose the amount of change in the Contract Sum, if any, and the extent of change in the Contract Time, if any, arising from the proposed change in the Work. The Contractor shall submit its responsive proposal as soon as possible, and shall in good faith specify the components and amounts by which the Contract Sum and/or Contract Time would change. Labor, materials and equipment shall be limited to and itemized in the manner described in Section 7.5 for the Contractor and major Subcontractors. If the Contractor fails to respond within this time, the Owner may withhold amounts in dispute of a progress payment otherwise due until the tardy proposal is received. If the Owner explicitly accepts the proposal in writing, the Owner and the Contractor will be immediately bound to the terms of the proposal, the change will be included in the next available Change Order, and the change in the Work described in the proposal shall commence expeditiously. The Owner may reject the proposal, in which case the Owner may either not implement the change in the Work or may order the change through a Construction Change Directive or supplemental instruction or an order for a minor change in the Work. The Architect may confer directly with Subcontractors of any tier concerning any item proposed to the Owner under this Article.

...

§ 7.2.2 Agreement on any Change Order constitutes a final settlement of all matters relating to the change in Work that is the subject of the Change Order, including but not limited to all direct and indirect costs and damages associated with such change and any and all adjustments to the Contract Sum and the construction schedule.

PAGE 22

- .3 Cost to be determined in a manner agreed upon by the parties (accompanied by an itemized estimate of probably cost) and a mutually acceptable fixed or percentage fee; or

...

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved. As soon as possible, and within seven (7) days of receipt, the Contractor shall advise the Architect in writing of the Contractor's agreement or disagreement with

the proposed adjustment or the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time. The Contractor's response shall reasonably specify the reasons for its disagreement and the adjustment or other terms that it proposes. Without such timely written response, the Contractor shall conclusively be deemed to have accepted the Owner's adjustment. The Contractor's disagreement shall not relieve the Contractor of its obligation to comply promptly with any written notice issued by the Owner or the Architect. The adjustment shall then be determined by the Architect in accordance with the provisions of the Contract Documents. The ultimate adjustment shall not exceed the larger amount submitted.

...

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be ~~recorded as incorporated into~~ a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the ~~Contract Sum,~~ the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also

Contract Sum, or if cost is to be determined under Section 7.3.3.3, the Contractor shall keep and present, itemized in categories in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 — Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 — Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 — Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 — Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 — Additional costs of supervision and field office personnel directly attributable to the change. In order to facilitate checking of such quotations, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs, including labor, equipment material and subcontract costs. Labor, equipment and materials shall be itemized in the manner described in Section 7.5. When major cost items arise from Subcontractors of any tier, these items shall also be similarly itemized. Approval may not be given without such itemization. Failure to provide data within twenty-one (21) days of the Owner's request shall constitute waiver of any Claim for changes in the Contract Time or Contract Sum. The total cost of any change, including a Claim under Section 15, shall be limited to the reasonable value, as determined by the Architect (subject to appeal through the dispute resolution procedure of Section 15.2.6), of the items in Section 7.5. Unless otherwise agreed in writing by the Owner, the cost shall not exceed the lower of the prevailing cost for the work in the locality of the Project or the cost of the work in the current edition of R.S. Means Company, Inc., Building Construction Cost Data as adjusted to local costs and conditions. The Architect and the Owner may communicate directly with Subcontractors concerning costs of any Work included in a Construction Change Directive. If the Contractor disagrees with the method or the adjustment in the Contract Time, the adjustment or method shall be referred to the Architect for determination, and any adjustment shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change ~~that which results in a net decrease in the Contract Sum shall be the largest of (i) the reasonable and prevailing value of the deletion or change, (ii) the line item value in the Schedule of Values, or (iii) the actual net cost as confirmed by the Architect.~~ When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that ~~change-change~~

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, ~~the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and~~

certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15, and provided that any reservations of rights in respect to the Construction Change Directive have been initialed by the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

PAGE 23

§ 7.3.11 Any adjustment in the Contract Time arising from a Change or a Claim shall be limited to the change in the actual critical path of the Contractor's Construction Schedule directly caused thereby.

