NOTICE OF REQUEST FOR PROPOSALS FOR CONSTRUCTION MANAGER/GENERAL CONTRACTOR ("CM/GC") SERVICES

This is a
REQUEST FOR PROPOSALS
by
CLATSOP CARE CENTER HEALTH DISTRICT
FOR CM/GC SERVICES
SKILLED NURSING FACILITY PROJECT

Clatsop Care Center Health District invites sealed written proposals for CM/GC services associated with the construction of the work related to the Skilled Nursing Facility Project. The scope of services may include but is not necessarily limited to pre-construction services and construction services.

This RFP is for a public works subject to the state prevailing wage requirements specified in ORS 279C.800 to 279C.875.

Prospective proposers may obtain a copy of the RFP, including the terms and conditions of the agreement to provide the requested services, by visiting the District's web-page (www.clatsopcare.org).

One (1) original and seven (7) hard copies of the Proposal and supporting documentation as described in this RFP must be delivered to Mark Remley, at Aidan Health Services, 8415 Seneca Street, #210, Tualatin, OR 97062 no later than 3:00 p.m., Pacific Time, on December 10, 2026. Proposers shall also provide one courtesy copy of the Proposal in PDF format on a USB storage or similar flash storage device. All packages and envelopes must be marked clearly with the note: "RFP—CM/GC Services, 3:00 p.m., December 10, 2026."

NO ORAL, TELEPHONIC, ELECTRONIC, OR FACSIMILE PROPOSALS WILL BE ACCEPTED.

Please direct any questions regarding this RFP in writing only to Construction Committee at: construction@clatsopcare.org. Or by mailing Mark Remley at Aidan Health Services, 8415 Seneca Street, #210, Tualatin, OR 97062.

Proposers should request clarification or additional information concerning this RFP in writing as soon as possible, but in no event will such requests be received by the District later than 3:00 p.m., Pacific Time, on November 30, 2026. All questions will be answered by written addenda only, which will be posted on the District's web-page (www.clatsopcare.org).

TERMS AND CONDITIONS OF CLATSOP CARE CENTER HEALTH DISTRICT REQUEST FOR PROPOSALS FOR CM/GC SERVICES

I. GENERAL INFORMATION

A. INTRODUCTION

By way of this Request for Proposals ("RFP"), Clatsop Care Center Health District ("District") is requesting proposals ("Proposals") from qualified contractors ("Proposers") for CM/GC services ("Services") associated with the construction of the work related to the District's new skilled nursing facility project, which is set out in Appendix A (the "Project"). The Project consists a skilled nursing facility at the District's Olney Avenue site located in Astoria, Oregon, which will be developed for vehicle access, parking, building and associated utilities and landscaping. Services to be provided include, but are not necessarily limited to, pre-construction services and construction services. The Services described in this RFP will be performed beginning in January 2027. Construction will begin as soon as design allows.

This RFP is intended to provide Proposers with the opportunity to present their qualifications and approach clearly and succinctly, while providing the District with comparable information from each Proposer. Except as modified herein, the District will conduct this CM/GC procurement in accordance with model rules the Attorney General adopts under ORS 279A.065(3).

B. RFP SCHEDULE

RFP Release:	November 13, 2026
Non-Mandatory Pre-Proposal Conference: (10:00 a.m. Pacific Time—location: 947 Olney Ave, Astoria, Oregon 97103)	November 19, 2026
Deadline for Requests for Clarification/Protests: (3:00 p.m. Pacific Time)	November 30, 2026
Proposals Due/Opening of Proposals: (3:00 p.m. Pacific Time)	December 10, 2026
Interviews (if any):	December 16, 2026
Notice of Intent to Award:	December 29, 2026
Deadline for Protests of Notice of Intent to Award:	January 5, 2027 (3:00 p.m. Pacific Time)
District Board of Directors' Contract Approval:	January 7, 2027
Deadline for Unsuccessful Proposers to Request Meeting:	January 21, 2027

The District may, in its sole discretion, revise these dates. This proposed schedule is intended to allow prospective Proposers sufficient time for requests for information, objections to the requirements of this RFP, and preparation of Proposals. Prospective Proposers who believe that the schedule is unreasonable should notify the District immediately. If the District receives a substantial number of adverse comments, the District will consider extending the schedule of events by issuing an addendum.

C. NON-MANDATORY PRE-PROPOSAL CONFERENCE

Prospective Proposers are invited to attend a pre-proposal conference to be held at the time and date specified in the RFP Schedule, as modified by the District, at the job site located at 947 Olney Road, Astoria, OR 97103. Attendance at this pre-proposal conference is encouraged.

D. REQUESTS FOR CLARIFICATION OF RFP

Proposers are cautioned not to make any assumptions as to the implied meaning or intent of any part of this RFP. Proposers should request clarification or additional information concerning this RFP in writing as soon as possible, but in no event will such requests be received by the District later than the time and date specified in the RFP Schedule, as modified by the District. Questions regarding this RFP should be addressed to Construction Committee at construction@clatsopcare.org.

ANY CORRECTIONS OR CLARIFICATIONS MADE IN ANY MANNER OTHER THAN BY A WRITTEN ADDENDUM ADDRESSED TO ALL PROPOSERS AND POSTED ON THE DISTRICT'S WEBSITE:

WWW.CLATSOPCARE.ORG.

WILL NOT BE BINDING ON THE DISTRICT, AND PROPOSERS SHALL NOT RELY THEREON.

E. AMENDMENT OF RFP BY ADDENDA ONLY

If any part of this RFP is amended, addenda will be published on the District's website (www.clatsopcare.org). Addenda may be downloaded from the District's website. Proposers should frequently check the District's website up to the date and time when Proposals are due, i.e., at least once weekly until the week the Proposals are due and at least once daily the week the Proposals are due. Each Proposer shall provide written acknowledgement of its receipt of all issued Addenda with its Proposal using the form attached as Appendix E.

F. ACCEPTANCE OF CONDITIONS AND CONTRACTUAL REQUIREMENTS

By submitting a Proposal, a Proposer expressly represents that the Proposer has read and understands the terms and conditions contained in this RFP, and that the Proposer agrees to be bound by such terms and conditions, including any and all changes to such terms and conditions contained in all written addenda.

A Proposer further represents that it takes no exception to any terms, conditions, obligations, or requirements of the form of modified AIA A133-2019 Standard Form of Agreement Between Owner and Construction Manager, the exhibits attached thereto, and

the modified AIA A201-2017 (collectively, the "Contract"), a copy of which is attached hereto as Appendix B.

The District may in its sole discretion negotiate any terms, conditions, obligations, or requirements of the Contract or of the form of Contract, but only to the extent the negotiated terms and conditions do not materially conflict with the applicable terms, conditions, obligations, or requirements of the form of Contract.

G. DURATION OF PROPOSALS

Any Proposal submitted shall be irrevocable and open for acceptance until the later of either: (1) the date when the District Board of Directors formally approves a Contract for provision of the Services; or (2) the District cancels this RFP. A Notice of Intent to Award the Contract to any Proposer shall not constitute a rejection of any other Proposal.

H. WITHDRAWAL OR MODIFICATION OF PROPOSALS

The District takes the proposal process seriously, and it is the District's intent to solicit Proposals that are accurate and that each Proposer intends to honor. Proposers are expected to submit Proposals that are accurate, complete, and responsive to the requirements set forth in this RFP. If after submitting a Proposal, the Proposer finds changes are necessary, the Proposer may change or withdraw their Proposal by delivering a written request to the District at any time prior to the time set for opening Proposals. The request shall be executed by a duly authorized representative of the withdrawing Proposer. However, AFTER THE OPENING, A PROPOSAL MAY NOT BE WITHDRAWN, CHANGED, OR ALTERED IN ANY WAY. If accepted, a Proposal is considered non-cancellable and the Proposer will be expected to honor a binding contract. If for any reason the Proposer does not perform, the District can be expected to take whatever action it believes appropriate, including, but not limited to, the disqualification of that Proposer from future public contracts.

I. PUBLIC RECORDS

This RFP, including all addenda, and one copy of each Proposal received in response to it, together with copies of all documents pertaining to the award of a contract, shall be kept by the District and made part of a file or record. Pursuant to ORS 279C.410, the District will open Proposals so as to avoid disclosing the contents of Proposals to competing Proposers during the negotiation process provided for in Section V.4.

If a Proposal contains any information that is considered a trade secret under ORS 192.345(2), each sheet of such information shall be marked with the following caption:

"This data constitutes a trade secret under ORS 192.345(2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192."

Sheets identified as containing trade secret information shall not contain non-trade secret material. A violation of this requirement shall result in the entire sheet being subject to

public disclosure. The District shall have no liability for the disclosure of trade secret material and especially so when the material is not properly marked or separated from non-trade secret material. Any Proposal marked as a trade secret in its entirety may be considered nonresponsive and may be rejected.

J. PROTESTING CONTENTS OF RFP

Any prospective Proposer who contends that the terms and conditions of this RFP, including but not limited to the Contract, or any aspect of the selection process: (1) will encourage favoritism in the award of the Contract; (2) will substantially diminish competition; (3) will violate any other statute, regulation (including, but not limited to, OAR Chapter 137), policy, or law of any kind; and/or (4) is ambiguous, insufficient, or unfair for any reason, must file a written protest to this RFP consistent with the procedures provided for in OAR 137-049-0260, as modified in this RFP. Protests must set forth the basis of the protest or request for clarification along with any proposed changes to the RFP provisions, specifications, or Contract terms. Any protest that does not meet these requirements will not be considered.

Protests must be received by the District no later than the time and date specified in the RFP Schedule, as modified by the District. Protests must be submitted to Mark Remley, Aidan Health Services, 8415 Seneca Street, #210, Tualatin, OR 97062. Failure to file a protest by the above-noted deadline will be deemed a waiver of any claim by a Proposer that the selection process violates any of the items (1)-(4) above.

The purpose of this protest/request for clarification procedure is to permit the District time to correct, prior to the submission of Proposals, aspects of this RFP or its procedures that may be improvident, be unlawful or unnecessarily restrict competition. This requirement is intended to eliminate, by permitting corrections prior to the submission of Proposals, the waste of resources and delay that may result from the untimely detection of errors in the RFP, possible protests and possible rejection of proposals. The District will consider each protest or request, will amend the RFP accordingly if warranted and will notify in writing each prospective proposer of any change. At its discretion, the District may extend the proposal closing date if the District determines an extension is necessary to consider the protest or request for clarification or change and to issue an addendum, if any, to this RFP.

K. PREVAILING WAGE RATES

The Contract resulting from this RFP solicitation procurement process will be a Contract for a public work subject to the state prevailing rates of wage under ORS 279C.800 to 279C.875. By submitting a proposal, a Proposer agrees, if awarded the Contract for this Project, to be bound by and will comply with the prevailing wage provisions. No proposal will be received or considered unless the Proposer so agrees to be bound. The CM/GC contract becomes 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, reconstruction, major renovation or painting of an improvement that is a public works or when the CM/GC contract enters the

construction phase, whichever occurs first. For example, the CM/GC will have a binding and enforceable obligation to perform or arrange for the performance of construction, reconstruction, major renovation or painting of an improvement after the public agency and CM/GC commit to the guaranteed maximum price. For purposes of this procurement, the CM/GC contract enters the construction phase when the agency first authorizes the performance of early construction, reconstruction, major renovation or painting work directly related to the improvement project. The publication entitled Definitions of Covered Occupations for Public Works Contracts in Oregon and the prevailing wage rate in effect at the time the CM/GC contract becomes a public works contract shall apply and the applicable prevailing wage rates must be included with the construction specifications for the CM/GC contract.

L. RESERVATION OF RIGHTS

The District reserves the right, in its sole discretion:

- to cancel, withdraw, postpone, extend, or amend this RFP, including but not limited to making such changes or corrections in plans, specifications or quantities as it may deem necessary or desirable prior to the Proposal due date;
- to extend the deadline for submitting Proposals;
- to determine whether a Proposal does or does not substantially comply with the requirements of this RFP;
- to suspend and terminate the procurement process or terminate evaluations of Proposals received;
- to waive any minor irregularity, informality, or nonconformance with this RFP;
- to obtain information from or provide information to other public agencies, upon request, regarding the Proposer's performance;
- to consider the competency and responsibility of Proposers and of their proposed suppliers, subcontractors, and subconsultants in making the award;
- to determine which, if any, Proposers will be interviewed;
- to seek clarifications regarding any Proposer's Proposal or request additional information necessary to evaluate, rank, and select a Proposer;
- to permit a Proposer to submit supplemental information;
- to determine whether the Evaluation Team should reconvene and collectively review the scoring, making changes as the Evaluation Team deems appropriate;
- to determine whether to negotiate with any Proposer or multiple Proposers in any manner necessary to serve the best interests of the District;
- at any time prior to the Contract execution (including after announcement of the apparent awardee):
    i. to reject any Proposal that fails to substantially comply with all prescribed RFP requirements and procedures and/or the prescribed public contracting procedures and requirements, including, but not limited to, the requirement to demonstrate the Proposer's responsibility under ORS 279C.375; and/or

ii. to reject all Proposals received and cancel this RFP upon a finding by the District that there is good cause therefore and that such cancellation would be in the best interests of the District;

- to hold meetings, exchange correspondence, and obtain data from any source or party, including a Proposer, to seek an improved understanding and evaluation of the Proposals;
- to negotiate the terms and conditions of the Contract, including, but not limited to, the Contract price, the construction schedule, and the quantities of supplies and materials to be provided in connection with the Services, in order to meet the District's expectations and in the best interest of the District;
- to make the award based on the District's best judgment as to which Proposal best meets the District's expectations of a program of the highest quality and innovation;
- in the event any Proposer or Proposers to whom the contract is awarded shall default in executing said formal contract or in furnishing satisfactory insurance coverage within the time and in the manner hereinafter specified, to re-award the contract to another Proposer or Proposers;
- to cancel the contract upon written notice at any time the District in its sole discretion determines that the provider is not meeting the needs of the District; and
- to make any and all amendments to the Contract within the scope of the Services solicited in this RFP.

ALL PROPOSERS WHO SUBMIT A RESPONSE TO THIS RFP UNDERSTAND AND AGREE THAT THE DISTRICT IS NOT OBLIGATED TO AWARD A CONTRACT TO ANY PROPOSER. THE DISTRICT HAS NO FINANCIAL OBLIGATION TO ANY PROPOSER. IN ADDITION, EACH PROPOSER UNDERSTANDS AND AGREES THAT THE DISTRICT SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES, EXPENSES, AND COSTS INCURRED IN SUBMITTING A PROPOSAL IN RESPONSE TO THIS RFP, ATTENDING ANY INTERVIEWS, AND NEGOTIATING A CONTRACT. EACH PROPOSER WHO SUBMITS A PROPOSAL IN RESPONSE TO THIS RFP DOES SO SOLELY AT THE PROPOSER'S OWN COST AND EXPENSE.

II. SCOPE OF WORK

A. OVERVIEW OF SERVICES REQUIRED

1. Scope of the Services. The Scope of Services is set out in the Contract.

III. PROPOSAL SPECIFICATIONS

A. PROPOSAL SPECIFICATIONS

1. Formatting Requirements. The following items explain the formatting requirements for Proposals. The District reserves the right to eliminate from consideration any Proposal received that does not follow this format.

    a. Proposals must be printed, computer generated, or typewritten on 8.5" x 11" paper, using both sides of the paper. All pages must be numbered. Margins must be at least 1/2" on all sides. Font size can be no smaller than 12-point type. Any pages failing to comply with these requirements will be counted as two pages for purposes of the page limit specified below.

    b. The submitted proposal shall include, but not be limited to, a divided and tabbed response to each of the items listed in Section IV, Part A, Sub-Part 2. This required format will provide the Proposers the best opportunity to compile their Proposal in a format that will be most easily understood and reviewed by the Evaluation Committee.

    c. Proposals must be limited to ten (10) pages. One side of a double-sided page counts as one page for purposes of this ten (10) page limit. The Proposer's cover letter, the front and back covers, section dividers, table of contents (if included), all forms requested by this RFP, and detailed resumes are exempt from the ten (10) page limit.

2. Other Requirements.

    a. Proposals must be submitted in the name of the legal entity registered with the State of Oregon, Corporations Division, to do business in the State of Oregon or an independent contractor.

    b. Proposals must include a title page that lists the Proposer's contact information.

    c. The original Proposal must bear an original signature signed in ink and dated by the Proposer or a representative legally authorized by the Proposer, further defined as follows:

        i. In the case of an individual Proposer, by such individual Proposer.

        ii. In the case of a partnership or limited liability partnership, the name of the partnership or limited liability partnership must appear on such Proposal and it shall be signed in the name of such partnership or limited liability partnership by at least one partner. In addition to such signature, the names of all partners shall be stated in the Proposal.

        iii. In the case of a limited liability company, the name of the limited liability company must appear on such Proposal and it shall be signed in the name of

such limited liability company by at least one member or manager. In addition to such signature, names of all members (and at least one manager, if applicable) shall be stated in the Proposal.

iv. In the case of a corporation, the corporate name must appear on such Proposal and it shall be signed by the president or other authorized officer, and there shall be set forth under the signature of such officer the name of the office he or she holds or the capacity in which he or she acts for such corporation.

"E-signed" Proposals may be rejected for failure to comply with this provision. The signature must clearly indicate the Proposer's intent to be bound by the terms and conditions specified in this RFP and its Proposal.

3. Means of Submission. One (1) original and seven (7) hard copies of the Proposal must be submitted in sealed packages or envelopes to Mark Remley, at Aidan Health Services, 8415 Seneca Street, #210, Tualatin, OR 97062. All packages and envelopes must be marked clearly with the note: "RFP—CM/GC Services, 3:00 p.m., December 10, 2026." Proposers shall also provide one courtesy copy of the Proposal in PDF format on a USB storage or similar flash storage device.

   NO ORAL, TELEPHONIC, ELECTRONIC, OR FACSIMILE PROPOSALS WILL BE ACCEPTED.

4. Deadline for Submission of Proposals. Proposals must be received by the time and date specified in the RFP Schedule, as modified by the District. Late Proposals or modifications will not be accepted.