The Architect has and Owner have the authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§ 7.5 The total cost of any Change in the Work or of any other increase or decrease in the Contract Sum, including a Claim, shall be limited to the following components:

§ 7.5.1 Direct labor costs: These are the estimated or actual labor costs determined by the number of additional craft hours and the hourly costs necessary to perform the change in the Work. The hourly cost shall be based upon the following: (a) Basic wages and fringe benefits: The hourly wage (without markup or labor burden) and fringe benefits paid by the Contractor as established by the State Bureau of Labor and Industries or contributed to labor trust funds as itemized fringe benefits, whichever is applicable, not to exceed that specified in the applicable "Intent to Pay Prevailing Wage" for the laborers, apprentices, journeymen, and foremen performing and/or directly supervising the Change in the Work on the site. The premium portion of overtime wages is not included unless pre-approved in writing by the Owner. Costs paid or incurred by the Contractor for vacations, per diem, subsistence, housing, travel, bonuses, stock options, or discretionary payments to employees are not separately reimbursable; (b) Workers' insurances: Direct contributions to the State as industrial insurance; medical aid; and supplemental pension by class and rates established by the Oregon Bureau of Labor and Industries; (c) Federal insurances: Direct contributions required by the Federal Insurance Compensation Act (FICA); Federal Unemployment Tax Act (FUTA); and State Unemployment Compensation Act (SUCA).

§ 7.5.2 Direct material costs: This is an itemization, including material invoice, of the quantity and cost of additional materials reasonable and necessary to perform the change in the Work. The unit cost shall be based upon the net cost after all discounts or rebates, freight costs, express charges, or special delivery costs, when applicable. No lump sum costs will be allowed except when approved in advance by the Architect. Discounts and rebates based on prompt payment need not be included, however, if the Contractor offered but the Owner declined the opportunity to take advantage of such discount or rebate.

§ 7.5.3 Construction equipment usage costs: This is an itemization of the actual length of time that construction equipment appropriate for the Work will be used solely on the change in the Work at the site times the applicable rental cost as established by the lower of the local prevailing rate published in The Rental Rate Blue Book by Data Quest San Jose, California, or the actual rate paid to unrelated third parties as evidenced by rental receipts. Rates and quantities of equipment rented that exceed the local fair market rental costs shall be subject to the Owner's prior approval. Total rental charges for equipment or tools shall not exceed 75% of the fair market purchase value of the equipment or the tool. Actual, reasonable mobilization costs are permitted if the equipment is brought to the Site solely for the change in the Work. If equipment is required for which a rental rate is not established by The Rental Rate Blue Book, an agreed rental rate shall be established for the equipment which rate and use must be approved by the Architect prior to performing the work. If more than one rate is applicable, the best available rate will be utilized. The rates in effect at the time of the performance of the Work are the maximum rates allowable for equipment of modern design and in good working condition and include full compensation for furnishing all fuel, oil, lubrication, repairs, maintenance, and insurance to the same extent as the comparable Blue Book or fair market rate. Equipment not of modern design and/or not in good working condition will have lower rates. Hourly, weekly, and/or monthly rates, as appropriate, will be applied to yield the lowest total cost. When the rate payable does not include fuel, lubricants, standard maintenance and servicing, such operating costs shall be reimbursed based upon actual costs. When rental rates payable do not include fuel, lubrication, maintenance and servicing, as defined as operating costs in

the reference, such operating costs shall be reimbursed based on actual costs. The rate for equipment necessarily standing by for future use on the Work shall be 50% of the rate established above. The total cost of rental allowed shall not exceed the cost of purchasing the equipment outright unless pre-approved by the Owner. If equipment is required for which a rental rate is not established by Blue Book, an agreed rental rate shall be established for that equipment which rate and use must be approved by the Owner prior to performing the Work.

§ 7.5.4 Cost of change in insurance or bond premium. This is defined as: (a) Contractors' liability insurance: The actual cost (expressed as a percentage submitted with the certificate of insurance provided under Section 11.7.1. and subject to audit) of any changes in the Contractor's liability insurance arising directly from the changed Work; and (b) Public works bond: The actual cost (expressed as a percentage submitted with evidence of bondability under Section 11.5.1. and subject to audit) of the change in the Contractor's premium for the Contractor's statutorily required performance and payment bond arising directly from the changed Work. Upon request, the Contractor shall provide the Owner with supporting documentation from its insurer or surety of any associated cost incurred.

§ 7.5.5 Subcontractor costs: These are payments the Contractor makes to Subcontractors for changed Work performed by such Subcontractors. The Subcontractors' cost of changed Work shall be determined in the same manner as prescribed in this Section 7.5 and, among other things, shall not include consultant costs, attorneys' fees, or claim preparation expenses.

§ 7.5.6 Fee: This is the allowance for all combined overhead, profit and other costs, including all office, home office and site overhead (including project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles), taxes (except for sales tax), employee per diem, subsistence and travel costs, warranty, safety costs, quality control/assurance, purchasing, small or hand tool (a tool that costs \$500 or less and is normally furnished by the performing contractor) or expendable charges, preparation of as-built drawings, impact on unchanged Work. Claim preparation, and delay and impact costs of any kind, added to the total cost to the Owner of any Change Order, Construction Change Directive, Claim or any other claim of any kind on this Project. No Fee shall be due, however, for direct settlements by the Owner of Subcontractor claims. The Fee shall be limited in all cases to the following schedule: (a) The Contractor shall receive 12% of the cost of any materials supplied or work properly performed by the Contractor's own forces; (b) The Contractor shall receive 8% of the amount owed directly to a Subcontractor or supplier for materials supplied or for work properly performed by that Subcontractor or supplier; (c) Each Subcontractor of any tier shall receive 12% of the cost of any materials properly supplied or work performed by its own forces; (d) Each Subcontractor of any tier shall receive 6% of the amount it properly incurs for materials supplied or work properly performed by its suppliers or subcontractors of any lower tier; (e) The cost to which this Fee is to be applied shall be determined in accordance with Section 7.5.1 through 7.5.4; and (f) The total summed Fee of the Contractor and, all Subcontractors of any tier shall not exceed 25% of any amounts owed to any remote, lower-tier Subcontractors that are within the lines of contractual responsibility but not in privity of contract with such Contractor or Subcontractor(s), for Work performed by that remote, lower-tier Subcontractor. If a change in the Work involves both additive and deductive items, the appropriate Fee allowed will be added to the net difference of the items. If the net difference is negative, no Fee will be added to the negative figure as a further deduction. The parties acknowledge that the fees listed in this Section 7.5.6 are substantially greater than the fees and overhead normally included in determining the Contract Sum bid; that these higher percentages are a sufficient amount to compensate the Contractor for all effects and impacts of Changes in the Work; and that the resultant overcompensation of the Contractor for some Changes compensates the Contractor for any Changes for which the Contractor believes the percentage is otherwise insufficient.

§ 7.6 Work shall be accessible to firefighting equipment at all times. Temporary provisions shall be made by the Contractor to ensure the use of sidewalks, fire lanes, private and public driveways and proper functioning of gutters, sewer inlets, drainage ditches and culverts, irrigation ditches and natural water courses, if any, on the Work site.

PAGE 25

§ 8.2.4 The Owner will issue a Notice to Proceed. The Notice to Proceed will state the dates: (a) On which the Contractor may begin the Work; (b) By which the Contractor is required to attain Substantial Completion of the Work; and (c) By which the Contractor is required to attain Final Completion of the Work.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. It is hereby understood and mutually agreed, by and between the Contractor and the Owner that the date of beginning and the time of completion of the Work to be done are essential conditions of this Contract; it is further mutually understood and agreed that the Contract Time specified in this Contract shall commence on the date identified in the Owner's Notice to Proceed.

§ 8.3.4 The Contractor agrees that said work shall be prosecuted regularly, diligently, and without interruption at such rate of progress as will ensure full completion of the work within the time specified. It is expressly understood and agreed that the Contractor has considered all contingencies and factors affecting the ability to perform all the work within the time specified, including, among others, delays caused by weather (as detailed in 8.3.5 below) and other possible delays caused by the industrial conditions prevailing in this locality, and after consideration of these factors, has made an allowance for such factors before agreeing to completion date specified in the Contract Documents.

§ 8.3.5 Completion time will not be extended for normal bad weather. The time for completion, as stated in the Contract Documents, includes due allowance for calendar days on which work cannot be performed out of doors. For the purpose of this Contract, the Contractor agrees that calendar days may be lost due to weather, in accordance with the Weather Bureau information or Almanac. The Contractor agrees that the measure of extreme weather during the period covered by this Contract shall be the number of days in excess for each month that exceed the following conditions: (a) The daily precipitation exceeds the average daily precipitation by .10 inch; or (b) Average temperature failed to exceed 40° Fahrenheit; or (c) Maximum temperature failed to exceed 50° Fahrenheit. Temperature and precipitation information will be averaged from three local weather stations over the same time period. In the absence of local weather information, averages will be obtained from historical averages over a five-year period for the area. If the total accumulated number of calendar days lost to weather from the start of work exceeds the total accumulated number to be excepted for the same period, time for completion will be extended by the number of calendar days needed to include the excess number of calendar days lost.