5. Prohibition of Alterations. Proposals that are incomplete, or that contain any erasures, alterations, or that contain irregularities of any kind, or that are not in conformity with the law may be rejected by the District in its sole discretion or receive a lower rating in the evaluation process. A Proposer may not make its Proposal conditional or contingent upon the District's acceptance of any terms and conditions other than those contained in this RFP.

IV. PROPOSAL CONTENTS AND EVALUATION PROCESS

A. PROPOSAL CONTENTS

In addition to the specifications listed above, and in order to enable the District to determine a Proposer's ability to perform satisfactorily the Services, Proposals must include, at minimum, the following information relevant to the District's determination of the Proposer's responsibility, as set forth in ORS 279C.375, and the Proposer's qualifications:

1. Certifications and Acknowledgements

a. Proposals must include a certification by the Proposer of nondiscrimination in obtaining any required subcontractors in accordance with ORS 279A.110(4) (see Appendix C).

b. Proposals must include a statement as to whether the Proposer is a resident proposer as defined in ORS 279A.120 (see Appendix D).

c. Proposals must include written acknowledgement of Proposer's receipt of all issued addenda, unless the District otherwise specifies in the addenda (see Appendix E).

d. Proposals must include written acknowledgement of Proposer's agreement to be bound by the state prevailing rates of wage under ORS 279C.800 to 279C.875 (see Appendix F).

2. Description of Qualifications

Each Proposal must contain a narrative description that conveys, at a minimum, the following information:

a. Firm's Background: Prior Experience (if Proposer is a joint venture, provide this information for each of the firms involved)

i. Provide your firm's name, address, phone and fax numbers.

ii. Provide the name of the contact person submitting the Proposal.

iii. Provide a brief overview of your firm, including number of years in continuous operation, your annual gross dollar volume of work for last three (3) years, anticipated volume of work for this year, current company construction capabilities (types of work in which firm specializes, preferred range of job size, etc.) and names of all persons with an ownership interest in the firm. List primary bank, insurance underwriters, accounting firm and legal firm references currently used by company.

iv. Provide the names and addresses of any of your firm's clients or any other persons or entities who have made claims against your firm within the last five (5) years alleging that your firm breached a contract for services, was negligent in performance of services, or otherwise caused harm or damage to the claimant. Describe the nature and current status of the claims. Claims should be fully disclosed regardless of whether they involved litigation, arbitration or other formal or informal dispute resolution process. The disclosures required under this provision also apply to any claims arising out of services of any principal or officer of your firm or any member of the project team regardless of whether the person was associated with your firm at the time of the claim.

v. Indicate whether your firm or any personnel have been involved in any litigation, arbitration or mediation, either as defendant or plaintiff, over the

five (5) years immediately preceding the closing date of the RFP. If your firm or any personnel has been involved in any such litigation, arbitration or mediation, provide a general description of the cause or nature and status of each case or claim, and the identity of the client.

vi. Indicate whether your firm has ever been terminated from a project. If so, include the name(s) and address(es) of the client(s) and the nature of the termination.

b. Project Team and Staffing

i. Describe current work load and priority of providing the Services as it relates to overall work load.

ii. Provide a chart showing all proposed preconstruction and construction phase staff for the Project (down to the superintendent level). Indicate your company's commitment to assign these personnel to the Project through its completion.

iii. For each individual listed on your proposed organizational chart, provide a resume and include at least two client references (including name and current telephone number) for the proposed individuals.

iv. State whether your firm is capable of performing all Services described in this RFP and other Services recommended in the Proposal. If your firm intends to subcontract any of the Services to other consultants, the Proposal shall identify those consultants and describe the consultants' experience in providing the type of Services covered by this RFP.

v. If your firm has multiple locations, please identify the offices in which the various personnel resources will originate.

vi. State as a percentage the approximate amount of time the project manager and superintendent will devote to this Project (i.e., 50%, 100%, etc.). Additionally provide a staffing plan indicating how you will manage and supervise this Project.

c. Related Experience

i. Provide an overview of up to five (5) public improvement projects recently completed. If your project history does not include many public improvement projects, list and briefly describe up to five (5) projects of comparable size to the proposed Project. For each of the five (5) projects provide information as follows:

a) Brief description of the project;
b) Brief description of preconstruction services provided, if any;
c) Owner's name and the name of an individual employed by the owner, along with his or her current contact information;
d) Architect's name and current telephone number;
e) Name and role of personnel proposed for this Project that

were involved with the past project;
f) Location of the project and completion date;
g) Final contract amount and total amount of Change Orders;
h) Originally scheduled and final completion dates; and
i) Total value of project claims that were litigated or arbitrated.

ii. Briefly discuss your firm's experience completing projects with a similar schedule for completion as this Project. Describe what specific challenges you faced and how you dealt with them.

iii. Provide a listing of all of your firm's lost or discontinued accounts in the State of Oregon within the last five (5) years.

d. Proposer Integrity

i. Indicate whether your firm, or any person having influence or control over your firm, has committed a violation of state environmental laws; has previously made false certifications made to a Contracting Agency; or has been convicted of any offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Proposer's performance of a contract or subcontract.

ii. Review of and determinations regarding your firm's integrity will be made pursuant to the process set forth in OAR 137-049-0370.

e. Overall Project Approach

i. State what Project cost control, quality control and schedule control mechanisms you intend to use on this Project.

ii. If your firm believes there are additional services not identified in this RFP that are necessary for successful completion of the Project, your firm's Proposal should include a description of the additional services recommended by your firm, describe how the additional services would benefit the District, describe your firm's ability to provide the additional services, and propose a cost for providing the additional services.

iii. Identify those portions of the Services, if any, your firm intends to self-perform.

f. Availability to and Familiarity with the District Locale

i. Describe your firm's experience with CM/GC services that are unique to the Project location, including but not limited to; soil conditions, climate, and weather-related considerations and how you will use that experience to benefit this Project.

ii. Provide information regarding your firm's knowledge of the local area and the unique aspects of the region and community that will influence your process.

iii. Discuss any previous experience your firm has providing CM/GC services in Western Oregon or Western Washington and how that experience will influence your approach to this Project.

g. References

i. Provide a listing of all public agencies, if any, and entities in the state of Oregon for whom your firm currently provides CM/GC services. This listing must include a contact name and phone number.

ii. Provide contact information for each any other project appropriate for use as a reference.

h. Cost of Services

i. Present a proposed "Construction Manager's Fee" percentage amount as that term is defined in the Contract. The fee proposal shall be submitted on the form set forth as Appendix G. The Cost Responsibility Matrix summarizes the descriptions of the Cost of the Work and Construction Manager's Fee items (as those terms are defined in the Agreement). Please also refer to the Agreement for more information.

ii. Present a Guaranteed Maximum Price for Preconstruction Services based on the estimated Cost of the Work plus the Construction Manager's Fee. The Proposer shall state its proposed Guaranteed Maximum Price for performing all Preconstruction Services described in the Contract. The proposed amount should reflect the Proposer's good-faith estimate of the reasonable value and anticipated cost of providing the required Preconstruction Services.

a. The Evaluation Committee will evaluate both the amount of the proposed Guaranteed Maximum Price for Preconstruction Services and its reasonableness. The lowest proposed fee will not necessarily receive the highest score. In evaluating price reasonableness, the Evaluation Committee may consider the proposed fees submitted by other Proposers; the scope, level of effort, staffing, and services proposed; the District's estimate or other information concerning the anticipated cost or market value of comparable preconstruction services; historical pricing for similar services; and any other information reasonably relevant to determining whether the proposed fee reflects a fair and reasonable price for the required services.

b. For purposes of scoring, the District's objective is to identify the proposal offering the most reasonable and credible Guaranteed Maximum Price for the required Preconstruction Services, not necessarily the proposal offering the lowest price.

c. **A nominal, zero-dollar, or materially below-market Guaranteed Maximum Price for Preconstruction Services will not receive additional scoring advantage merely because it is the lowest amount.** If the Evaluation Committee determines that a proposed fee does not reasonably reflect the anticipated cost or value of the required

Preconstruction Services, the Evaluation Committee may reduce the points awarded for this criterion.

i. Approach to Schedule and Budget

i. Proposing firms should include in their proposals a detailed description and explanation of your firm's established and proposed approaches, mechanisms and programs to control (a) the Cost of the Work (as that term is defined in the Contract) and (b) the conformance of the performance of the work to the project schedule. In so doing, each firm should identify in its proposal potential problems and challenges as well as potential opportunities for achieving savings in the Cost of the Work and early completion of the work. Each proposal also should provide recommendations for minimizing or overcoming such problems and challenges and for maximizing such opportunities.

3. Proof of CCB Registration. Proposers must provide with their response to this RFP proof of current registration with the Oregon Construction Contractor's Board ("CCB"). FAILURE TO PROVIDE THE INFORMATION CALLED FOR IN THIS PARAGRAPH MAY, AT DISTRICT'S DISCRETION, CAUSE THE CONTRACTOR'S PROPOSAL TO BE REJECTED. Note: Proposers must actually be registered with the CCB and must not be listed by the CCB as disqualified from holding a contract for a public improvement at the time of submitting their Proposals. THE DISTRICT MAY NOT RECEIVE OR CONSIDER A PROPOSAL UNLESS THE PROPOSER IS LICENSED BY THE CONSTRUCTION CONTRACTORS BOARD.

4. Surety Letter of Intent. Proposers must submit a letter of intent to issue performance and payment bonds in the form set forth as Exhibit D to the Contract to the Proposer from a surety. The letter shall confirm the Proposer's ability to secure bonds with a penal sum of not less than $34,000,000. The letter of intent may be submitted by a third-party representative of the surety so long as the Proposer includes with the letter of intent evidence of the third party's authority to make the representations on behalf of the surety.

5. Proposers must clearly indicate within their Proposal any exceptions or recommended adjustments to the requested time frames or to the statement of services.

B. EVALUATION

1. Opening of Proposals. Proposals received in response to this RFP will be opened by the District at 10:00 a.m. at Clatsop Care Memory Community, 2219 SE Dolphin Avenue, Warrenton, OR 97146, at the time and date specified in the RFP Schedule, as modified by the District. Proposers who wish to be present at that time will be informed of the number and names of Proposers. No other information will be made available at that time.

2. Evaluation Process. Each Proposal will be subjectively evaluated by an evaluation team appointed by the District (the "Evaluation Team"). The Evaluation Team will score the Proposal based on its assessment of the requested Proposal contents. Those Proposals submitted that do not meet mandatory requirements outlined in this RFP may, in the District's sole discretion, be rejected or receive a lower rating in the evaluation process. A Proposal submitted by a Proposer determined to be not responsible shall be rejected.

   The District may request supplemental information from a Proposer concerning the Proposer's ability to perform the Services. If a Proposer fails to provide supplemental information promptly after receiving a written request from the District, the District may, in its sole discretion, refuse to consider the Proposer's proposal.

   The role of the committee shall include a complete review of all Proposals submitted and may include conferring with references provided by the Proposer(s). It may also involve interviews with selected Proposer(s) to review and discuss their Proposals and the Services. The District Board ("Board of Directors") will make the final decision about which firm will be awarded the Contract.

   In the event the District receives two or more Proposals that are identical in terms of fitness, availability, and quality, preference will be given to Proposers residing in Oregon in accordance with ORS 279A.120. In the event that this does not resolve the tie among Proposers, the Evaluation Committee may reconvene and review the scoring, making changes as the Evaluation Committee deems appropriate until a candidate is selected.

3. Scoring System. Proposals will be evaluated using the categories and scoring indicated below. The final score will be calculated by computing an average of the total Evaluation Team's scores.

   a. Background (5 Points)
   b. Project Team & Staffing (20 Points)
   c. Related Experience (20 Points)
   d. Proposer Integrity (5 Points)
   e. Overall Project Approach (10 Points)
   f. Approach to Schedule and Budget (5 Points)
   g. Availability to and Familiarity with the District Locale (15 Points)
   h. References (5 Points)
   i. Cost of Services (15 Points)

4. Interviews. Proposers may receive a request for an interview that may be conducted as scheduled by the District. The District retains sole discretion to determine which Proposers, if any, will be interviewed and the number of interviews, if any, to be conducted. Interviews, if conducted, will not be scored; however, the Evaluation Team may reconvene and re-evaluate any interviewed Proposers and adjust the ranking of the Proposals as warranted. There is no guarantee of an interview for any one Proposer or all Proposers.

5. Investigation of References. The District reserves the right to investigate the references and past performance of any Proposer with respect to its successful completion of similar projects, compliance with contractual obligations and specifications, and lawful payments of suppliers, contractors, and workers. The District may postpone the award or execution of the Contract after the announcement of the apparent successful Proposer in order to complete the investigation.

6. Applicable Preferences. In its evaluation of Proposals, the District will apply preferences for: Oregon goods and services, as required by ORS 279A.120; the use of recycled materials, as required by ORS 279A.125; and the performance within the state of public printing, binding, and stationery work, as required by ORS 282.210.

7. Price. The District retains the right to negotiate price and terms with top-ranked Proposers. Any unspecified costs shall be borne by the Proposer.

8. No Communications with Evaluation Team. Evaluation Team members may not be contacted or solicited by any firm or individual submitting Proposals, with the exception of the communications expressly authorized in this RFP for purposes of seeking clarification or submitting a protest.

V. SELECTION AND PROTEST OF AWARD

1. Selection of Award. Based on the Evaluation Team's scoring, a recommendation regarding the award of the Contract will be made to the Board of Directors. The final decision regarding award of the contract will be made by the Board of Directors. The Contract will be awarded to the Proposer who submitted the proposal that the District determines to be the most advantageous to the District based on the evaluation process and the evaluation factors described in this RFP.

2. Notification of Non-Acceptance. All Proposers not initially selected will be notified of the District's decision by receiving a copy of the Notice of Intent to Award sent to the selected Proposer. After the District and the successful Proposer have executed the Contract, any Proposer may review the evaluation documentation, except for information that the District determines to be exempt from disclosure under the Oregon Public Records Law, ORS Chapter 192. In the event an unsuccessful Proposer requests a meeting to discuss the procurement no later than the time and date specified in the RFP Schedule, as modified by the District, the District will meet with the unsuccessful Proposer within ten (10) days of receiving the Proposer's request.

3. Protest of Award. If there are disagreements with the outcome or questions regarding the selection process, adversely-affected or aggrieved Proposers must submit protests in writing to Mark Remley, at Aidan Health Services, 8415 Seneca Street, #210, Tualatin, OR 97062. Such protests must be received by the District no later than the time and date specified in the RFP Schedule, as modified by the District.

Protest procedures are set forth in OAR 137-049-0450 and this RFP. Such protests shall specify the grounds for the protest to be considered by the District. To be an adversely-affected or aggrieved Proposer, the Proposer must demonstrate that but for the District's (a) error in failing to reject a non-responsive higher-ranked Proposal, (b) substantial violation of a provision in the RFP or applicable procurement statute or administrative rule, or (c) error in evaluating and scoring the protesting party's Proposal, the protesting party would have been awarded the Contract. No protest of the award of the Contract shall be considered if submitted after the deadline established for submitting such protest. At the request of the protester, a hearing will be conducted before the District staff within seven (7) calendar days after submission of the written protest. The District will either uphold or deny the protest, and a written response will be issued for all properly submitted protests. All such rulings shall be final. If the protest is denied, the District will proceed to award the Contract.

During the resolution of the protest, the District has the right and ability to continue negotiations with the selected Proposer, though contract execution may be delayed until resolution of the protest. If the protest is not resolved at the time when the contract is ready to be executed, the District Administrator may authorize the execution of interim 30-day letter agreements for a limited scope of the services with the selected Proposer. The District will not consider a protest of award submitted after the protest submission deadline.

4. Negotiation and Final Award. Final award will be subject to execution of the Contract. Negotiation of the Contract may, at the District's discretion and to the fullest extent permitted by law, include any aspect of the Proposal, this RFP, or the Contract. The District reserves the right to negotiate a final Contract that is in the best interest of the District. Award of the Contract may be withdrawn if the Contract negotiations are not concluded in time to execute a Contract by 60 days after the closing date.

   If the District and the Proposer initially selected are unable to negotiate a Contract, the District reserves the right to select another Proposer and negotiate a Contract with that Proposer.