§ 8.3.6 No change in Contract Sum will be authorized because of adjustment of Contract Time due to normal bad weather.

PAGE 27

§ 9.3.4 A signed release or waiver of liens form will be submitted by the Contractor and all Subcontractors with their monthly Application for Payment. The submittals will be conducted in a manner acceptable to the Owner's lending agency.

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Five percent of the amount of the completed work up to 100 percent completion of the Contract, as shown on approved monthly Application and Certificate for Payment Form, will be retained by the Owner.

PAGE 28

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. If the Contractor has submitted a timely application, the Owner will make payments on account of the Contract on or about the tenth day of each month, based on the value of work estimated by Contractor in the schedule of values (and approved by the A/E) to have been completed on or about the last day of each calendar month. Itemized Application for Payment shall be made in triplicate on an Application and Certificate for Payment Form. Payments shall be made on estimated quantities of Work, completed and acceptable, properly stored, protected and insured. Estimated quantities shall be considered only as approximate and will be subject to A/E's adjustment and correction.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in Article 9 to the contrary, Owner may in its sole discretion elect to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and the

Subcontractor. The Contractor and the Subcontractor will be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event will any joint payment be construed to create any: (a) contract between Owner and a Subcontractor; (b) obligations from the Owner to the Subcontractor; or (c) any rights in the Subcontractor against the Owner.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut down, delay and start up, plus interest as provided for in the Contract Documents. § 9.7.1 If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Contract Documents entitle Owner to reimbursement or payment from the Contractor then Contractor will promptly make such reimbursement or payment upon Owner's demand. Despite any contrary language in the Contract Documents, if Contractor fails to promptly make any payment due the Owner, or if Owner incurs any costs and expenses to cure any default of Contractor or to correct defective Work, Owner has an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (a) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor; or (b) issue a written a notice to Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

PAGE 32

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed; possessing a Best's policyholder's rating of B+ or better and a financial rating of no less than VII and reasonably acceptable to the Owner, an occurrence-based Commercial General Liability Insurance Policy, which shall provide personal injury, bodily injury and properly damage liability on the Contractor's operations, including Subcontractors and suppliers of any tier; owned, non-owned and hired vehicles; on work the Contractor may subcontract or sublet to others; and on the indemnity provisions of this Contract, including but not limited to premises, products/completed operations, personal injury, blanket contractual liability, explosion, collapse or underground (XCU) and stopgap employer's liability. This insurance will name the Owner, the Architect, their consultants and employees, and any required governmental agencies as additional insureds and will include a severability of interest (cross liability clause) for Work performed under this Contract. The Contractor's policy shall be designated primary coverage for both defense and indemnify, and any Owner's policies excess. Such limits of liability insurance shall have per project general aggregate provisions and shall not be less than the following:

2. Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees; a. \$1,000,000 per occurrence for bodily injury liability including sickness, disease or death and \$1,000,000 bodily injury liability for all occurrences (other than automobiles); and

3. Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

~~.4 — Claims for damages insured by usual personal injury liability coverage; b. \$1,000,000 for property damage liability (other than automobiles) because of damage to or destruction of property of others including loss of use thereof caused by one occurrence and \$1,000,000 property damage liability for all occurrences; and c. As an alternate to subparagraphs .1 and .2 above, the Contractor may insure for \$1,000,000 Combined Single Limit protection for both bodily injury and property damage liability per occurrence and \$2,000,000 general aggregate stop loss; and~~

~~.5 — Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; d. \$1,000,000 per accident for bodily injury liability including sickness, disease or death and property damage liability because of damage to or destruction of property of others including loss of use thereof arising out of the operation of automobiles; and~~

~~.6 — Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle; e. \$1,000,000 for claims for damages insured by personal injury liability coverage (included and defined in the Commercial General Liability insurance policy) which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or (2) by another person; and~~

~~.7 — Claims for bodily injury or property damage arising out of completed operations; f. \$1,000,000 for claims involving damages to a person as a result of an offense directly or indirectly related to employment of such person by the Contractor or another employee; and~~

~~.8 — Claims involving contractual liability insurance g. \$1,000,000 for claims involving blanket contractual liability insurance (included and defined in the Commercial General Liability Insurance Policy) applicable to the Contractor's obligations under Section 3.18-Paragraph 3.18; and~~

~~h. In addition, the Contractor shall maintain a true umbrella policy that provides excess limits over the primary layer, in an amount not less than \$5,000,000.~~

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. ~~Coverages, whether~~ Coverages shall be written on an occurrence ~~or claims made~~ basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment-Final Acceptance and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents-payment. Completed operations coverage shall remain in force for three (3) years after Final Acceptance. The insurance described above shall include coverage for underground, collapse and explosion exposures. In addition, the Contractor shall purchase and maintain insurance for claims under workers' compensation (industrial insurance), disability benefit and other similar employee benefit acts in the State statutory amount and Stop Gap Liability Insurance (Employer's Contingent Liability Insurance) with coverage of at least \$500,000 each occurrence/\$500,000 each accident.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If the Owner is damaged by the failure of the Contractor to maintain any of the above insurance or to so notify the Owner, then the Contractor shall bear all costs attributable thereto. THE OWNER MAY WITHHOLD PAYMENT FENDING RECEIPT OF ALL CERTIFICATES OF INSURANCE WITH ENDORSEMENTS ATTACHED. Failure to withhold payment shall not constitute a waiver.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. All policies and certificates must be signed copies and shall contain a provision that written notice by certified mail must be provided to the Owner and Architect 45 days before the policies expire or are cancelled or any coverages afforded under the policies are reduced, limits decreased, or the additional insured's

removed. The Contractor shall furnish to the Owner and Architect copies of any subsequently issued endorsements amending, modifying, altering or restricting coverage or limits. Furthermore, such policies or certificates shall contain a clause verifying that the policy contains coverage for blanket contractual liability including both oral and written contracts and that liability coverages include protection for underground, collapse and explosion.

§ 11.1.5 The Owner's specification or approval of the insurance in this Contract or of its amount shall not relieve or decrease the liability of the Contractor under the Contract Documents or otherwise. Coverages are the minimum to be provided and are not limitations of liability under the Contract, indemnification, or applicable law provisions. The Contractor may, at its expense, purchase larger coverage amounts.

§ 11.1.6 Coverage shall be maintained without interruption from the date of commencement of the Work until the date of Final Acceptance, except for any coverage required to be maintained after Final Acceptance.

§ 11.1.7 The Contractor shall ensure and require that Subcontractors of any tier have insurance coverage to cover bodily injury and property damage on all operations and all vehicles owned or operated by Subcontractors of all tiers in the amount of \$1,000,000 per occurrence with a \$2,000,000 aggregate limit. Also, the Subcontractors shall name the Contractor and the Owner as an additional insured giving notice in accordance of their policy provisions.

PAGE 33

§ 11.3.1 Unless otherwise provided, the ~~Owner-Contractor~~ shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form to cover the course of construction in the amount of the initial Contract Sum, less costs of clearing, preparation and excavation of the site under this Agreement, plus the value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Each loss may be subject to a deductible of \$10,000. Losses up to the deductible amount or otherwise not covered by insurance shall be the responsibility of the Contractor. The policy shall be endorsed to allow complete or partial occupancy by the Owner before or after Substantial Completion without the insurer's approval.

PAGE 35

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. In waiving rights of recovery under terms of this Subparagraph, the term "Owner" shall be deemed to include its employees and the A/E and its employees as the Owner's representative, as provided in the Contract Documents.

PAGE 36

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within ~~one year~~ two years after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of

the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The ~~one-year~~ two-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The ~~one-year~~ two-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

...

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the ~~one-year~~ two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

PAGE 38

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30-60~~ consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon ~~seven-ten~~ (10) days' written notice to the Owner and Architect, terminate the Contract and only recover from the Owner payment for Work ~~executed, including reasonable overhead and profit, executed and reasonable costs incurred by reason of such termination, and damages-termination.~~ In no event will Contractor be entitled to any consequential damages as a result of a termination for Owner's convenience, including payment for lost profits, either on the Work not executed or other work on other projects.

§ 14.1.4 ~~If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.~~ [INTENTIONALLY OMITTED].

PAGE 39

§ 14.2.2 When any of the above reasons exist, the ~~Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

...

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. ~~Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.~~

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed, reasonably and directly incurred by reason of such termination. In no event will Contractor be entitled to any consequential damages as a result of a termination for Owner's convenience, including payment for lost profits, either on the Work not executed or other work on other projects.

PAGE 40

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by consistent with the requirements contained in Article 8 of these General Conditions. Contractor must document such Claim with data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction-construction.