Attachments:

Project Description (Appendix A)
Illustrative Slides (Appendix A-1)
Form of the Agreement (Appendix B)
Certificate of Nondiscrimination (Appendix C)
Proposer Residency Statement (Appendix D)
Acknowledgement of Addenda (Appendix E)
Acknowledgement of Prevailing Wage Rates (Appendix F)
Form of Fee Proposal (Appendix G)
Cost Responsibility Matrix (Appendix H)

Appendix A

PROJECT DESCRIPTION

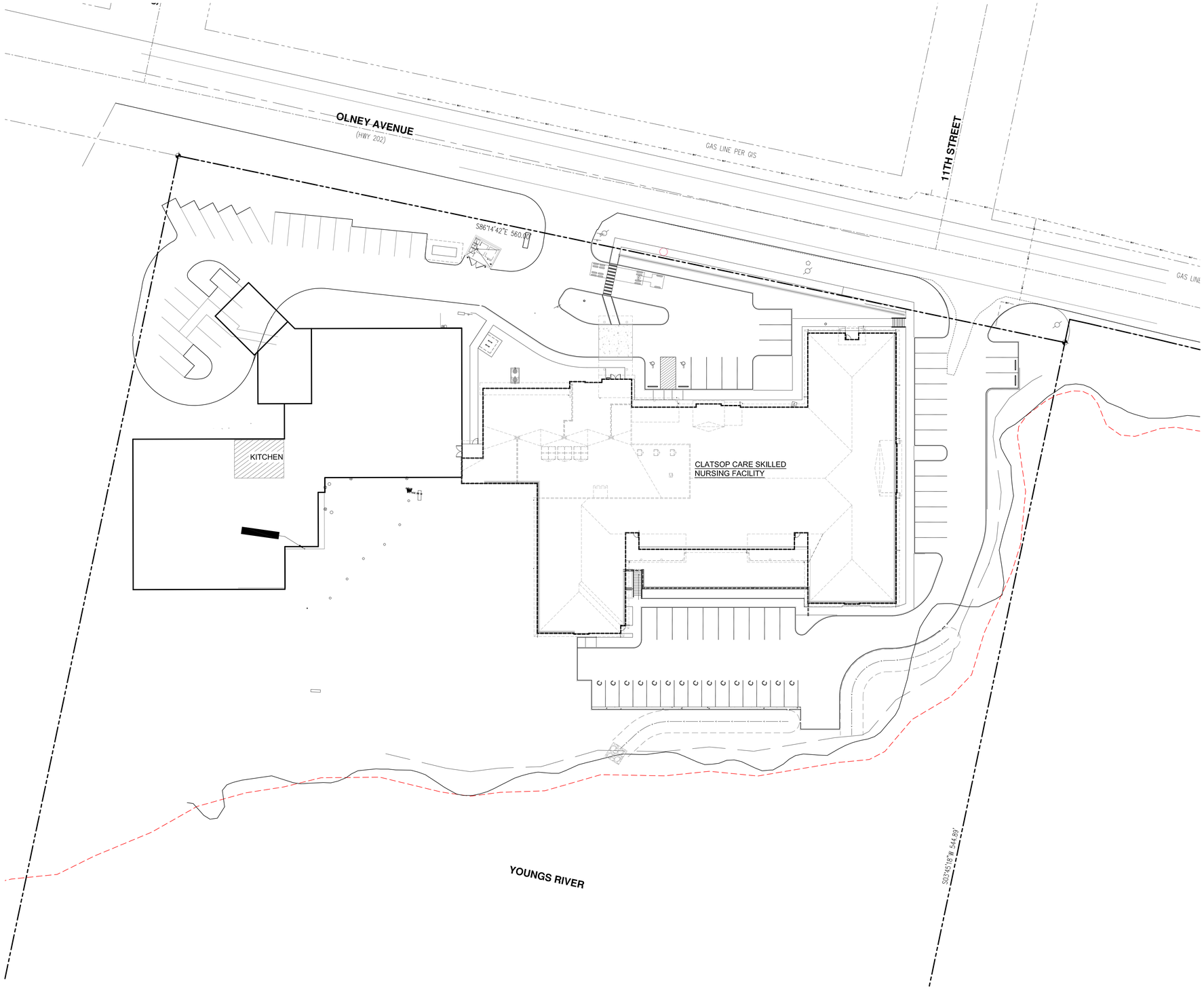
The building will be constructed on a vacant 3+ acre parcel at 947 Olney Avenue, Astoria adjacent to the existing Clatsop Care Retirement Village. The project includes a building pad and foundation, paved parking, utilities, landscaping, and stormwater infrastructure. Site work includes demolition of existing outbuildings and pavement. The new two story, approximately 37,000 sf building is currently planned to contain 44 Suites, (44 beds), servicing patients and their families, full commercial kitchen and dining room, administrative offices, and support space.. It has a primary occupancy classification of I-2 and will be wood framed type V-A construction with an NFPA -13 automatic sprinkler system. The building will be attached to the existing Retirement Village structure.

The District has selected Lenity Architecture, Inc. and its consultants as the Architectural team. They will collaborate with the CM/GC selected from this RFP, the Owner and the Owner's Representative, to form a complete project team. Successful collaboration between all parties will be crucial to achieve the desired design, stay within budget and schedule, and maintain high-quality construction and safety standards.

Following is a link to the 70% design development drawings for more information: https://www.dropbox.com/scl/fi/ghhjq192ez9mt9lj2tvbq/Clatsop-Care-DD-set-12-19-25.pdf?rlkey=qyn3567salgeo48xq0rnwyi4c&st=fsl1l3e5&dl=0.

Appendix A-1

ILLUSTRATIVE SLIDES



SITE PLAN - OVERALL
1" = 30'

0 15 30 60 90

lenity
architecture, inc.
1055 Commercial Street SE, Salem Oregon 97302
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SKILLED NURSING
BUILDING ADDITION
947 OLNEY AVE, ASTORIA, OR 97103

SITE PLAN
OVERALL

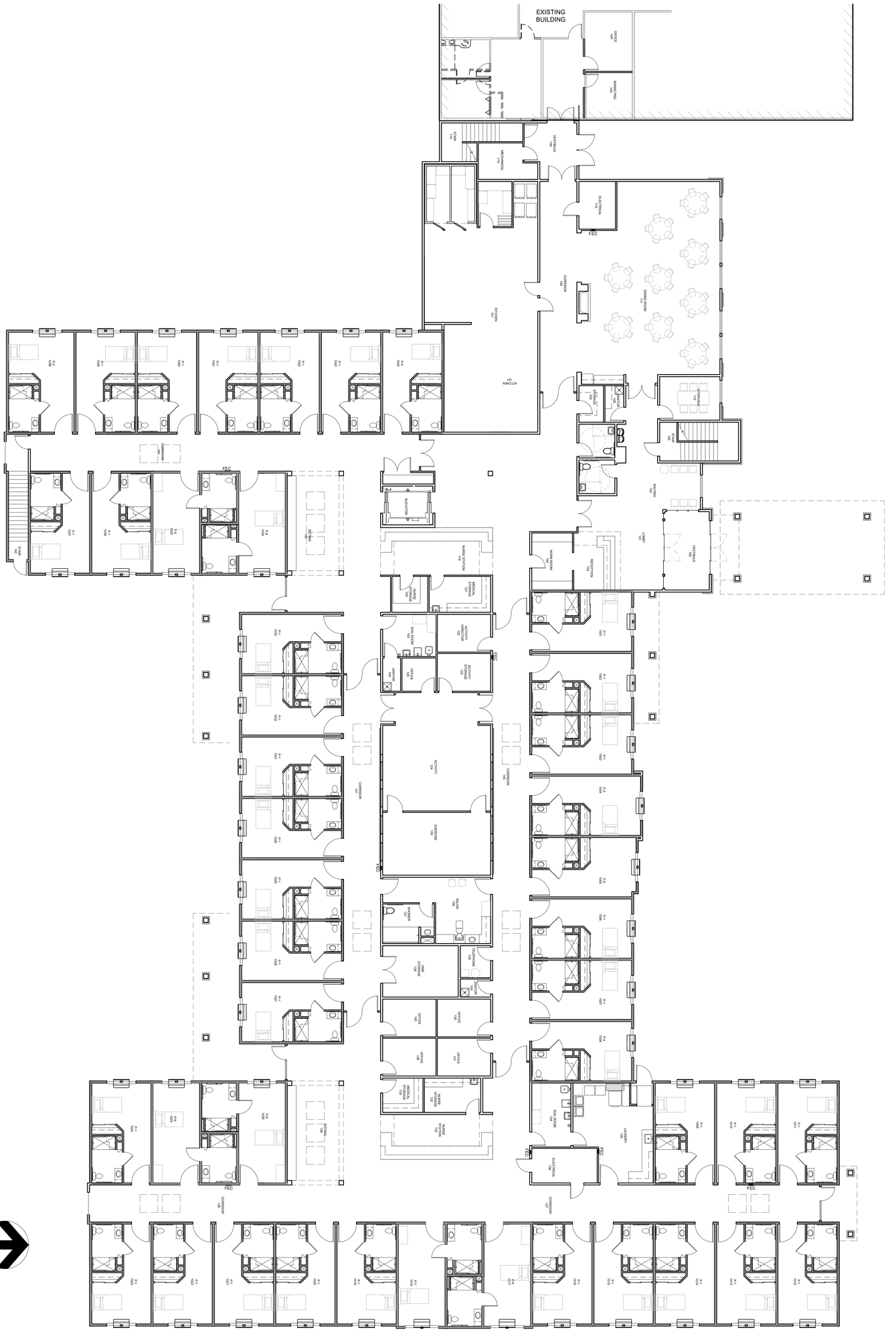
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1 A3.1 OVERALL FLOOR PLAN
SCALE: 3/32" = 1'-0"

7/7/26

SHEET	REVISED DATE	DATE
A3.1		

PRELIMINARY FLOOR PLAN

CLATSOP CARE
SKILLED NURSING
BUILDING ADDITION
947 OLNEY AVE, ASTORIA, OR 97103

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1 A3.2 SECOND FLOOR PLAN
SCALE: 3/32" = 1'-0" 7/7/26

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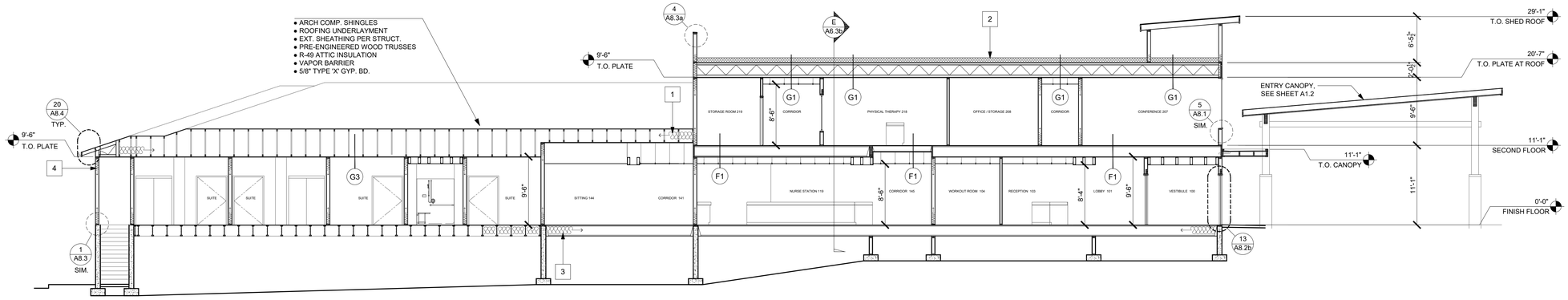
PRELIMINARY
SECOND FLOOR

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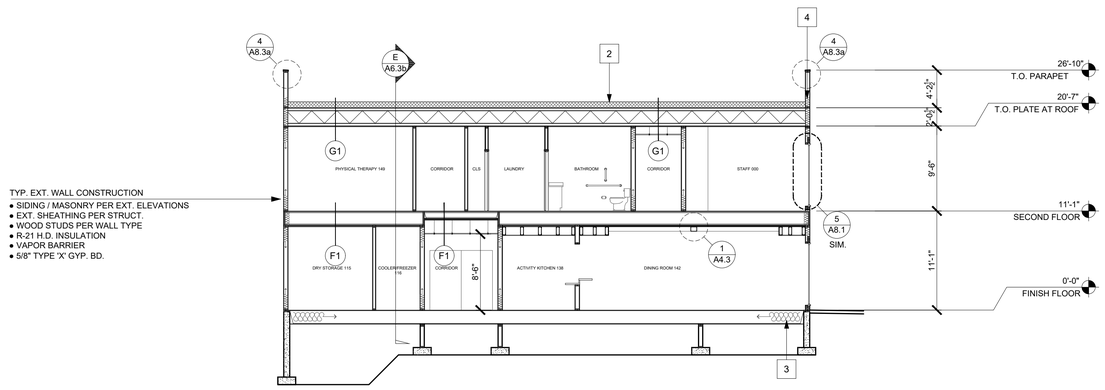
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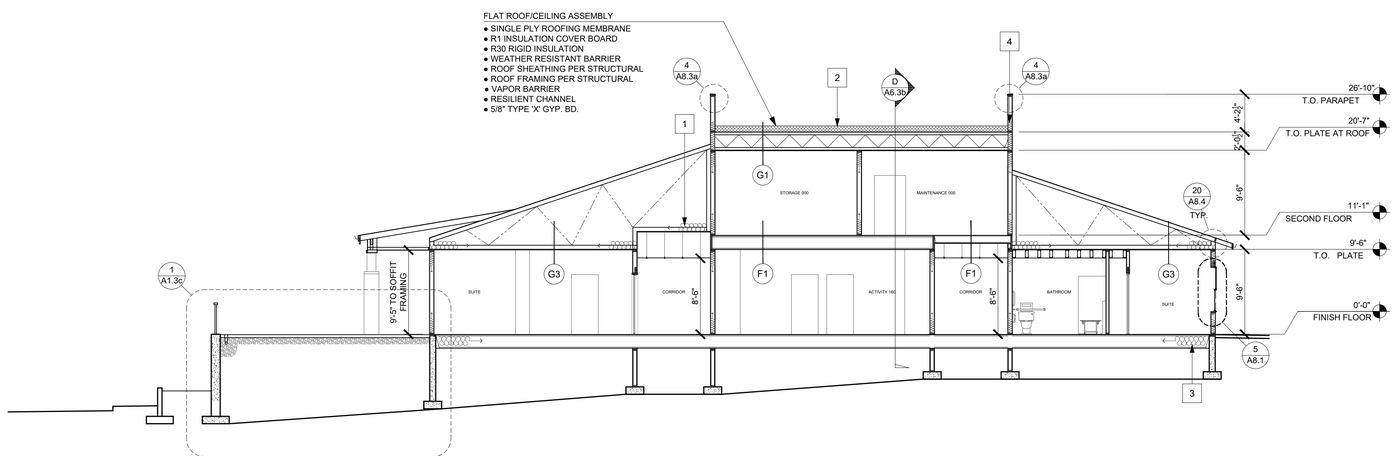
A A6.3 SECTION A

SCALE: 1/8" = 1'-0"



B A6.3 SECTION B

SCALE: 1/8" = 1'-0"



C A6.3 SECTION C

SCALE: 1/8" = 1'-0"

INSULATION VALUES

KEY:	'R' VALUE AND LOCATION
1	R-49 BLOWN-IN INSULATION AT ATTIC TYP. U.O.N.
2	R-30 CONTINUOUS INSULATION ENTIRELY ABOVE ROOF DECK TYP. U.N.O.
3	R-30 BATT INSULATION FIT BETWEEN FLOOR JOIST TYP. U.N.O. PROVIDE PERMANENT SUPPORT 24" O.C.
4	R-21 BATT INSULATION AT EXTERIOR WALL TYP. U.N.O.

-DOOR U-VALUE: OPAQUE DOORS U-0.37
-ENTRANCE DOOR U-VALUE: 0.63, SHGC - 0.33
-FIXED WINDOW U-VALUE: 0.36, SHGC - 0.36
-OPERABLE WINDOW U-VALUE: 0.45, SHGC - 0.33

NOTE:
ALL WALL, FLOOR AND CEILING TYPES ARE ON G3.0a, G3.0b, AND G3.0c.

LEGEND

E — CONSTRUCTION ASSEMBLY REFERENCE
REFER TO G SHEET SERIES

- / - — DETAIL NUMBER / SHEET NUMBER

GENERAL NOTES:

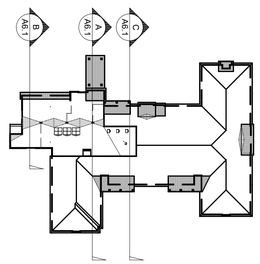
1. REFER TO FOUNDATION PLANS FOR FOUNDATION TYPE, SLAB THICKNESS, FOOTING LOCATIONS.
2. REFER TO FRAMING PLANS FOR PROPER STRUCTURAL MATERIALS, SIZE, ORIENTATION, AND LOCATION.
3. COORDINATE ALL MECHANICAL, STRUCTURAL AND PLUMBING WITH FRAMING (TYP.)

WRB NOTE:
WRAP ENTIRE EXTERIOR OF BUILDING WITH (2) LAYERS (WRB) WEATHER RESISTIVE BARRIER PER MANUFACTURER'S RECOMMENDATIONS. ALL VERTICAL JOINTS TO BE LAPPED AND TAPED PER REQUIREMENTS OF BUILDING WRAP MANUFACTURER.
ALL HORIZONTAL JOINTS TO HAVE ¼" TO ½" BEAD OF SEALANT APPLIED TO THE LOWER COURSE OF THE BUILDING WRAP. MAKE SURE THE HORIZONTAL OVERLAP OF THE UPPER BUILDING WRAP IS AT LEAST 2". APPLY HAND PRESSURE TO THE OVERLAP TO CREATE A FULL SEAL. SYSTEM MUST BE INSTALLED IN ACCORDANCE WITH MANUF. INSTALLATION INSTRUCTIONS TO PROVIDE 10 YR. WARRANTY TO GENERAL CONTRACTOR.

STONE/MASONRY VENEER NOTE:
STONE MASONRY VENEER SYSTEM AND DETAIL IS TO BE PER PRODUCT MANUFACTURER'S SPECIFICATIONS. THE VENEER SYSTEM PROVIDED SHALL BE WARRANTED AS A COMPLETE WEATHER BARRIER INCLUDING MOISTURE PENETRATION. STONE/MASONRY VENEER REPRESENTATIONS ON THESE DOCUMENTS ARE FOR LOCATION AND AESTHETIC EFFECT ONLY AND ARE NOT INTENDED AS APPLICATION DETAILS. MANUFACTURER AND INSTALLER ARE RESPONSIBLE FOR JOINT, CAULKING, FLASHING, CONNECTIONS TO DISSIMILAR MATERIALS, COMPATIBILITY WITH DISSIMILAR MATERIALS AND ALL OTHER APPLICATION AND CONNECTION DETAILS NEEDED FOR PRODUCT PERFORMANCE AS A COMPLETE WEATHER BARRIER SYSTEM WITH NO SUBSTRATE DAMAGE.

STONE/MASONRY TO BE APPLIED OVER FIRST 2 COATS OF STUCCO FINISH. STUCCO TO ADHERE TO "STUCCO SYSTEM NOTE". HORIZONTAL AND VERTICAL JOINTS TO CONTINUE BEHIND STONE. LATH TO BE OF A GAUGE SUFFICIENT TO HOLD THE ADDED WEIGHT OF THE VENEER.

SHEET METAL FLASHING NOTE:
THE SHEET METAL ASSEMBLIES PROVIDED SHALL BE WARRANTED AS A COMPLETE WEATHER BARRIER SYSTEM INCLUDING MOISTURE PENETRATION. SHEET METAL REPRESENTATIONS ON THESE DOCUMENTS ARE FOR LOCATION AND AESTHETIC EFFECT ONLY AND ARE NOT INTENDED AS APPLICATION DETAILS. FABRICATOR AND INSTALLER ARE RESPONSIBLE FOR JOINT CAULKING, FLASHING, CONNECTIONS TO SIMILAR MATERIALS, COMPATIBILITY WITH DISSIMILAR MATERIALS, AND ALL OTHER APPLICATION AND CONNECTION DETAILS NEEDED FOR PRODUCT PERFORMANCE AS A COMPLETE WEATHER BARRIER WITH NO SUBSTRATE DAMAGE SYSTEM. ALL SHEET METAL COPINGS, FLASHING, AND TRIMS ARE TO BE FABRICATED AS RECOMMENDED BY THE ARCHITECTURAL SHEET METAL MANUAL, 7TH EDITION. IT WILL BE THE RESPONSIBILITY OF THE FABRICATOR/INSTALLER TO SUBMIT SHOP DRAWINGS FOR ALL SHEET METAL WORK TO ARCHITECT FOR REVIEW AND APPROVAL PRIOR TO FABRICATION.



ELEVATION KEY

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BUILDING ADDITION
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BUILDING SECTIONS

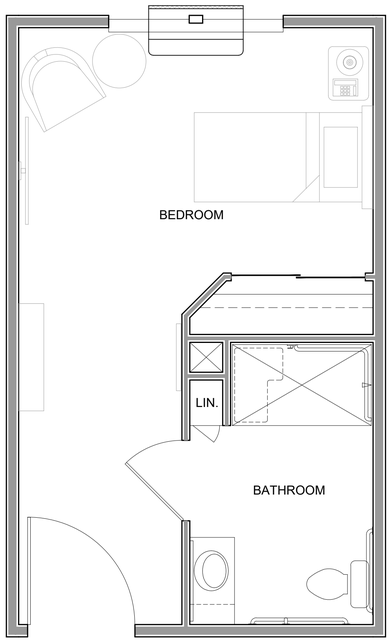
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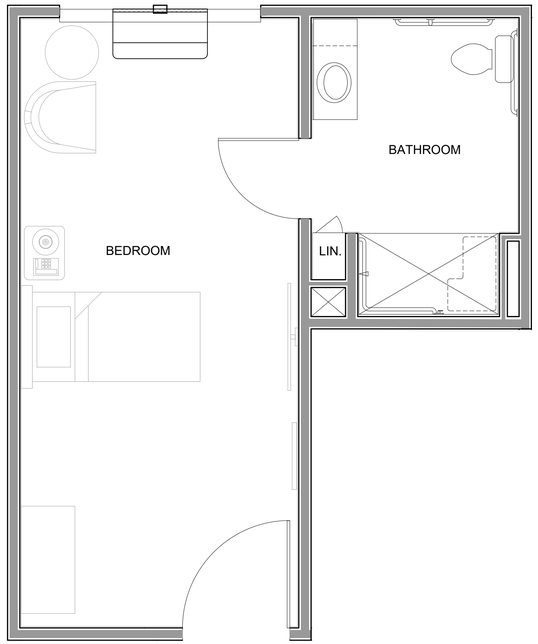


SUITE TYPE P1

SCALE: 3/8"=1'-0"

(SUITES P-2 THROUGH P-5 ARE SIMILAR)

TOTAL AREA: 293 S.F.
BATHROOM: 74 S.F
SUITE: 219 S.F.



SUITE TYPE P6

SCALE: 3/8"=1'-0"

(SUITES P-7 THROUGH P-9 ARE SIMILAR)

TOTAL AREA: 328 S.F.
BATHROOM: 89 S.F
SUITE: 239 S.F.

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CLATSOP CARE
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947 OLNEY AVE, ASTORIA, OR 97103

SUITE TYPES

DATE

REVISED DATE

SHEET
-

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Appendix B

FORM OF THE AGREEMENT

DRAFT

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 «2027»
(In words, indicate day, month, and year.)

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

Clatsop Care Center Health District
646 16th Street
Astoria, Oregon 97103

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

« »« »
« »
« »
« »

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

Skilled Nursing Facility
Astoria, Oregon

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

Lenity Architecture, Inc.
1055 Commercial Street SE
Salem, Oregon 97302

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.

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.

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User Notes: (1278847341)

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4 OWNER'S RESPONSIBILITIES

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6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES; LIQUIDATED DAMAGES

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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

DRAFT

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.")

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

The Project consists of a new skilled nursing facility.

§ 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.)

The skilled nursing facility will be constructed on a vacant 3+ acre parcel at 947 Olney Avenue, Astoria adjacent to the existing Clatsop Care Retirement Village. The Project includes a building pad and foundation, paved parking, utilities, landscaping, and stormwater infrastructure. Site work includes demolition of existing outbuildings and pavement. The new two story, approximately 37,000 sf building is currently planned to contain 44 Suites, (44 beds), servicing patients and their families, full commercial kitchen and dining room, administrative offices, and support space.. It has a primary occupancy classification of I-2 and will be wood framed type V-A construction with an NFPA -13 automatic sprinkler system. The building will be attached to the existing Retirement Village structure.

§ 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.)

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« »

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

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

« »

§ 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.)

«Not applicable.»

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

« »

§ 1.1.6.1 [Intentionally deleted.]

§ 1.1.7 Other Project information:

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

§ 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.)

«Lenity Architecture, Inc.
1055 Commercial Street SE
Salem, Oregon 97302»

§ 1.1.10 The Owner shall retain the following consultants and contractors:
(List name, legal status, address, and other contact information.)

§ 1.1.11 The Architect's representative:
(List name, address, and other contact information.)

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§ 1.1.12 The Construction Manager identifies the following Representative in accordance with Article 3:
(List name, address, and other contact information.)

« »
« »
« »
« »
« »
« »

The Construction Manager's Representative shall not be replaced without the consent of the Owner. If the Owner approves replacement of the Construction Manager's Representative, the Owner shall have the right to approve the replacement Construction Manager's Representative. The Owner shall have the right, which shall be exercised in a reasonable fashion, to require replacement of the Construction Manager's Representative.

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services:
(List any Owner-specific requirements to be included in the staffing plan.)

« »

§ 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 other Sections of this Agreement, including but not limited to Section 3.3.2.1 and the General Conditions. »

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

« »

§ 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.

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, General Conditions, Drawings, Specifications, Addenda (but only those Addenda issued prior to the execution of this Agreement), other documents listed in this Agreement, and Modifications issued after execution of this Agreement. A "Modification" is (1) a written amendment to the Contract signed by both parties (including but not limited to the Guaranteed Maximum Price Amendment ("GMP Amendment")), (2) a Change Order signed by both parties or (3) a construction change directive issued by Owner (a "Construction Change Directive") or (4) a written order for a minor change in the Work issued by the Architect. Upon the Construction Manager's and Owner's execution of the GMP Amendment, the Contract Documents will also include the documents incorporated by reference in the GMP Amendment. The Contract Documents form the Contract for Construction (the "Contract") and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior and contemporaneous negotiations, representations or agreements, either written or oral. Any conflicts, inconsistencies, discrepancies or ambiguities between or among the Contract Documents will be resolved as set forth in Sections 1.2.4 and 1.2.5 of the General Conditions.

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§ 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 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; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required 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 The general conditions of the Contract shall be as set forth in A201–2017, as modified (the "General Conditions"), which document is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

§ 2.4 The Owner's Reliance on the Construction Manager and the Subcontractors

The Owner and Construction Manager acknowledge and agree that (1) all Work performed by the Construction Manager and Subcontractors at all tiers shall be performed in the interests of the Owner and for its benefit, (2) the Construction Manager and Subcontractors at all tiers are authorized by the Owner to exercise their own independent, professional and trade judgments in performing their contractual obligations pursuant to this Section 2.4 on behalf of the Owner, (3) the Owner will be relying on the Construction Manager and Subcontractors at all tiers to perform their obligations consistent with this Section 2.4, and (4) as a result, the Construction Manager and Subcontractors at all tiers shall owe a duty to the Owner to exercise reasonable care and to avoid negligence in performing their obligations under the Contract and on the Project. The Construction Manager shall incorporate and shall cause to be incorporated into all subcontracts with Subcontractors a provision equivalent to this Section 2.4.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall fully execute the Work described in the Contract Documents and incidental, necessary and reasonably inferable therefrom, except as specifically indicated in the Contract Documents to be the responsibility of others. The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the General Conditions. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3 and in the General Conditions. 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.

§ 3.1 Preconstruction Phase

§3.1.0 The date of commencement of the Preconstruction Services shall be the date of this Agreement. The Construction Manager shall perform Preconstruction Services diligently and continuously until either the Construction Manager's commencement of construction or the Owner's termination of the Contract, at which time the Construction Manager's performance of Preconstruction Services shall be deemed completed.

§ 3.1.1 Extent of Responsibility

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 in writing 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.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct 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. 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

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construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

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

§ 3.1.3.4 The Construction Manager shall review and advise on the Drawings and Specifications as they are developed, and periodically released, regarding completeness and clarity, suitability for supporting proper cost estimating, suitability for proper bidding, constructability and work sequence issues, and impact to the Project schedule.

§ 3.1.4 Project Schedule

The Construction Manager shall prepare and periodically update a Project schedule using the critical path method for the Architect's and Owner's review. 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 could affect the Project's timely completion. The 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 well in advance of construction; and the occupancy requirements of the Owner.

§ 3.1.5 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues. The Construction Manager shall develop and comply with a Conduct of Construction Plan that addresses phasing and scheduling, public safety, neighborhood interaction, and community relations.

§ 3.1.5.1 The Construction Manager shall prepare and submit a Safety Plan for use during construction.

§ 3.1.5.2 The Construction Manager shall prepare and submit a Cost Control Plan for use prior to and during construction. The Cost Control Plan shall include without limitation a description of how the Construction Manager shall monitor the Cost of the Work throughout construction, provide the necessary substantiation for monthly Pay Applications, substantiate all costs incurred, and organize its accounting records such that, if Owner elects to conduct an audit, Owner's auditors will be able to efficiently review Construction Manager's accounting and cost records.

§ 3.1.5.3 The Construction Manager shall prepare and submit a Quality Control Plan for use during construction.

§ 3.1.5.4 The Construction Manager shall develop and implement an Erosion Control Plan for use during construction that complies with governmental erosion control requirements for construction.

§ 3.1.5.5 If required by Owner, the Construction Manager shall develop and comply with a Recycling Plan that establishes a reuse and recycling objective.

§ 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 preliminary detailed estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Owner's and Architect's review. 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 At the conclusion of the conceptual design phase, the Construction Manager shall provide a rough order of magnitude construction cost estimate and comparable for potential design solutions for, including but not limited to, structural systems, envelope systems, mechanical systems, electrical systems, plumbing systems, fire protection systems, fire alarm systems and finishes as requested by Owner. 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, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design, price escalation, impact of existing and anticipated market conditions, until such time as the Owner and Construction Manager agree on a

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Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Owner's and Architect's review and be in such detail and include such substantiation as requested by Owner. The Construction Manager shall inform the Owner and Architect if any estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action. In preparing such estimates, Construction Manager shall use CSI or other format acceptable to Owner. If the preliminary construction cost estimate is exceeded, Construction Manager shall identify feasible cost reducing options, including projected cost savings offset with any additional design costs, to bring construction costs within the estimate.

§ 3.1.7 Value Engineering

§ 3.1.7.1 The Work also shall include the obligation on the part of the Construction Manager to make an affirmative, good faith effort during the course of construction to identify and propose for review and decision by the Owner value engineering and other deductive changes to the Work with the aim of lessening the overall cost of the Project without any or significant diminution in the overall value of the Project. Estimates shall be accompanied by a detailed list of cost saving and value engineering recommendations. The Construction Manager will meet with the Owner and Architect and explain the details of the Construction Manager's list of cost saving and value engineering recommendations. The Construction Manager will note causes for cost changes from the previous estimate including such items as design changes, scope changes, or changes in the market conditions.

§ 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 [Intentionally deleted.]

§ 3.1.10 [Intentionally deleted.]

§ 3.1.11 Subcontractors

The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.1 The Construction Manager shall be responsible to the Owner for acts and omissions of the Construction Manager's employees, Subcontractors at all tiers, design professionals performing services on behalf of the Construction Manager or Subcontractors, and their respective agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Construction Manager or any of its Subcontractors. The Construction Manager 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 its administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Construction Manager.

§ 3.1.11.2 The Construction Manager shall enter into written contracts with Subcontractors as provided in Section 5.2 of the General Conditions. Under no circumstances shall Construction Manager enter into subcontracts or any other agreement with itself.

§ 3.1.11.3 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to directly 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. 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.

§ 3.1.11.4 The Construction Manager shall cooperate with the Owner to: recommend division of the Work to facilitate bidding and award of trade subcontracts; recommend which work, if any, should be procured through value-based competitive selection in lieu of low bid; identify work which the Construction Manager proposes to self-perform and how competitive pricing will be accomplished.

§ 3.1.11.5 [Intentionally deleted.]

§ 3.1.11.6 The Work shall include design professional services provided on a design/build basis for the fire alarm and fire protection portions of the Work. Such services shall be performed by design professionals licensed, registered and otherwise legally authorized to perform such services in Oregon, to the extent such licensure, registration and

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authorization are required by law to perform such services on such portions of the Work. Such services shall be performed by one or more employees or consultants of the Construction Manager or a Subcontractor. The Construction Manager shall ensure that all such design services and documents, during both the design and construction phases, are coordinated with the services and documents of the Architect and its consultants in the interests of the Owner and the Project to ensure deliverables and open issues are submitted and completed by the agreed upon dates and to ensure open and effective communication among team members.

§ 3.1.11.6.1 All drawings, specifications, and other work product of Construction Manager that results from this Agreement ("Work Product") will be provided to Owner upon request and will be considered the exclusive property of Owner. If any of the Work Product contains intellectual property of the Construction Manager or the Subcontractors that is or could be protected by federal copyright, patent, or trademark laws, or state trade secret laws, Construction Manager hereby grants Owner a perpetual, royalty-free, fully paid-up, nonexclusive and irrevocable license to copy, reproduce, perform, dispose of, use and re-use, in whole or in part, and to authorize others to do so for the benefit of Owner, all such Work Product. Construction Manager will cause a provision equivalent to this Section 3.1.11.6.1 to be included in all contracts, purchase orders and similar agreements with Subcontractors.

§ 3.1.12 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, licensing requirements 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 for inclusion in the Contract Documents.

§ 3.1.13 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.)

« »

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 The Construction Manager will provide the Owner with a Guaranteed Maximum Price proposal for the entire scope of the Project when the Drawings and Specifications are at least 90% complete or at such other time agreed to by Owner and Construction Manager. The Guaranteed Maximum Price proposal will be provided in writing with all back-up line item costs attached supporting the proposed Guaranteed Maximum Price. The Guaranteed Maximum Price proposal shall be reviewed by the Owner and the Architect. The proposed Guaranteed Maximum Price shall include all fees and percentages as well as the estimated costs for all services required to complete the Project in accordance with the Contract Documents.

§ 3.2.2 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as 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;
- **.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, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- **.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, allowances, contingency, and the Construction Manager's Fee in such detail as may be requested by Owner;
- **.4** The anticipated date of Substantial Completion specified in Section 1.1.4.3, upon which the proposed Guaranteed Maximum Price is based; and
- **.5** Such other information as the Owner may require.

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§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include an agreed-upon amount for contingency for the Construction Manager's use with Owner's prior written approval to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order. In no event shall Construction Manager's contingency exceed _____ percent (__%) of the estimated Cost of the Work.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both, within ten (10) days from the date of such notification.

§ 3.2.6 If the Owner and Construction Manager reach agreement on the terms of the GMP Amendment, Owner and Construction Manager shall execute the GMP Amendment amending this Agreement using the form attached hereto as Exhibit A, a copy of which the Owner shall provide to the Architect. The GMP Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. Under no circumstances shall the Construction Manager's Guaranteed Maximum Price proposal form part of the GMP Amendment, except to the extent it is explicitly incorporated by reference.

§ 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 commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 3.2.8 Regardless of whether the final permit set of Drawings and Specifications is incorporated by reference into the Contract in the GMP Amendment or otherwise, the Construction Manager agrees to perform the Work in accordance with such final permit Drawings and Specifications and, before commencing the Work, shall notify Owner and Architect of any inconsistency between those Drawings and Specifications and the Drawings and Specifications incorporated by reference into the GMP Amendment.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use, excise, corporate activity (including but not limited to Oregon's Corporate Activity Tax) and similar taxes.

§ 3.3 Construction Phase
§ 3.3.1 General
§ 3.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the earlier of the Owner's authorization of the Construction Manager's performance of specified early work or the date determined pursuant to the GMP Amendment.

§ 3.3.1.3 Constraints on Operations at the Project Site
§ 3.3.1.3.1 In addition to its other obligations under the Contract, the Construction Manager shall perform the Work and conduct its operations at the Project site and elsewhere so as to not interfere with the Owner's operations, the occupancy and use of other spaces and sidewalks, parking, roads, thoroughfares, delivery and access areas, and other common areas at the Project site.

§ 3.3.2 Administration
§ 3.3.2.1 Solicitation and Selection of Subcontractors
§ 3.3.2.1.1 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 by other appropriate written agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids.

§ 3.3.2.1.2 Absent a written justification prepared by the Construction Manager and approved in writing by the Owner, the Construction Manager's subcontractor selection process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment consistent with the requirements of the Contract and the Request for Proposals to which the Construction Manager responded.

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§ 3.3.2.1.2.1 If the Construction Manager or a bidder that may be considered a "related party" according to Section 7.8. will be included in the subcontractor selection process to perform particular construction Work on the Project, the Construction Manager must disclose that fact in the selection process documents and announcements. In such an event, the Construction Manager shall also notify the Owner in writing of its intent to submit a bid, and the Owner shall assume responsibility for selecting the successful bidder for that particular construction Work on the Project.

§ 3.3.2.1.3 The Construction Manager shall be primarily responsible for soliciting and selecting prospective subcontractors and resolving any protests in connection with such solicitations and selections. Notwithstanding the foregoing the Owner reserves the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract. Furthermore, the Owner shall have final authority to approve all subcontract awards, but the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. All records of the Construction Manager in connection with the solicitation and selection of prospective subcontractors will be public records subject to disclosure under ORS 192.311 to 192.338. Notwithstanding the foregoing, the Owner reserves the right to monitor the subcontracting process in order to protect the Owner's interests and to confirm the Construction Manager's compliance with the Contract and the applicable statutes, administrative rules and other legal requirements. Furthermore, the Owner shall have final authority to approve all subcontract awards, but the Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. No later than ten (10) days after selecting a subcontractor-bidder for award, the Construction Manager shall notify all subcontract bidders in writing that the subcontract has been awarded.