...

§ 15.2.1 ~~Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, Claims~~ shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. ~~Except for those Claims excluded by this Section 15.2.1, an~~ An initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. ~~Unless the Initial Decision Maker and all affected parties agree, the litigation of any Claim. The Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) ~~approve the Claim, forward the Claim to Owner with a recommendation that the Claim be approved,~~ (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

PAGE 41

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or ~~approve the Claim in whole or in the Claim or forward the Claim to the owner with recommendation that the claim be approved in whole or part.~~

§ 15.2.5 The Initial Decision Maker will ~~render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the evaluate claims by written decision and notify parties of any recommended changes to Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~

§ 15.2.6 Either party may ~~file for request~~ mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, ~~demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision. notify the other party in writing of its desire to mediate the initial decision. In that event, the parties agree to defer mediation of the initial decision to a date after Substantial Completion. Mediation shall be administered by the Arbitration Service of Portland, Inc. in accordance with its rules in effect on the date the parties proceed to mediation. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The~~

request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. A party waives its right to object to an initial decision if it does not request mediation in accordance with this subsection.

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the ~~American Arbitration Association~~ Arbitration Service of Portland, Inc. in accordance with its ~~Construction Industry Mediation Procedures~~ procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

SUBCONTRACTS AND OTHER CONTRACTS

a. General Subcontracting Requirements.

- 1) Notwithstanding any contrary provisions in the Contract Documents, these Exhibit C provisions govern CM/GC's relationships with Subcontractors and its award of Subcontracts.
- 2) Other than Work performed pursuant to paragraphs d) or e) below, CM/GC shall subcontract the Work to Subcontractors other than the CM/GC and its Affiliates. If CM/GC elects to bid on any Work, CM/GC shall inform Owner in writing of its intention to do so 30 days prior to the bid package release date for bidding for that Work.

b. CM/GC's Obligations under Subcontracts.

- 1) No use of a Subcontractor or supplier shall relieve the CM/GC of any of its obligations or liabilities under the Contract. Except as may expressly otherwise be provided in the Contract, the CM/GC shall be fully responsible and liable for the acts or omissions of all Subcontractors and suppliers including persons directly or indirectly employed by them. The CM/GC shall have sole responsibility for managing and coordinating the operations of its Subcontractors and suppliers, including the settlement of disputes with or between the CM/GC and any such Subcontractor or supplier.
- 2) The CM/GC shall include in each subcontract and require each Subcontractor to include in any lower tier subcontract, all provisions necessary to make all of the provisions of the Contract Documents, including the A201-2007 General Conditions (herein "General Conditions"), fully effective as applied to Subcontractors. CM/GC shall indemnify Owner for any additional cost based on a Subcontractor claim which results from the failure of CM/GC to incorporate the provisions of this Agreement in each subcontract. The CM/GC shall provide all necessary Plans, Specifications, regulatory requirements and project instructions to its suppliers and Subcontractors to enable them to properly perform their portions of the Work.
- 3) **Retainage from Subcontractors.** Except with the Owner's prior approval and as allowed under Oregon law, payments to Subcontractors shall be subject to retainage of no more than 5%. The Owner shall review and approve payments and retainage for Subcontractors.

c. Subcontractor Selection.

- 1) All Subcontractors performing Work must be, as legally required or appropriate for the Work they are performing, registered or licensed by one of the following before such Subcontractors commence Work and for the duration of the subcontract:
 - i. The Construction Contractors' Board in accordance with ORS 701.035 to 701.138;

- ii. The State Board of Examiners for Engineering and Land Surveying in accordance with ORS 672.002 to 672.325;
 - iii. The State Board of Architect Examiners in accordance with ORS 671.010 to 671.220;
 - iv. The State Landscape Architect's Board in accordance with ORS 671.310 to 671.459; or
 - v. The State Landscape Contractor's Board in accordance with ORS 671.510 to 671.710.
- 2) The CM/GC shall pay and comply with, and require Subcontractors to pay and comply with State prevailing wage rates in effect at the time of execution of the first Early Work Amendment, or if no Early Work Amendment is executed, at the time the GMP Amendment is executed, as listed in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", and any amendments thereto. Those rates shall be incorporated in the Contract and shall then apply throughout the remainder of the Project.
- 3) The CM/GC shall provide the owner bid tabulation comparison document documenting all bids and shall work with bidders to clarify submitted bids and document the bids to reduce exclusions, verify and document scope and quantities, equalize the bidder numbers, and seek to minimize work subsequently awarded via the Change Order process.
- 4) Unless otherwise provided in this Exhibit C, the selection of all Subcontractors and suppliers shall be made by competitive bidding in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the procedures discussed herein, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices. The CM/GC shall document the bidding process and steps for owner approval before the first bid.
- 5) CM/GC shall submit to Owner's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all Owner comments regarding any proposed procurement packages. As Subcontractor bids are received, CM/GC shall submit to the Owner a bid comparison in a mutually agreeable form together with any specific back-up documentation requested by Owner. The competitive process used to award subcontracts by the CM/GC shall be monitored by the Owner's Authorized Representative; provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this Agreement. CM/GC shall cooperate in all respects with Owner's monitoring. The Owner's Authorized Representative shall be advised in advance of and be given the opportunity to be present at bid openings, and CM/GC shall provide him or her with a summary or abstract of all bids in form acceptable to the Owner's Authorized Representative, and copies of particular bids if requested, prior to CM/GC's selection of bids. Prior to opening bids, the CM/GC agrees to disclose in writing to Owner any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such

Subcontractor, supplier or contracting party intends to compete on any Project Work, directly or indirectly, including whether such party is an Affiliate of CM/GC.

- 6) The following minimum requirements apply to the Subcontract solicitation process:
- i. Solicitations shall be advertised at least ten (10) business days prior to opening in the Daily Journal of Commerce. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
 - ii. Unless specific other prior arrangement has been made with Owner, all bids will be written, and submitted to a specific location at a specific time. CM/GC shall time/date-stamp all bids as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction Contractors Board.
 - iii. If fewer than three (3) bids are submitted in response to any solicitation (inclusive of any bid submitted by CM/GC), prior written approval by Owner shall be required to accept a bid for the specific scope of work.
 - iv. CM/GC may develop and implement a prequalification process in accordance with Oregon Revised Statutes for competitive bidding for particular solicitations, followed by selection of successful bids among those bidders that CM/GC determines meet the prequalification standards, with Owner's prior written approval of such prequalification process.
 - v. The CM/GC shall comply, and require Subcontractor compliance, with the State of Oregon Bureau of Labor & Industries prevailing wage rate requirements.
 - vi. Owner may at its sole discretion require CM/GC to re-solicit for bids based on the same or modified documents.
 - vii. CM/GC and the Owner, at its' discretion, shall review all bids and shall work with bidders to clarify bids, reduce exclusions, verify scope and quantities, and seek to minimize Work subsequently awarded via the Change Order process.
 - viii. The CM/GC shall document any and all discussions, questions and answers, modifications and responses to from any bidder and ensure that the same are distributed to all bidders, and Owner shall be provided documentation on request.
 - ix. CM/GC shall determine the lowest responsive and responsible bid for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such bidder, CM/GC may, with Owner's prior approval, execute a

subcontract with the second-lowest Subcontractor bidder pursuant to paragraph c.9) below.

- 7) Under special circumstances and only with prior written authorization by Owner, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, Owner may require CM/GC's agreement to establish and implement qualification and performance criteria for bidders, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; systems that intergrate with Owners existing systems, special packaging requirements for Subcontractor Work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit Owner. Such alternative procurements may, at the sole determination of the Owner, be subject to the Owner's procurement policies.
- 8) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in paragraph c.5), the process must meet the following requirements:
 - i. The CM/GC must prepare and submit a written justification to the Owner explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification.
 - ii. For a "sole source" selection of a subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
 - iii. If required by the Owner, the CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process.
 - iv. The CM/GC must fully respond to all Owner questions or comments pertaining to a proposed or completed non-competitive selection process or associated Work package.

- v. The Owner must approve in writing the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.
- 9) A competitive selection process may be preceded by a publicly advertised Subcontractor pre-qualification process, with only those Subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the Subcontractor to perform the construction Work described in the selection process;
- 10) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project:
 - i. the CM/GC must disclose that fact in the selection process documents and announcements.
- 11) CM/GC shall notify Owner in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to Owner of all bidders received for the Subcontract at issue.
- 12) Owner reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility.
- 13) The CM/GC shall notify the Owner in the event that it receives an objection or protest in response to Subcontractor selection. The Owner must approve the CM/GC's proposed resolution to any such objections or protests, prior to the CM/GC implementing the resolution.
- 14) Briefings for Unsuccessful Subcontractors. Unsuccessful subcontractors will be allowed 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC. The CM/GC shall hold such meetings within 45 days of the subcontractor's written request.
- 15) CM/GC's subcontracting records shall not be considered public records; provided, however, that Owner and other agencies of the State shall retain the right to inspect, audit and monitor the subcontracting process in order to protect the Owner's interests.

d. CM/GC Field Work.