§ 3.3.2.1.3.1 The Construction Manager will, upon written request within sixty (60) days of the foregoing date of notification, meet with an unsuccessful bidder consistent with the requirements of OAR 137-049-0690. Such meeting must be held within forty-five (45) days of the Construction Manager's receipt of the request.

§ 3.3.2.1.4 For all portions of the Work (including those the Construction Manager proposes to self-perform), whose contract value is expected to exceed $25,000, Construction Manager shall solicit and make a good faith effort to obtain bids from no fewer than three (3) independent Subcontractor bidders, unless the Owner agrees in advance to fewer than three (3) bids, for particular subcontracted or supplied Work. The Construction Manager shall solicit and make a good faith effort to obtain bids from no fewer than two (2) independent Subcontractor bidders, unless the Owner agrees in advance to fewer than two (2) bids, for portions of the Work that the Construction Manager desires to self-perform with its own personnel. In the event the Construction Manager provides bids for self-performed Work, such bids shall be prepared and submitted to Owner one (1) day in advance of receipt of competitors' bids and considered in the same manner as if they were bids from Subcontractors. For the purposes of this Section, references to the Construction Manager's "own personnel" shall be construed to mean both (1) the Construction Manager's own personnel per se and (2) the Construction Manager's affiliated or associated firms or companies, including but not limited to firms or companies owned or controlled by officers of the Construction Manager.

§ 3.3.2.1.5 If Construction Manager intends to perform a non-competitive selection process for a particular portion of the Work, the Construction Manager must prepare and submit a written justification to the Owner explaining the circumstances that support the proposed non-competitive selection process, including, but not limited to, emergency circumstances, the Construction Manager's need to utilize a key subcontractor member of the Construction Manager's project team consistent with the Construction Manager's 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 consistent with Section 3.3.2.1.2 along with facts supporting the continuation or expansion of the subcontractor agreement, or a sole source justification.

§ 3.3.2.1.5.1 The Construction Manager must (1) provide an independent cost estimate for the portion of the Work that will be subject to a non-competitive process, and (2) fully respond to any questions or comments submitted by the Owner.

§ 3.3.2.1.5.2 The Construction Manager shall not pursue a non-competitive procurement without first securing Owner's approval.

§ 3.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (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 propose that a Change Order be issued to adjust the

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Contract Time and 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 and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 3.3.2.3 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 the Subcontract is awarded on a cost-plus-a-fee basis, 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. Under any such subcontract or other agreement awarded on the basis of cost plus fee, the "costs" to be paid shall include only items included in the Cost of the Work under Article 7. As provided in Section 3.11 of the General Conditions, Construction Manager shall maintain current copies of such subcontracts or other agreements at the Project site for the Owner's and Architect's review. Construction Manager shall notify Owner of any amendments to such subcontracts or other agreements.

§ 3.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.

§ 3.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.

§ 3.3.2.6 Before execution of the GMP Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of the General Conditions (the "Construction Schedule").

§ 3.3.2.7 The Construction Manager shall record the progress of the Project. On at least a monthly basis, or otherwise as agreed to in writing by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall also 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 by the Owner.

§ 3.3.2.8 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 report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.7 above.

§ 3.3.3 In no event shall the Construction Manager be authorized to self-perform any portion of the Work unless it provides to Owner a detailed proposal for performance of the Work, which is supported by at least one independent cost estimate prior to the Work being included in the Contract.

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, including at Owner's option 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.

§ 4.1.2 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.

§ 4.1.3 [Intentionally deleted.]

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§ 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 reasonably 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, required by law and 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 Owner shall furnish to the Construction Manager, after receipt of written request, surveys describing known physical characteristics, legal limitations and utility locations for the site of the Project, and a 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 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. The Construction Manager shall confirm indicated dimensions and other aspects of existing conditions at the Project site as necessary for the proper performance of the Work.

§ 4.1.4.2.1 Notwithstanding the provisions of Section 4.1.4.2, the Construction Manager shall be responsible for determining, prior to commencement of the Work, the locations of all underground utility lines, cables, pipelines and similar such underground public service installations within and serving the Project site, utilizing utility locating services or other means permitted by law. The Construction Manager shall coordinate with utility and other involved third-party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging or interrupting the operation of all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 4.1.4.3 The Owner, when such services are requested in writing by Construction Manager, 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 Construction Manager shall make its requests for such information or services so as to allow the Owner a reasonable time to respond without delaying the performance of the Work.

§ 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 Designated Representative"). The Owner's Designated Representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Changes to the Contract involving modification to the Contract Time or Contract Sum must be signed by the Owner's Designated Representative. Neither the Architect nor the Owner's Project Manager has such authority. The term "Owner" means the Owner or the Owner's Designated Representative.

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the 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.

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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: based on the Cost of the Work plus the Construction Manager's Fee, which amount shall not exceed $_____ (the "Preconstruction Services Guaranteed Maximum Price"). Costs which will cause the Cost of the Work plus the Construction Manager's Fee to exceed the Preconstruction Services Guaranteed Maximum Price shall be paid by Construction Manager without reimbursement by Owner.

§ 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.)

« »

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, 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, overhead, profit and any other markup 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 «twelve» («12») 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.

§ 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 unpaid «thirty» («30») days after receipt of the invoice 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.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES; LIQUIDATED DAMAGES

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

« ___% of the Cost of the Work. Construction Manager's Fee shall be inclusive of all overhead, other than the costs that are expressly reimbursable hereunder, and profit to be paid to Construction Manager on the Project.»

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

«The same rate specified in Section 6.1.2.»

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

«Subcontractor overhead and profit shall not exceed: fifteen percent (15%).»

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed «seventy-five» percent («75» %) of the standard rental rate paid at the place of the Project.

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§ 6.1.6 Liquidated damages:

§ 6.1.6.1 The Construction Manager acknowledges that the Owner will incur significant damages if the Project is not completed within the Contract Time, including without limitation, damages in the form of: inability to use the Project and all related facilities (i.e. "loss of use"); delay costs for completion of portions of the Project or related projects to be constructed by the Owner or the Owner's separate contractors; or costs of extended services of the Owner's project management staff, outside construction management firms, Architect, any separate contractors and consultants, and others performing work or services related to the Project. In consideration of the factors set out in this Section 6.1.6.1, the Construction Manager acknowledges and agrees that time is particularly of the essence in the Construction Manager's performance of the Work in accordance with the agreed date of commencement of the Work, the agreed dates of Substantial Completion and Final Completion of the Work, and the approved Construction Schedule.

§ 6.1.6.2 Loss of Use Liquidated Damages; Final Completion Liquidated Damages

§ 6.1.6.2.1 The Owner and Construction Manager acknowledge and agree that if Substantial Completion of the Work is not achieved by the Contract Time for Substantial Completion, the amount of the Owner's actual loss of use damages (as described in Section 6.1.6.1 above) will be difficult, impractical or impossible to determine. Accordingly, the parties agree that if Substantial Completion is not achieved by the agreed date of Substantial Completion as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay to the Owner as liquidated damages for the loss of use of the Project the following amounts: the sum of _____ dollars ($_____) for each partial day or full day of delay beyond the deadline for Substantial Completion.

§ 6.1.6.2.2 The parties further acknowledge and agree that the Construction Manager's obligation to pay liquidated damages under this Section 6.1.6 shall be in lieu of the obligation to pay actual delay damages for the loss of use damages. The parties agree that the daily rate agreed to above is reasonable in comparison to the approximate scope of actual delay damages for loss of use that the parties anticipate as of the time of execution of this Agreement, and that the payment of such liquidated damages is not intended to be a penalty or forfeiture. The parties further acknowledge that these liquidated damages are meant to reimburse the Owner only for loss of use delay damages and that Owner reserves the right to claim other types of damages against Construction Manager resulting from delays, including but not limited to the other delay damages described in Section 6.1.6.1.

§ 6.1.6.2.3 Withholding of Liquidated Damages

Owner may withhold liquidated damages from any progress or final payment.

§ 6.1.6.2.4 Final Completion Liquidated Damages

The parties agree that if Final Completion is not achieved by the agreed date of Final Completion as may be adjusted pursuant to the Contract Documents, the Construction Manager shall pay to the Owner as liquidated damages the following amounts: the sum of five hundred dollars ($500) for each partial day or full day of delay beyond the deadline for Final Completion.

§ 6.1.6.3 Acceleration of Work

In the event the Construction Manager, at any time, is behind the schedule for the completion of the Work, the Owner shall have the right to accelerate the completion date of the Work.

§ 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. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.2.1 In the event the sum of the final Contract Sum shall be less than the final Guaranteed Maximum Price, the savings shall devolve one hundred percent (100%) to the Owner. In the event of any such savings, upon the making of final payment, the Guaranteed Maximum Price shall be deemed reduced by the amount of any difference between the Guaranteed Maximum Price and the Cost of the Work plus the Construction Manager's Fee so that the final amount of the Guaranteed Maximum Price is equal to the Cost of the Work plus the Construction Manager's Fee as of the date of such final payment.

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§ 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; no oral changes shall be binding on Owner. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. Notwithstanding any other provision of the Contract to the contrary, the Construction Manager agrees that no additional or different Work shall be allowed or compensated unless prior written approval is given by the Owner for the specific Work at issue.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of the General Conditions.

§ 6.3.2 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 the General Conditions.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of the General Conditions, 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 the General Conditions 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.

§ 6.3.6 A Change Order shall be a written amendment to the Contract between Owner and Construction Manager. A Construction Change Directive requires written direction by Owner and may or may not be agreed to by Construction Manager. In order to be binding upon Owner, all Change Orders and Construction Change Directives must be properly completed in writing before commencement of the altered or additional Work, and before Construction Manager incurs any additional time or expense. Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a corresponding Change Order or Construction Change Directive is properly and timely prepared and executed as required by the Contract Documents in advance of the extra or different Work. Construction Manager hereby waives any argument that Owner's conduct (including, but not limited to, orally approving changes or extras) amounts to a waiver of the prior written change requirements of the Contract Documents.

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. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior written 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 the standard rates paid at the place of the Project, except with prior written approval of the Owner.

§ 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 written 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 written approval except for the Construction Manager's superintendent and project engineer who both will be stationed at the Project site.

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§ 7.2.2.1 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.)

« »

§ 7.2.3 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.

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

§ 7.3 Subcontract Costs
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction
§ 7.4.1 Costs, including transportation and storage at the Project 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 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, fuel, lubrication, 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 written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

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

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§ 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 written approval.

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

§ 7.6.2 Sales, use, or similar taxes (excluding Oregon's Corporate Activity Tax), imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 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 the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

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

§ 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 written approval in each instance.

§ 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, with the Owner's prior written approval in each instance.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, (1) approved in writing in advance by Owner as a Cost of the Work or (2) expressly identified as a Cost of the Work in the Contract.

§ 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 the General Conditions.

§ 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 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

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§ 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 written 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** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the 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;
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- **.9** Costs of parking or related access;
- **.10** Costs of subcontractor default insurance (e.g., Subguard); and
- **.11** Oregon's Corporate Activity Tax.

§ 7.9.1.1 The Cost of the Work shall not include costs incurred before the Owner's written approval thereof, when such prior approval is required by the Contract Documents, and costs incurred in excess of the Owner's limitations or contrary to the Owner's limitations or instructions, when such limitations or instructions are imposed by the Owner pursuant to the Contract Documents.

§ 7.9.1.2 The Cost of the Work shall not include costs expressly excluded from the Cost of the Work by the Contract Documents.

§ 7.9.1.3 The Cost of the Work shall not include fees and costs of business licenses and contractor, design professional and other licenses or registrations.

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. The Construction Manager shall inform the Owner and Architect in a timely manner of opportunities for cash discounts under this Section.

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§ 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. 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 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

§ 10.1 The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, including but not limited to those records necessary to clearly document (1) its performance; and (2) any claims arising from or relating to its performance under the Contract. The Construction Manager shall 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. In addition, Construction Manager shall maintain and permit Owner to audit all records necessary to document Construction Manager's performance of the Work and all claims arising from or relating to Construction Manager's performance. 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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders and similar agreements, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six (6) years after final payment, or for such longer period as may be required by law. The term "Owner's accountants" as used in this Contract shall mean, at the Owner's discretion, "Owner's accountants", "Owner's internal audit department", or "Owner's Authorized Representative".

§ 10.2 The Owner shall have the right to conduct an independent audit of the Construction Manager's records, books and other documents referenced in Section 10.1 at any time during the performance of the Work and thereafter until the end of the period referenced in Section 10.1. If such audit determines that the Construction Manager has submitted Applications for Payment for more than the amount actually due under the Contract Documents or has been paid pursuant to Applications for Payment for more than the amount actually due under the Contract Documents, the Construction Manager shall (1) issue a credit to the Owner in the amount of the overage, if the overage has not been paid, and (2) pay the amount of the overage and accumulated interest thereon, if the overage has been paid.

§ 10.3 If the amount of the overage determined by the audit referenced in Section 10.2, whether paid or not, is two percent (2%) or more of the amount actually due under the Contract Documents, the Construction Manager shall pay the cost of the audit. Such cost shall not be included in the Cost of the Work.

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ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Owner and 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 Owner and Architect not later than the «first» day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the «30th » day of the «same» month. If an Application for Payment is received by the Owner and 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, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the 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 Except for amounts allocated to allowances, 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 Before the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall obtain advance written approval from, and submit supporting documentation to, the Owner and 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 the General Conditions 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;

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.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 the General Conditions;

.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 the General Conditions;

.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 made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

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

«Five percent (5%) of each progress payment.»

§ 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 the General Conditions.

§ 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 in accordance with those agreements.

§ 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.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum including accrued retainage, 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 the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;

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.2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and

.3 a final Certificate for Payment has been issued by the Architect in accordance with Section 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 the General Conditions. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of the General Conditions. 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 pursuant to Article 15 of the General Conditions. 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, but within one (1) year after Substantial Completion of the Work and at the Owner's written 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.

§ 11.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the legal rate stated in ORS chapter 279C.

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 [Intentionally deleted.]

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[«X»] Arbitration pursuant to Article 15 of the General Conditions

[« »] Litigation in a court of competent jurisdiction pursuant to Article 15 of the General Conditions.

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ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price within a time period determined by Owner in Owner's sole discretion, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and 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.

§ 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 the General Conditions.

§ 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.

§ 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 in addition to any compensation paid to the Construction Manager under Section 13.1.4:

.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 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 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 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. In no event shall Owner be obligated to pay the Construction Manager for overhead, profit or other markup on unperformed Preconstruction Services or Work, or both.

§ 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 the General Conditions.

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§ 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 the General Conditions, the amount, if any, to be paid to the Construction Manager under Article 14 of the General Conditions 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 the General Conditions.

§ 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 the General Conditions, then the Owner shall pay the Construction Manager as set forth in those provisions.

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of the General Conditions, 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 the General Conditions. Where reference is made in this Agreement to a provision of the General Conditions 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 13.2.2 of the General Conditions, 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.

§ 14.3 Insurance and Bonds

For all phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Article 11 of the General Conditions and Exhibit C. The Construction Manager shall furnish a payment bond and a performance bond in accordance with Section 11.6 of the General Conditions.

§ 14.4 The Construction Manager represents and warrants to the Owner, in addition to the other representations and warranties contained in the Contract Documents and as an inducement to the Owner to execute the Agreement, which representations and warranties shall survive the execution of this Agreement and the Final Completion of the Work, as follows:

.1 that the Construction Manager is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to perform and complete the Work as described in the Contract Documents and to otherwise perform its obligations under the Contract Documents;

.2 that the Construction Manager is able to furnish the labor, services, materials, equipment, facilities, supervision, project management and other services necessary and required to perform and complete the

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Work as described in this Agreement and to otherwise perform its obligations under the Contract Documents, and has sufficient experience and competence to do so;

.3 that the Construction Manager is authorized to do business in the state where the Project is located and is properly licensed and registered by all necessary governmental and quasi-public authorities having jurisdiction over the Construction Manager, the Work and the Project; and

.4 that the Construction Manager's execution of this Agreement and its performance of the Contract are within its duly authorized powers.

§ 14.5 Construction Manager hereby agrees that the Project will be completed substantially in accordance with building permits and any other permits related to development of the Project, the Contract Documents and unless otherwise provided in the Contract Documents all manufacturers' or suppliers' recommended installation procedures so as to preserve any warranties with respect thereto, free and clear of all liens or encumbrances and within the time set forth in the Contract Documents. Construction Manager does further agree that on the date of Substantial Completion, the Project shall comply with all applicable building laws, ordinances, rules and regulations known, or which should in the exercise of reasonable care be known, to Construction Manager, and that all utility services necessary for the operation of the Project shall have been provided to the Project within the time for completion of construction.

§ 14.6 The Contract Documents have been carefully reviewed and negotiated by both parties at arm's length, and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Section headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 14.7 If the Construction Manager fails, neglects or refuses to make prompt payment for labor, materials, equipment or other services furnished to the Construction Manager or a Subcontractor by any person in connection with the Project as such claim becomes due, the Owner may pay the claim and charge the amount of the payment against funds due or to become due the Construction Manager under this Contract. Payment of claims in this manner shall not relieve the Construction Manager or the Construction Manager's surety from obligation with respect to any unpaid claims.

§ 14.8 ORS Chapters 279A and 279C and the Oregon Attorney General Model Rules set forth in OAR chapter 137 ("Model Rules") contain certain requirements for public contracts, including, but not limited to, certain required contract provisions. The required contract provisions are attached as Exhibit E and are incorporated herein by this reference. Furthermore, Construction Manager and Owner agree to comply with all requirements of ORS Chapters 279A and 279C, the Model Rules and other Oregon laws whether or not such provisions are included in Exhibit E and whether or not any such provisions are excised in Exhibit E.

§ 14.9 Construction Manager shall obtain and deliver payment and performance bonds in the form attached as Exhibit D and as required by the General Conditions.

§ 14.10 This Contract is subject to the State of Oregon BOLI Prevailing Wage Rates, and Construction Manager shall pay or cause to be paid all workers accordingly. The Construction Manager and Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, sexual orientation, age or disability.

§ 14.11 Construction Manager shall not discriminate based on race, religion, color, sex, marital status, familial status, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or political affiliation in programs, activities, services, benefits, or employment. Construction Manager shall not discriminate against minority-owned, women-owned, or emerging small businesses. Construction Manager shall also include a provision in each subcontract requiring Subcontractors to comply with the requirements of this Section 14.11.