- 1) The CM/GC or its Affiliate(s) may provide general conditions Work ("GC Work") required to complete the Project with its own forces, without the necessity of subcontracting such Work.

- 2) Except as provided in paragraph 11..d.1), any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of paragraph 11..e.

e. Subcontracting by CM/GC.

- 1) Except to the extent otherwise approved in advance in writing by Owner's Authorized Representative, the CM/GC or its Affiliates may submit a bid in accordance with paragraph c) to do Work with its own forces, provided at least 80% of the labor by such work unit is performed by employees of the CM/GC or such Affiliate. If CM/GC is selected to perform the Work as the lowest responsible bidder and as approved by Owner and Architect, the compensation for all defined work shall be the lump sum bid amount, unless changes to the scope are made, in which case markups applicable to Change Order Work shall apply. The CM/GC shall clearly identify any Work for which it was the winning bidder in the supporting documentation and invoicing for payments so it can be easily determined that the Work was provided within CM/GC's bid price.
- 2) For those items for which the CM/GC or any of its Affiliates intends to submit an bid, such intent must be publicly announced with the solicitation for bidders required by paragraph c), and Owner must be notified in writing 30 days in advance of release of bid package. All bids for this Work, including the CM/GC, shall be delivered to Owner and publicly opened by Owner at an announced time, date, and place. An appointed Owner representative will provide objective, independent review and opening of bids or proposals for the elements of Work on which CM/GC bids.
- 3) CM/GC or an Affiliate of the CM/GC may only perform elements of the construction Work without competition from subcontractors when:
 - i. The work is job-site GC Work, or
 - ii. The CM/GC proposed to self-perform certain elements of the Work in response to the Owner's CM/GC RFP and the Owner accepted these portions of the proposal in its contract negotiations with the CM/GC, or
 - iii. The CM/GC provides the Owner a detailed written proposal to self-perform the work, showing that such self-performance is cost effective, the Owner accepts the written proposal and the proposal is supported by at least one independent cost estimate prior to Work being included in the Contract. The Owner will review the documentation and complete an approval process required by their procurement rules.

- f. Change of Subcontractors.** Once a subcontract has been accepted by the Owner and executed by the CM/GC and Subcontractor, CM/GC shall not terminate or substitute the Subcontractor without prior written approval of the Owner. In the event a change to the

subcontract assignment is made, CM/GC shall initiate a new bid package consistent with this Agreement to procure a new Subcontractor.

g. Definitions. For the purposes of this Exhibit and the Contract Documents, the following definitions apply:

1) General Conditions Work. General Conditions Work ("GC Work") shall mean:

- i. that portion of the Work required to support construction operations that is not included within overhead or general expense but is called out as GC Work in the RFP matrix or agreed to in writing between Owner and CM/GC, and
- ii. any other specific categories of Work approved in writing by the Owner as forming a part of the GC Work. GC Work shall mean customary layout, clean up, supervision, and portions of the Work of a minor nature and not feasibly part of the subcontracted Work due to: exclusions by the Subcontractor not resolved through the process described in paragraph c), undeveloped design owing to deviations in Work performed or materials delivered by Subcontractors or suppliers that do not represent defective or nonconforming Work, a breach or failure to perform by the Subcontractor or supplier, complexity of coordination of the Work, and other similar reasons typically providing cause for "pick-up" or GC Work under industry standards; provided, however, that:

(a) the CM/GC has reasonably determined that doing such portion of the Work itself is in the best interests of Owner, including cost comparison or schedule advantages;

(b) such Work is identified as GC Work in monthly billings; and

(c) CM/GC receives prior approval of the Owner as to the scope of such GC Work.

2) CM/GC has the same meaning as the term Construction Manager in the A133-2009 Agreement.

3) Affiliate. Affiliate shall mean any subsidiary of CM/GC and any other entity in which CM/GC has a financial interest or which has a financial interest in CM/GC (including without limitation parent companies, related businesses under the same holding company, or any other business controlled by, under common control with, or which controls CM/GC).