§ 14.12 The Construction Manager shall not be relieved from its obligations to perform the Work pursuant to the Contract Documents, or from responsibility for defects or nonconformities in the Work, either by observations, reviews, inspections or approvals of the Work by the Owner or Architect or other persons or entities or by other observations, reviews, inspections, tests or approvals of the Work by any person, entity or agency.

§ 14.13 Remedies Cumulative

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§14.13.1 The Owner may, at its discretion, avail itself of any or all rights or remedies set forth in these rules, in the Contract, or available at law or in equity.

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 modified herein

.2 the General Conditions;

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

Exhibit A: Form of GMP Amendment

Exhibit B: Forms of Claim Waivers and Releases

Exhibit C: Insurance Requirements

Exhibit D: Forms of Payment and Performance Bonds

Exhibit E: Contract Provisions from ORS Chapters 279A and 279C and Model Rules

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

CLATSOP CARE CENTER HEALTH DISTRICT

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

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DRAFT AIA® Document A133™ – 2009
Exhibit A

Guaranteed Maximum Price Amendment

for the following PROJECT:
(Name and address or location)
Skilled Nursing Facility
Astoria, Oregon

THE OWNER:
(Name, legal status and address)
Clatsop Care Center Health District
646 16th Street
Astoria, Oregon 97103

THE CONSTRUCTION MANAGER:
(Name, legal status and address)

ARTICLE A.1
§ A.1.1 Guaranteed Maximum Price
Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « » ($ « ») (the "Guaranteed Maximum Price"), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Schedule of Values. Attached is a Schedule of Values.
(Provide below or reference an attachment.)

« »

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)

« »

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price ($0.00)

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

« »

§ A.1.1.6 [INSERT REFERENCES TO APPLICABLE PREVAILING WAGE RATES.]

Exhibit A

Guaranteed Maximum Price Amendment

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)

« »

Section	Title	Date	Pages

§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)

« »

Number	Title	Date

§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

« »

ARTICLE A.2
§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

« »

CLATSOP CARE CENTER HEALTH DISTRICT

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

EXHIBIT B

FORMS OF WAIVERS AND RELEASES

SUBCONTRACTOR/SUPPLIER
CONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Subcontractor/Supplier, upon receipt of a check in the sum of _____ Dollars ($_____) payable to Subcontractor/Supplier, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, hereby waives and releases any construction lien claim, stop notice, payment and performance bond claim, and any and all other claims Subcontractor/Supplier has with respect to its Work on the _____ ("Project") under and related to the prime contract for the Project between _____ ("Contractor") and Clatsop Care Center Health District ("Owner") dated _____ ___, 202__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Subcontractor/Supplier and its subcontractors and suppliers at all tiers during the period commencing on and including _____, 202_ and ending on and including _____, 202_, including/excluding retainage (identify which).

This document may be relied upon by Owner, Contractor, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Subcontractor/Supplier of the full amount set out above.

Date: _____

SUBCONTRACTOR/SUPPLIER

_____

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

SUBCONTRACTOR/SUPPLIER
UNCONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Subcontractor/Supplier has been paid and has received a final/progress payment (identify which) in the sum of _____ Dollars ($_____), and hereby waives and releases any construction lien claim, stop notice, payment and performance bond claim, and any and all other claims Subcontractor/Supplier has with respect to its Work on the _____ ("Project") under and related to the prime contract for the Project between _____ ("Contractor") and Clatsop Care Center Health District ("Owner") dated _____ _____, 202__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Subcontractor/Supplier and its subcontractors and suppliers at all tiers during the period commencing on and including _____, 202_ and ending on and including _____, 202_, including/excluding retainage (identify which).

This document may be relied upon by Owner, Contractor, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Subcontractor/Supplier of the full amount set out above.

Date: _____

SUBCONTRACTOR/SUPPLIER

_____

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

CONTRACTOR
CONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Contractor, upon receipt of a check in the sum of _____ Dollars ($_____) payable to Contractor, and when the check has been properly endorsed and has been paid by the bank upon which it is drawn, hereby waives and releases any construction lien claims, stop notice and any and all claims Contractor has with respect to its Work on the _____ ("Project") under and related to its prime contract for the Project with Clatsop Care Center Health District ("Owner") dated _____ _____, 202__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Contractor and its architect, consultants, subcontractors and suppliers at all tiers during the period commencing on and including _____, 202_ and ending on and including _____, 202_, including/excluding retainage (identify which).

This document may be relied upon by Owner, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Contractor of the full amount set out above.

Date: _____

CONTRACTOR

_____

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

CONTRACTOR
UNCONDITIONAL WAIVER AND RELEASE

UPON FINAL/PROGRESS PAYMENT (Identify which)

The undersigned Contractor has been paid and has received a final/progress payment (identify which) in the sum of _____ Dollars ($_____), and hereby waives and releases any construction lien claim, stop notice, and any and all other claims Contractor has with respect to its Work on the _____ ("Project") under and related to its prime contract for the Project with Clatsop Care Center Health District ("Owner") dated _____ _____, 202__, to the following extent.

This waiver and release is effective as to a final/progress payment (identify which) for labor, services, overhead, materials, and equipment furnished and any and all other claims by Contractor or its architect, consultants, subcontractors and suppliers at all tiers during the period commencing on and including _____, 202_ and ending on and including _____, 202_, including/excluding retainage (identify which).

This document may be relied upon by Owner, any principal and surety on a bond, and any lender providing financing for the Project; provided that any party intending to rely upon this document should first verify evidence of payment to Contractor of the full amount set out above.

Date: _____

CONTRACTOR

_____

By: _____
(signature)

Name: _____
(printed or typed)

Title: _____

EXHIBIT C

INSURANCE REQUIREMENTS

[To be issued by addendum.]

EXHIBIT D

FORMS OF PAYMENT AND PERFORMANCE BONDS

PERFORMANCE BOND

(Bond No. _____)

The undersigned, _____ _____ as Principal and _____ as Surety, a corporation organized and existing under the laws of the state of _____, are held and bound unto Clatsop Care Center Health District and its heirs, executors, administrators, and assigns as Obligee, in the penal sum of _____ Dollars ($_____), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS Principal has entered into a Construction Contract ("Contract") dated _____, 202_ with Obligee for _____ ("Project"), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall faithfully, punctually and completely perform and comply with the covenants, terms, conditions and provisions of said Contract and any extensions thereof in all respects and within the time prescribed therein, including, but not limited to, the terms of any warranty and guarantee required under the said Contract; shall pay all laborers, mechanics, subcontractors, material and equipment suppliers and all persons supplying to Principal or its subcontractors and suppliers at any tier labor, materials, supplies or equipment for the prosecution of the work or any part thereof; shall fully defend, indemnify and hold Obligee harmless from all cost and damage that Obligee may suffer by reason of Principal's failure to do so; and shall in all respects perform said Contract according to applicable law, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event that Principal is in default under the Contract and is declared by Obligee to be in default, the Surety, at the request of the Obligee, shall promptly remedy the default in a manner acceptable to the Obligee.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal's payments to Subcontractors or Principal's use of Project funds.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee's favor, Surety shall pay all of Obligee's costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees.

In the event there is an arbitration clause in said Contract, Surety agrees to participate in and to be bound by any such arbitration to the same extent Principal is bound.

No right of action shall accrue on this bond to or for the use of any person or corporation other than Obligee or its heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 202_.

_____
PRINCIPAL

_____
Title

_____
Address

_____
SURETY

_____
Title

_____
Address

COUNTERSIGNED:

_____
Resident Agent

_____
Address

PAYMENT BOND

(Bond No.)

The undersigned, _____ _____ as Principal and _____ as Surety, a corporation organized and existing under the laws of the state of _____, are held and bound unto Clatsop Care Center Health District and its heirs, executors, administrators, and assigns as Obligee, for the use and benefit of all persons or entities that provide labor, materials, equipment or supplies for use under the Contract described below, in the penal sum of _____ Dollars ($_____), lawful money of the United States of America, for the payment of which Principal and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally.

WHEREAS the Principal has entered into a Construction Contract ("Contract") dated _____, 202_ with Obligee for the _____ project ("Project"), which Contract is made a part hereof as if fully incorporated herein.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION are such that if Principal shall promptly make payment to all persons or entities that provide labor, material, equipment or supplies for use under said Contract, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. In the event that Principal is in default under the Contract and is declared by Obligee to be in default, the Surety, at the request of the Obligee, shall promptly remedy the default in a manner acceptable to the Obligee.

In any event, this obligation shall remain in full force and effect for the applicable period of limitations or repose, whichever is longer.

Surety acknowledges that Obligee does not owe any duty to Surety to advise, notify or consult with Surety on any matters relating to the Principal or the Project, including, but not limited to, Principal's payments to Architect, Subcontractors or Principal's use of Project funds.

Principal and Surety hereby jointly and severally agree that any person or entity that provides labor, material, equipment or supplies for use under said Contract and has not been paid in full within the applicable time period set forth in ORS 279C.605 may sue on this bond for the use of such person or entity, prosecute the suit to final judgment for such sums as may be justly due and owing claimant and have execution thereon. Obligee shall not be liable for the payment of any damages, costs or expenses (including attorney fees) awarded in any such suit.

No prepayment or delay in payment and no change, extension, assignment, addition or alteration of any provision of said Contract and no forbearance on the part of Obligee shall operate to relieve Surety from liability on this bond, and Surety hereby consents to any such changes, extensions, additions and alterations without further notice to or consent by Surety.

In the event arbitration, litigation or any other proceeding is brought upon this bond by Obligee and judgment or award is entered in Obligee's favor, Surety shall pay all of Obligee's costs incurred in such arbitration, litigation or other proceeding, including any attorney and expert witness fees.

Except as expressly provided above, no right of action shall accrue on this bond to or for the use of any person or corporation other than Obligee or its heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 202_.

_____
PRINCIPAL

_____
Title

_____
Address

_____
SURETY

_____
Title

_____
Address

COUNTERSIGNED:

_____
Resident Agent

_____
Address

EXHIBIT E

PROVISIONS FROM THE PUBLIC CONTRACTING CODE AND PUBLIC CONTRACTING RULES

1. GENERAL

1.1 INCORPORATION OF ALL CONTRACT PROVISIONS. The Contract hereby incorporates all contract provisions that are required to be incorporated into contracts with public entities pursuant to (a) the Public Contracting Code (ORS Chapters 279A, 279B and 279C), (b) the Attorney General Model Public Contracting Rules (which are referred to in this Exhibit as the "Rules") or (c) other applicable law. The provisions incorporated into the Contract under the preceding sentence include, without limitation, any provisions or amendments to provisions that become required after the Contract is executed. References to Contractor in this Exhibit shall be construed as references to the Construction Manager (as that term is defined in the Agreement).

1.2 DISCLAIMER REGARDING ANY UNLISTED CONTRACT PROVISIONS. The provisions listed in this Exhibit are not necessarily an exhaustive list of provisions that are required under the Public Contracting Code, the Rules or other applicable law, and the fact that this Exhibit does not list a provision that is required by the Public Contracting Code, the Rules or other applicable law will not (i) prevent or otherwise diminish the incorporation of that unlisted provision into the Contract or (ii) negate or otherwise diminish Contractor's obligation to comply with applicable laws.

2. PAYMENT.

2.1 PROMPT PAYMENT. Contractor shall promptly pay all of its obligations arising out of or in connection with the Work, including, but not limited to, payments (1) to all persons, as due, supplying to Contractor labor, equipment, services or material for the performance of the Work, (2) of all contributions or amounts due the Industrial Accident Fund from Contractor or the Subcontractors incurred in the performance of the Work, and (3) to the Department of Revenue of all sums withheld from employees under ORS 316.167.

2.2 CONTRACTOR'S OBLIGATIONS TO FIRST-TIER SUBCONTRACTOR. Contractor shall include in each subcontract entered into by the Contractor for property or services a clause obligating the Contractor to pay each first-tier Subcontractor for satisfactory performance under its subcontract within 10 days out of amounts the Owner pays to the Contractor under the Contract. Contractor shall provide a first-tier Subcontractor with a standard form that the first-tier Subcontractor may use as an application for payment or as another method by which the Subcontractor may claim a payment due from the Contractor. Contractor shall use the same form and regular administrative procedures for processing payments during the entire term of the Subcontract. Contractor may change the form or the regular administrative procedures the Contractor uses for processing payments if the Contractor notifies the Subcontractor in writing at least 45 days before the date on which the Contractor makes the change and includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.

2.3 PROMPT PAYMENT POLICY. It is the policy of the State of Oregon that all payments due on a public improvement contract and owed by a contracting agency shall be paid promptly. No public contracting agency is exempt from the provisions of ORS 279C.570.

2.4 CONTRACTOR'S FAILURE TO MAKE PROMPT PAYMENT. If the Contractor has failed, neglected or refused to pay promptly a person's claim for labor, equipment, services or materials that the person provides to the Contractor or a Subcontractor in connection with the Project as such claim becomes due, the Owner may pay such claim to the person that provides the labor, equipment, services or materials and charge the amount of the payment against funds due or to become due the Contractor under the Contract. Owner reserves the right to make payments directly or by multiple-payee check and Contractor hereby consents to such direct and multiple-payee check payments. Upon Owner's request, Contractor shall furnish to Owner the information required to facilitate such payments with each application for

payment, including (1) names, addresses, and telephone numbers of persons making any such claim for labor, equipment, services or material, and (2) a complete listing of outstanding amounts owed to all such persons.

2.5 CONTRACTOR'S AND FIRST-TIER SUBCONTRACTOR'S FAILURE TO MAKE PAYMENT AFTER PAYMENT FROM OWNER; INTEREST PENALTY. If the Contractor or a first-tier Subcontractor fails, neglects or refuses to pay a person that provides labor, equipment, services or materials in connection with the Contract within thirty (30) days after receiving payment from the Owner or the Contractor, the Contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period that payment is due under ORS 279C.580(3)(a) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580. The rate of interest on the amount due is nine percent per annum. The amount of interest may not be waived. Contractor shall also include in each subcontract entered into by the Contractor a provision requiring each first-tier Subcontractor to include a payment clause and an interest penalty clause conforming to the standards of this Section 2.5 in each of its subcontracts and to require each of the first-tier Subcontractor's lower-tier Subcontractors to include such clauses in their subcontracts with each lower-tier Subcontractor.

2.6 CONSTRUCTION CONTRACTORS BOARD COMPLAINT. If the Contractor or a Subcontractor fails, neglects or refuses to make payment to a person that provides labor, equipment, services or materials in connection with the Contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580.

2.7 CONTINUING LIABILITY OF CONTRACTOR AND SURETY. Payment by the Owner of a claim in the manner authorized in this Section 2 does not relieve the Contractor or the Contractor's surety from obligation with respect to any unpaid claims.

3. PUBLIC WORKS PROJECT.

3.1 PREVAILING RATE OF WAGE. The Project is a public works project subject to the prevailing wage rate requirements in ORS 279C.800 to 279C.870. Contractor and the Subcontractors shall comply with ORS 279C.840. Workers in each trade or occupation required for the Work of the Project shall not be paid less than the minimum hourly rate of wage for such workers as detailed in the Specifications for the Contract.

3.2 PUBLIC WORKS BOND. Before starting the Work, Contractor and every Subcontractor shall file with the Construction Contractors Board a public works bond in accordance with ORS 279C.836, unless the Contractor or Subcontractor has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Before permitting a Subcontractor to start the Work, Contractor shall verify that the Subcontractor has filed a public works bond as required by ORS 279C.836, has elected not to file a public works bond under ORS 279C.836(7) or (8) or is exempt under ORS 279C.836(4) or (9). Contractor shall also ensure that each subcontract entered into by a Subcontractor for the Project shall include a clause obligating each Subcontractor to comply with the requirements of this Section 3.2, such that all subcontracts at all tiers include a requirement to comply with this Section 3.2.

4. COMPLIANCE WITH LAWS/TAX LAWS. Contractor shall comply with all applicable federal, state, and local laws, statutes, codes, regulations, rules, orders and rulings as well as all applicable construction industry standards, including without limitation those governing labor, materials, equipment, construction procedures, safety, health, sanitation and the environment. Contractor agrees to indemnify, hold harmless, reimburse, and defend Owner from and against any penalties or liabilities arising out of violations of such obligations by Contractor or its Subcontractors at any tier. Contractor must also comply with all Oregon tax laws and shall submit a certification of such compliance in accordance with ORS 305.385(6). Without limiting the generality of the foregoing, Contractor and all Subcontractors expressly agree to comply with the following, and all regulations and administrative rules established pursuant thereto:

(i) Workers' Compensation Laws (ORS Chapter 656);
(ii) Wages, Hours and Records Laws (ORS Chapter 652);
(iii) Conditions of Employment Laws (ORS Chapter 653);

(iv) Safety and Health Regulations (ORS Chapter 654); and Unemployment Insurance (ORS Chapter 657);
(v) Titles VI and VII of the Civil Rights Act of 1964, as amended, which prohibit discrimination on the basis of race, color or national origin;
(vi) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;
(vii) the Americans with Disabilities Act of 1990, as amended;
(viii) the Health Insurance Portability and Accountability Act of 1996;
(ix) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;
(x) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;
(xi) Discrimination against disabled persons (ORS 659A.142);
(xii) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92.255) as amended, relating to nondiscrimination on the basis of drug abuse;
(xiii) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91.616) as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
(xiv) Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-2), as amended, relating to confidentiality of alcohol and drug abuse patient records;
(xv) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
(xvi) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made;
(xvii) the requirements of any other nondiscrimination statute(s) which may apply; and
(xviii) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations not set forth in this Section.

5. CONTRACTOR'S EMPLOYEES AND SUBCONTRACTORS.

5.1 EMPLOYEE DRUG TESTING PROGRAM. Contractor shall certify to Owner that Contractor has initiated, and shall maintain through the completion of the Work of the Project, an employee drug testing program.

5.2 WORK DAY/WORK WEEK. No person shall be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay for (1) all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or (2) all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and (3) all work performed on Saturday and on any legal holiday specified in ORS 279C.540. Any contractor or subcontractor or contractor's or subcontractor's surety that violates the provisions of this section 5.2 is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation results from willful falsification of payroll records, the contractor or subcontractor or contractor's or subcontractor's surety is liable to the affected employees in the amount of their unpaid overtime wages and an additional amount equal to twice the unpaid overtime wages as liquidated damages.

5.3. NON-DISCRIMINATION. Contractor shall comply with the prohibition set forth in ORS 652.220. Contractor's compliance with ORS 652.220 is a material element of the Contract, and failure to comply is a breach that entitles Owner to terminate the Contract for cause.

5.4 DISCUSSION OF WAGES. Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

5.5 NOTICE OF REQUIRED WORK HOURS. The Contractor and each Subcontractor must give notice to its employees in writing, either at the time of hire or before commencement of Work, or by posting a notice in a location frequented by its employees, of the number of hours per day and days per week that the employees may be required to work.

5.6 CLAIMS FOR OVERTIME. Any worker employed by the Contractor shall be foreclosed from the right to collect for any overtime provided in ORS 279C.540 unless a claim for payment is filed with the Contractor within 90 days from the completion of the Contract, provided the Contractor has: (1) caused a circular clearly printed in boldfaced 12-point type and containing a copy of this Section 5.6 to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place that is readily available and freely visible to any or all workers employed on the Work; and (2) maintained such circular continuously posted from the inception to the completion of the contract on which workers are or have been employed.

5.7 WORKERS' COMPENSATION. All employers, including Contractor, that employ subject workers who work under the Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its Subcontractors complies with these requirements.

5.8 PROMPT PAYMENT FOR MEDICAL SERVICES. The Contractor shall promptly, as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Contractor, of all sums that the Contractor agrees to pay for the services and all moneys and sums that the Contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services.

5.9 LICENSING WITH CONSTRUCTION CONTRACTORS BOARD AND LANDSCAPE CONTRACTORS BOARD. Before commencing the Work, Contractor shall ensure that the Subcontractors are duly registered with the Oregon State Construction Contractors Board (and the State Landscape Contractors Board, if applicable), and that no Subcontractor has been declared ineligible to work on a public contract.

6. MATERIAL SALVAGE. To the extent the scope of the Work for the Contract requires demolition, Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective.

7. COMPOSTING. To the extent the scope of the Work for the Contract requires lawn and landscape maintenance, the Contractor must compost or mulch yard waste material at an approved site, if feasible and cost-effective.

8. RECYCLED MATERIALS. The Contractor, in performance of the Work, shall give preference to the procurement of goods manufactured from recycled materials.

9. ENVIRONMENTAL AND NATURAL RESOURCES LAWS. Pursuant to ORS 279C.525, the following is a list of Federal, State, and Local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that may affect the performance of the Contract. The following list may not include all such agencies that have enacted ordinances, rules or regulations relating to the environmental pollution and preservation of natural resources.

Federal Agencies:

Agriculture, Dept. of
Forest Service
Natural Resources Conservation Service
Defense, Dept. of
Army Corps of Engineers
Coast Guard

Environmental Protection Agency
Interior, Dept. of
U.S. Fish and Wildlife Service
Bureau of Land Management
Bureau of Indian Affairs
Bureau of Reclamation
Labor, Dept. of
Occupational Safety and Health Administration
Transportation, Dept. of
Federal Highway Administration

State Agencies:

Agriculture, Dept. of
Consumer and Business Services Dept.
Oregon Occupational Safety and Health Division
Environmental Quality, Dept. of
Fish and Wildlife, Dept. of
Forestry, Dept. of
Geology and Mineral Industries, Dept. of
Human Services, Dept. of
Land Conservation and Development, Dept. of
Natural Resources, Dept. of
State Fire Marshal
State Lands, Dept. of
Water Resources Department

Local Agencies:

City Councils
Circuit Courts
County Commissioners, Boards of
Fire Districts
Planning Commissions

10. RETAINAGE. The withholding of retainage by the Contractor or Subcontractor shall be in accordance with ORS 279C.550 to ORS 279C.570 and OAR 137-049-0820.

11. LIENS. The Contractor shall not permit any lien or claim to be filed or prosecuted against the state, county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished.

12. NOTICE OF CLAIM ON BOND. The notice of claim required by ORS 279C.600 must be sent by registered or certified mail or hand delivered no later than 180 days after the day the person last provided labor or furnished materials or 180 days after the worker listed in the notice of claim by the Commissioner of the Bureau of Labor and Industries last provided labor. The notice may be sent or delivered to the Contractor or Subcontractor at any place the Contractor or Subcontractor maintains an office or conducts business or at the residence of the Contractor or Subcontractor. If the claim is for a required contribution to a fund of any employee benefit plan, the notice required by ORS 279C.600 must be sent or delivered within 200 days after the employee last provided labor or materials. The notice shall be in the form of a signed writing substantially as follows:

To (here insert the name of the Contractor or Subcontractor and the name of the Owner):

Notice hereby is given that the undersigned (here insert the name of the claimant) has a claim for (here insert a brief description of the labor or materials performed or furnished and the person by whom performed or furnished; if the claim is for other than labor or materials, insert a brief description of the claim) in the sum of (here insert the

amount) dollars against the (here insert public works bond or payment bond, as applicable) taken from (here insert the name of the principal and, if known, the surety or sureties upon the public works bond or payment bond) for the work of (here insert a brief description of the work concerning which the public works bond or payment bond was taken). Such material or labor was supplied to (here insert the name of the Contractor or Subcontractor).

_____(here to be signed by the person making the claim or giving the notice)

DRAFT

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Skilled Nursing Facility
Astoria, Oregon

THE OWNER:
(Name, legal status and address)
Clatsop Care Center Health District
646 16th Street
Astoria, Oregon 97103

THE ARCHITECT:
(Name, legal status and address)
Lenity Architecture, Inc.
1055 Commercial Street SE
Salem, Oregon 97302

THE CONTRACTOR:
(Name, legal status and address)

TABLE OF ARTICLES

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12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 CLAIMS AND DISPUTES

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents consist of the Standard Form of Agreement between the Owner and Contractor (the "Agreement"), the General Conditions, Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Agreement. 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 (this or the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior or contemporaneous 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. Nothing in this Section 1.1.2 shall be interpreted or applied so as to negate, abridge, or reduce the status or rights of the Owner as a third-party beneficiary of subcontracts, purchase orders and similar agreements between the Contractor and its Subcontractors and between Subcontractors at all tiers and their Sub-subcontractors.

§ 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 or Subcontractors 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 but not limited to 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 and obligations.

§ 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, plans, Drawings, Specifications, and other similar materials.

§ 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.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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§ 1.2.1.2 This Contract incorporates all provisions as required by law. Such incorporated provisions will have priority over any conflicting provision herein. Should any provision of the Contract, at any time, be in conflict with any law, statute, code, ordinance, rule, regulation or lawful order of a public authority, or be unenforceable or inoperative for any reason, then the remaining provisions of the Contract nonetheless shall continue in full force and effect and the court shall give the offending provision the fullest meaning and effect allowed by law.

§ 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.

§ 1.2.3.1 The Owner and Contractor agree that no additions, deletions or other revisions shall be made to these General Conditions except by means of a written Modification executed by the Owner and Contractor. With respect to any provision of the Contract Documents requiring written approval or written Modification by the Owner, Contractor expressly waives any argument or right, and agrees not to assert, that Owner's alleged knowledge of the circumstances, or other conduct of Owner (including, without limitation, making oral approvals) before, during or after the Project amounts to a waiver by Owner of the written Modification or written approval requirements of the Contract Documents.

§ 1.2.3.2 Reference in the Specifications to an article, device, or piece of equipment in the singular number shall apply to as many such articles as are shown on Drawings or required to complete the installation. Mention in the Specifications or indication on the Drawings of articles, products, materials, operations, or methods requires the Contractor to provide and install such items including but not limited to all necessary plants, labor and appurtenances. Notes on Drawings are considered Specifications, equal in force to those in the printed text.

§ 1.2.4 Subject to Section 1.2.1.2, no Modification or other Contract Document shall override any provision of applicable law that cannot lawfully be varied by agreement. In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Contract Documents, interpretations shall be based on the following order of precedence:

.1 Modifications of the Contract with those of a later date having precedence over those of an earlier date.

.2 All Statutory Provisions required by ORS 279A and 279C and other applicable statutes and regulations and permits.

.3 AIA A133–2019 Standard Form of Agreement between Owner and Construction Manager as Constructor as modified.

.4 AIA A201-2017 General Conditions of the Contract for Construction as modified.

.5 The Drawings with larger scale having precedence over smaller scale, and with notes and schedules thereon having precedence over the remainder.

.6 Specifications.

§ 1.2.5 In the event of conflicts, inconsistencies, discrepancies or ambiguities between or among the Drawings, or between or among the Specifications, remaining after application of Section 1.2.4, those Drawings or Specifications of later date shall have precedence over those of earlier date. If a conflict, inconsistency, discrepancy or ambiguity nonetheless remains, the Contractor shall provide written notice thereof to the Architect and Owner. Thereafter, the Contractor shall proceed as ordered in writing by the Architect. Thereafter, unless otherwise ordered in writing by the Architect, the Contractor shall provide the better quality of, and the greater quantity of, the Work. The provisions of this Section 1.2.5 shall apply only to conflicts, inconsistencies, discrepancies or ambiguities in express requirements of the Drawings and Specifications and not to interpretations thereof by the Owner or Architect.

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§ 1.2.6 The Owner and Contractor acknowledge their intent and agreement that there shall be no binding revisions to the provisions of the Agreement or of these General Conditions made in the Specifications or other Contract Documents as of the time of execution of the Agreement. The Owner and Contractor expressly agree that in the event of conflicts or inconsistencies between or among the Contract Documents, interpretations shall be based on the order of precedence set forth in Section 1.2.4.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

§ 1.5 Ownership and use of Drawings, Specifications, and Other Instruments of Service

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors of the Instruments of Service, including but not limited to the Drawings and Specifications. The Contractor, Subcontractors, and Sub-subcontractors shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's reserved rights.

§ 1.5.2 The Contractor and Subcontractors are authorized to use and reproduce the Drawings and Specifications 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 and Subcontractors may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 Notice

§ 1.6.1 All notices given under the Contract Documents shall be in writing and shall be deemed properly given when delivered in person, delivered by commercial messenger or courier or four (4) days after it is sent postage prepaid by registered or certified mail return receipt requested, as follows:

.1 if to the Owner:

.2 if to the Contractor:

.3 if to the Architect:

or to such other address, telecopy number or addressee as any party entitled to receive notice hereunder shall designate to all other parties in the manner provided herein for the service of notice.

§ 1.7 Relationship of the Parties

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

ARTICLE 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, provided, however, that changes to the Contract involving Modifications to the Contract Time or Guaranteed

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Maximum Price must be signed by an authorized representative of Owner. The Architect does not have such authority. The term "Owner" means the Owner or the Owner's Representative.

§ 2.1.1.1 The Owner's Representative initially shall be_____. The Owner shall provide prompt written notice to the Contractor and Architect of the designation of a different individual as the Owner's Representative.

§ 2.2 [Intentionally deleted.]

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor or Subcontractors under the Contract Documents or applicable law, including but not limited to those required under Section 3.7.1, the Owner shall secure and pay for the building permit and other necessary permits, approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 The Owner shall, after receipt of written request, furnish to the Contractor 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 reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. However, the Contractor shall confirm indicated dimensions and other aspects of existing conditions at the Project site as necessary for the proper performance of the Work.

§ 2.3.4.1 Notwithstanding the provisions of Section 2.3.4, the Contractor shall be responsible for determining, prior to commencement of the Work, the locations of all telephone, data, video and internet lines and cables, sewer lines, water pipes, gas pipes, electrical lines and other utility lines, cables, pipes and pipelines, including but not limited to all those that are buried, within and serving the Project site, utilizing utility locating services or other means. The Contractor shall coordinate with utility and other involved third party representatives regarding utility locations and related issues, and shall hand excavate or otherwise take special precautions so as to perform the Work in such a manner as to avoid damaging, or interrupting the operation of, all utility lines, cables, pipelines and similar public service installations within and serving the Project site, whether above ground or underground.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor shall make its requests for such information or services so as to allow the Owner a reasonable time to respond without delaying the performance of the Work. The Owner shall furnish to the Contractor one (1) reproducible copy of the Drawings and Specifications at no cost to the Contractor. The Owner also shall make available to the Contractor and Subcontractors copies of the Drawings and Specifications at Owner's designated printing service. The Contractor's cost of obtaining up to ten (10) additional copies of the Drawings and Specifications as is required for the performance of the Work shall be included in the Guaranteed Maximum Price; the Contractor's cost of obtaining any additional copies beyond the ten (10) copies shall be at the Contractor's expense without reimbursement by the Owner, unless the Owner provides prior written approval for additional copies.

§ 2.4 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly or substantially 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.

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§ 2.4.1 The Owner's exercise of its right to stop Work pursuant to Section 2.4 shall not relieve the Contractor from any of its responsibilities and obligations under the Contract Documents.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or substantially fails or neglects to carry out all or a portion of 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 for the reasonable cost of correcting such deficiencies, including, but not limited to the Owner's attorneys' fees and related costs, disbursements and expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 2.6 Extent of Owner's Rights

§ 2.6.1 In no event shall the Owner have control over, charge of, or any responsibility for the construction means, methods, techniques, sequences, or procedures or for the safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted to the Owner in the Contract Documents.

§ 2.7 Review or Approval by Others

§ 2.7.1 Review or approval by Owner or its agents of Contractor's means, methods, techniques, procedures or submittals, or of any other aspect of Contractor's work or services shall not relieve Contractor of its sole liability for any damages resulting from or arising out of defects or deficiencies in the Contractor's means, methods, techniques, procedures or submittals, or of any other aspect of Contractor's work or services.

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.

§ 3.1.1.1 The following individuals shall perform in the following roles for the Contractor during the course of the Project:

.1 Principal: _____

.2 Project Manager: _____

.3 Superintendent: _____

Provided they remain in the employ of the Contractor, the individuals named above shall not be replaced during the course of the Project without the prior written approval of the Owner. The individual performing in the role of Principal shall be a corporate officer of the Contractor. The individuals named as Project Manager and Superintendent shall be replaced during the course of the Project upon written request of the Owner for reasonable cause stated. Persons proposed to replace the individuals named above shall be subject to the prior written approval of the Owner. The Owner's approvals under this Section 3.1.1.1 shall not unreasonably be denied.

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

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

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§ 3.1.4 The Contractor shall prepare and submit to the Owner and Architect, no less frequently than monthly, written reports on the progress of the Work in such form and in such detail as reasonably required by the Owner. Within seven (7) days of Owner's request, Contractor shall execute and deliver to Owner a certificate addressed to Owner concerning the compliance of the Work with the Contract Documents and applicable laws and regulations, the status of the completion of the Work, and the status of payments and defaults.

§ 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 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. Contractor shall notify the Architect and Owner in writing of any errors, inconsistencies, omissions, or ambiguities in the Contract Documents discovered by the Contractor. The Contractor shall be responsible for any additional costs to Owner resulting from the Contractor's failure to verify existing conditions related to any portion of the Work or to report to the Architect and Owner any errors, inconsistencies, omissions, or ambiguities in the Contract Documents discovered by, or which should have been discovered by, Contractor.

§ 3.2.2.1 The Contractor shall notify the Architect and Owner in writing of materials, systems, procedures, or methods of construction either shown on the Drawings or specified in the Specifications that Contractor discovers are incorrect or inappropriate for the purpose intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. The Architect and Owner will make a determination of such matters in writing. The Contractor shall be responsible for any additional costs to Owner resulting from Contractor's failure to notify the Architect and Owner of incorrect or inappropriate materials, systems, procedures, and methods that Contractor knows or should know are incorrect or inappropriate. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 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 Owner and Architect in writing 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 submit 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.

§ 3.2.5 Neither the Owner nor the Architect assumes responsibility for an understanding or representation made by their agents or representatives prior to the execution of the Agreement unless such understanding or representation is expressly stated in the Contract Documents.

§ 3.2.6 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in the performance of the Work, then it shall be the duty of the Contractor to request interpretation or information from the Architect.

§ 3.2.7 The Contractor and designated Subcontractors shall attend and participate with the Owner, designated separate consultants or contractors of the Owner, Architect, designated consultants of the Architect and others deemed necessary by the Owner in a pre-construction meeting scheduled and conducted by the Owner.

§ 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,

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sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and, 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 knows or should know 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 Owner or 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 Contractor shall not be responsible for any loss or damage resulting from its proper adherence to the written instructions.

§ 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. It is understood and agreed that the relationship of the Contractor to Owner shall be that of an independent contractor. Nothing contained in this Contract shall be deemed or construed to (1) make Contractor or any Subcontractor the agent, servant, or employee of the Owner, or (2) create any partnership, joint venture, or other association between Owner and Contractor or any Subcontractor.

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

§ 3.3.4 The furnishing of surveys and other information regarding the Project site by the Owner shall not relieve the Contractor from its duties under the Contract Documents.

§ 3.3.5 The Contractor and designated Subcontractors shall attend and participate with the Owner, designated separate consultants or Separate Contractors of the Owner, Architect, designated consultants of the Architect and others deemed necessary by the Owner in periodic construction meetings to be held at the Owner's discretion.

§ 3.4 Labor and Materials

§ 3.4.1 The Contractor shall provide and pay for supervision, 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.

§ 3.4.1.1 The Contractor's obligations under Section 3.4.1 shall include, without limitation, the obligation to pay all Subcontractors and any other person or entity having lien or bond rights regarding the Project due to their performance of the Contractor's obligations under the Contract. The Contractor agrees to keep the Project and the Project site free and clear of any and all Subcontractor claims (lien claims, bond claims or otherwise) filed or served by any person or entity at any tier performing the Work or the Contractor's obligations under the Contract.

§ 3.4.1.2 To the fullest extent permitted by law, the Contractor agrees to indemnify, defend, reimburse, and hold harmless (with counsel approved by the Owner) the Owner and the Architect from, for, and against any and all claims referenced in Section 3.4.1.1, and any actions, suits, or proceedings related to such claims, and any and all related costs and expenses incurred by the Owner or Architect, including, without limitation, attorneys' fees and expert witness and consultant fees.

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

§ 3.4.2.1 If the Contractor makes requests for substitutions, the Contractor thereby:

.1 represents that the Contractor and involved Subcontractor(s) has (have) personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor and the involved Subcontractor(s) will provide the same warranties for the substitution as would have provided for that specified;

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.3 certifies that the cost data presented is complete and includes all related costs under this Contract, including but not limited to Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent;

.4 agrees to coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects;

.5 agrees to be responsible for any redesign costs related to the substitution;

.6 will install all substituted products in accordance with applicable manufacturer's recommendations; and

.7 agrees to be responsible for all other costs related to the substitution.

§ 3.4.3 The Contractor shall enforce strict discipline and good order and civil and appropriate conduct among the Contractor's and Subcontractors' 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. The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. Contractor shall be responsible for labor peace on the Project and shall at all times make its best efforts and use its best judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances, and shall at all times maintain Project-wide labor harmony. Except as specifically provided in Section 8.3.1, Contractor shall be liable to Owner for all damages suffered by Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes. The Contractor shall not permit at the site of the Work the use of alcohol or tobacco, illegal use of drugs or other controlled substances, verbal or other harassment, lewd or obscene language or behavior, or disregard for the property, privacy, or personal or business interests of the Owner or other occupants of adjacent or nearby parcels, the personnel, visitors, customers, vendors, contractors or suppliers of any of them, or members of the public, or their respective contractors. The Contractor agrees to take prompt and effective corrective action in the event of violations of these standards of conduct. Nothing in this Section 3.4.3 shall establish or imply an employment relationship between the Owner, on the one hand, and the Contractor's and Subcontractors' employees and other persons performing the Work, on the other.

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that materials and equipment to be selected by the Contractor or its Subcontractors will be suitable for the purposes intended by the Contract Documents, that the Work will be performed in a workmanlike manner, and will conform to the standards and requirements of the Contract Documents and generally recognized standards of the construction industry, whichever provides the higher standard, and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit, and that all materials and equipment selected by the Contractor or any Subcontractor will be suitable for the purposes indicated in the Contract Documents. 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.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.5.3 Contractor shall obtain for Owner's benefit the same warranty as is set forth in Section 3.5.1 from all Subcontractors. Warranties in the Contract Documents shall survive termination, completion, acceptance and final payment.

§ 3.5.4 The Contractor hereby assigns to the Owner, effective upon the written demand of the Owner, upon the insolvency, bankruptcy, dissolution or other incapacity of the Contractor, or automatically upon Final Completion of

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the Work, any and all Subcontractors' warranties relating to the Work, and further agrees to perform the Work in such manner so as to preserve any and all such warranties.

§ 3.5.5 The Contractor shall collect, assemble in a binder and submit to the Owner written warranties and related documents provided by Subcontractors, including but not limited to suppliers of equipment, appliances and other components of the Project, at all tiers. All benefits under such written warranties shall extend to the Owner.

§ 3.6 Taxes

The Contractor shall pay all sales, consumer, use, corporate activity and other similar taxes that are applicable by law to the Work or the Contract or portions thereof. Such taxes shall be itemized by the Contractor in its Applications for Payment, paid by the Owner as part of its progress and final payments, and remitted by the Contractor to the appropriate governmental agencies. If such taxes are legally enacted or modified after the execution of this Agreement, the Guaranteed Maximum Price shall be equitably adjusted accordingly.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Owner shall secure and pay for all plan review fees, building permits, system development charges, and other fees and permits required for issuance of building or right-of-way permits related to the use of the particular site for the Project and the construction of the Project as a whole. The Contractor and Subcontractors shall secure and shall pay for the mechanical, electrical, plumbing and other similar trade permits as well as licenses required for the performance of the Work by the Contractor and Subcontractors, including but not limited to any licenses required for the handling and disposal of asbestos-containing and hazardous materials. The Contractor's and Subcontractors' costs incurred under this Section 3.7.1, except for the cost of construction contractor registration and licensure fees incurred by the Contractor and Subcontractor, shall be included in the Guaranteed Maximum Price. Upon Final Completion, the Contractor shall deliver to the Owner all original permits, licenses and certificates related to the Work procured by the Contractor and Subcontractors, with photocopies to the Architect.

§ 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 and such other costs and damages to the Owner as would have been avoided if the Contractor had performed its obligations.

§ 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 twenty-one (21) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner 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 propose an equitable adjustment be made in the Guaranteed Maximum Price or Contract Time, or both. If the Owner 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 Owner shall promptly notify the Contractor in writing, stating the reasons. If Contractor disputes the Owner's determination or proposal, Contractor 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 Guaranteed Maximum Price and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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§ 3.8.1 The Contractor shall include in the Guaranteed Maximum Price 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, allowances shall cover:

.1 the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts; and

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, supervision not included in supervision and management line items of the initial schedule of values, and other direct expenses contemplated for stated allowance items.

Whenever such costs for allowance items are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order executed by both parties before any excess costs are incurred.

§ 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 approved by the Owner 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 [Intentionally deleted.]

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

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's approval an initial Contractor's construction schedule for the Work. The schedule shall use the critical path method and contain detail appropriate for the Project, including but not limited to (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. If approved by Owner, Contractor's Construction Schedule shall be attached to the GMP Amendment. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project, and shall provide for expeditious and practicable execution of the Work. During the course of the Work, and not less often than monthly, the Contractor shall submit to the Owner a current, updated version of the initial Contractor's construction schedule. Each updated Contractor's construction schedule shall be in the same form and provide the same detail as the initial Contractor's construction schedule, unless approved otherwise by the Owner. Contractor's schedules shall be submitted in electronic format if requested by Owner. The Contractor's construction schedule shall not be modified without the written approval of the Owner, and otherwise shall conform to any changes in the Contract Time set out in Change Orders. For the purposes of whether any Change Orders or Construction Change Directives shall extend the contractual dates for Substantial Completion and Final Completion, any unused "float" or "slack" time for the whole or any part of the Work as provided in the Contractor's construction schedule shall belong to neither the Owner nor the Contractor but shall be equitably allocated in the interests of the Project. In no event will Contractor be entitled to make an "Early Completion" claim.

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

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§ 3.10.3 The Contractor shall perform the Work in accordance with the most recent schedules approved by the Owner and Architect.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall maintain at the Project site for the Owner and Architect one (1) copy of the Drawings, Specifications, Addenda, Change Orders, Construction Change Directives and other Modifications in good order and marked currently to indicate field changes and selections made during construction, and otherwise marked to depict the as-built nature and configuration of the Work, and one (1) copy of approved Shop Drawings, Product Data, Samples, and similar required submittals. The Contractor also shall maintain at the Project site for the Owner and Architect one (1) current copy of all subcontracts with Subcontractors, RFIs, DCVRs, RFPs, Requests For Change Proposals and Change Proposals. All documents and items referenced in this Section 3.11 shall be available to the Owner and Architect and shall be delivered to the Architect for submittal to the Owner no later than, and as a condition of, Final Completion of the Work as a record of the Work as constructed. Failure to deliver the complete, record copies shall result in Owner withholding Contractor's retainage until the complete, record copies are delivered.

§ 3.11.2 The marked record Drawings and Specifications referenced shall be marked to show field decisions and selections affecting the Work, including but not limited to information regarding (1) approved or directed deviations from the Drawings and Specifications made during construction, (2) details of Work not previously shown or indicated, (3) changes to existing conditions or existing conditions found to differ from those shown on the Drawings or Specifications and (4) other information that the Architect or Owner reasonably requests. The final set of marked Drawings shall be on CAD disks and in reproducible hardcopy, with each hardcopy sheet stamped "As-Built" and signed by the Contractor. The marked Specifications shall be in PDF format on disk and in reproducible hardcopy, with each hardcopy page stamped "As-Built" and signed by the Contractor.

§ 3.11.3 The Contractor shall duly note Addenda, Change Orders, Construction Change Directives and other Modifications in the appropriate referenced location in the Drawings and Specifications for ease of reference during construction.

§ 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 to illustrate some portion of the Work.

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

§ 3.12.3 Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked

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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 the requirements of the Contract Documents by the Architect's or Owner's approval of Shop Drawings, Product Data, Samples, or similar submittals unless the Contractor has specifically informed the Architect and Owner 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 and Owner's approval thereof.

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall 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 (unless Owner requests otherwise) 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; however, the Contractor shall notify the Architect if additional performance or design criteria are required.

§ 3.12.10.2 If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

§ 3.12.11 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation of any additional resubmittals by Contractor to the extent such resubmittals are not the fault of Owner or Architect.

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area as well as contiguous roads, streets and sidewalks free from accumulation of waste and excess materials, rubbish, excavated materials and "tracking" caused by operations under the Contract. At completion of the Work, the Contractor shall remove from the surrounding area and contiguous roads, streets and sidewalks waste materials, rubbish, excavated materials, "tracking," the Contractor's and Subcontractors' 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 the Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 The Contractor's obligations under this Section 3.15 shall include the proper disposal of all such waste materials, rubbish and disposable surplus materials consistent with and in compliance with all applicable laws, statutes, ordinances, codes, and rules and regulations, including without limitation those relating to hazardous materials and the environment.

§ 3.16 Access to Work

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

§ 3.16.1 As used in Section 3.16, the term "Owner" shall mean and be limited to the Owner's Representative referenced in or determined pursuant to Section 2.1.1.1 and other persons and parties authorized by the Owner's Representative to have access to the Work.

§ 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 indemnify, reimburse, and hold harmless the Owner and Architect from, for, and against any 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 patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect and Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, hold harmless, reimburse and defend the Owner, State of Oregon acting by and through its Department of Administrative Services, and their agents, employees, officers and directors from, for, and against suits, actions, awards, penalties, liabilities, claims, damages, losses and expenses, whether actual or merely alleged and whether directly incurred or from a third party, including but not limited to attorneys' and expert witnesses' fees, and related costs, disbursements, and expenses, arising out of or resulting from performance of the Work including, but not limited to, any such suit, action award, penalty, liability, claim, damage, loss, or expense attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, but only to the extent caused by the negligence, breach of contract, or other wrongful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they are responsible, or by failure of any such person or entity to perform as required by this Agreement.

§ 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 shall not be limited by a limitation on amount or type of damages,

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compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.3 To the fullest extent permitted by law, the Contractor's obligations under this Section 3.18 (i) shall apply whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, (ii) shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18 and (iii) shall not be limited to Damages arising from third-party claims.

§ 3.18.4 Contractor shall require each Subcontractor, by subcontract or other agreement, to indemnify, hold harmless, reimburse and defend the Indemnitees to the same extent as required of the Contractor in this Section 3.18.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents may be restricted, modified, or extended as provided or allowed under the agreement between the Owner and Architect.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide such administration of the Contract as described in the Contract Documents during construction until the date the Owner issues the Final Payment to the Contractor. 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.

§ 4.2.2.1 The Contractor acknowledges that the Architect does not have authority to make any decision or give any direction to the Contractor that would impact the Guaranteed Maximum Price or Contract Time without the prior written approval of the Owner.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration

The Contractor shall address all communications to the Owner's Representative with copies to the Architect. The Architect's and Owner's communications by and with Subcontractors shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. Owner and Contractor may communicate with each other directly, provided they endeavor to keep the Architect informed and apprised of all communication. The Contractor shall copy the Owner on all correspondence from the Contractor to the Architect, and the Architect shall copy the Owner on all correspondence to the Contractor.

§ 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.

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§ 4.2.6 The Owner shall have and the Architect, after consultation with the Owner in each instance, has authority to reject Work that is defective or does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, and after obtaining the Owner's permission in each instance, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, 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 (unless Owner requests otherwise) 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. Unless Owner requests otherwise, 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 is undertaken solely to satisfy its obligations to the Owner and shall not give rise to any claim by the Contractor or Subcontractors against the Architect or Owner. 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 assist the Owner in preparing Construction Change Directives for authorization and issuance by the Owner. At the Owner's request, the Architect will assist the Owner in investigating concealed and unknown conditions and will make recommendations to the Owner. The Owner will make determinations and propose adjustments regarding such conditions as provided in Section 3.7.4.

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a contract with the Contractor to perform labor or services for all or a portion of the Work at the site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or subcontractors of a Separate Contractor, but does include all subcontractors, suppliers and consultants of the Contractor at all tiers. A subsidiary, affiliate or related entity of Contractor, if it otherwise qualifies under this Section 5.1.1, may be a Subcontractor.

§ 5.1.2 For ease of reference only, as it is otherwise included within the definition of Subcontractor, a Sub-subcontractor is a person or entity who has a contract with a Subcontractor to perform labor or services for all or a portion of the Work at the site or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work

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§ 5.2.1 The Contractor, as soon as practicable after execution of the Agreement, shall furnish in writing to the Owner a list of the names of the persons or entities (including but not limited to those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the fourteen (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 has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Guaranteed Maximum Price 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 Guaranteed Maximum Price or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall (1) require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including but not limited to the responsibility for safety of the Subcontractor's Work, which the Contractor, by the Contract Documents, assumes toward the Owner and Architect, (2) allow the Subcontractor the benefit of all rights, remedies and redress against the Contractor that the Contractor, by these Contract Documents, has against the Owner, (3) include an express provision that such contract shall be assigned to the Owner, at the Owner's discretion, in the event the Owner terminates the Contract and takes over the Work pursuant to Article 14 and (4) state that the Owner is and shall be a third-party beneficiary of such contract. 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 which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3.2 Each subcontract shall state that the Subcontractor agrees to the contingent assignment of the subcontract to the Owner, consistent with Section 5.4.

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

§ 5.4.2 Upon such assignment, if the Subcontractor's portion of the Work has been suspended for more than 30 days, through no fault of Subcontractor, that Subcontractor's Sub-subcontractors, or any of their respective agents or employees, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors.

§ 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 Contractor 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 Owner shall require its own forces and Separate Contractors to cooperate with Contractor with respect to such coordination. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its 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.

§ 6.2 Mutual Responsibility

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

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

§ 6.2.2.1 If part of the Contractor's Work requires that any work being performed by the Owner or any of its Separate Contractors be performed before the Contractor can proceed, the Contractor shall give the Owner and Architect reasonable advance written notice of when such work must be done. In the absence of such written notice, the Contractor shall not be entitled to any additional costs or time arising out of delay caused by the Owner or its Separate Contractors in completing such Work.

§ 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.

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only 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. Any Change Order or Construction Change Directive changing the materials, layout, configuration or other physical characteristics of the Work as set out in the Construction Documents shall reference and be accompanied by a written modification of the Construction Documents prepared and issued by the Architect.

§ 7.1.1.1 The Owner and Contractor expressly and explicitly acknowledge and agree that no employee or consultant of the Owner or any other person or entity shall have authority to order, request, approve, cancel, disapprove or take any other binding action on behalf of the Owner with respect to Change Orders, Construction Change Directives and any other documents changing the Work, whether pursuant to this Article 7 or otherwise, except the Owner's Representative named or determined pursuant to Section 2.1.1.1. This Section 7.1.1.1 shall not negate, abridge or reduce the authority of the Architect under Section 7.4.

§ 7.1.2 Owner will not be responsible for additional costs, fees, or time associated with any altered or additional Work unless a Modification is properly and timely prepared and executed as required in the Contract Documents. Contractor hereby waives any argument that Owner's conduct (including, but not limited to, orally approving changes) amounts to a waiver of the prior, written change requirements of the Contract Documents. A Change Order shall be based upon agreement among the Owner, Contractor, and Architect; a Construction Change Directive requires authorization and signature by the Owner alone 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, but only if it does not affect the Guaranteed Maximum Price or the Contract Time.

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

§ 7.1.4 In determining the cost or credit to the Contractor in performing changed Work under this Article 7, a Subcontractor's compensation shall include markups for "general conditions" costs, overhead and profit of a total amount no greater than fifteen percent (15%) for direct Work performed by a Subcontractor and no more than five percent (5%) for Work performed by a Subcontractor's lower-tier Subcontractor.

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Owner or 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 Guaranteed Maximum Price; and
.3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The form of Change Orders shall be AIA Document G701, Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner, with the Architect's assistance, and authorized and signed by the Owner alone, directing a change in the Work prior to agreement on adjustment, if any, in the Guaranteed Maximum Price or Contract Time, or both. The Architect's approval or signature is not required for a Construction Change Directive to be effective. 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 Guaranteed Maximum Price and Contract Time being adjusted accordingly. A Construction Change Directive may state a proposed basis for adjustment, if any, in the Guaranteed Maximum Price or Contract Time, or both.

§ 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 Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

.1 Mutual acceptance of an amount properly itemized and supported by sufficient substantiating data to permit evaluation;

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.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price, the Owner shall determine the adjustment on the basis of reasonable cost expenditures and cost savings of those performing the Work attributable to the change, including, but not limited to, in case of an increase in the Guaranteed Maximum Price, 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 under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data.

§ 7.3.4.1 For the purpose of this Section 7.3.4, the term "costs" as applied to Subcontractors shall be limited to the following:

.1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
.5 Costs of supervision and field office personnel directly attributable to the change.

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

§ 7.3.7 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including but not limited to adjustment in Guaranteed Maximum Price and Contract Time, or both, or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment accompanied by a Change Order indicating the parties' agreement, if any, with part or all of such costs. For any portion of such cost that remains in dispute, the Owner and the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Guaranteed Maximum Price and Contract Time, or otherwise reach agreement upon the adjustments, 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 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs, including labor, materials, and subcontracts. Labor and materials shall be itemized in the manner prescribed above. Where major cost

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items are subcontracts, they shall be itemized as well. In no event will a change involving over $1,000 be approved without such itemization.

§ 7.4 Minor Changes in the Work

The Architect has authority to order in writing with a copy to the Owner minor changes in the Work not involving adjustment in the Guaranteed Maximum Price 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. If the Contractor believes a directive for a minor change in the Work is in fact not a minor change and results in added costs and/or time of performance, the Contractor shall promptly notify the Owner and Architect in writing before performing the affected Work, and may pursue a Claim in accordance with Article 15 of these General Conditions as modified. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior written notice to the Owner and Architect that such change will affect the Guaranteed Maximum Price or Contract Time, the Contractor waives any adjustment to the Guaranteed Maximum Price or extension of the Contract Time.

§ 7.5 LIMITATIONS ON ADJUSTMENTS IN GUARANTEED MAXIMUM PRICE AND CONTRACT TIME DUE TO CHANGES IN THE WORK

§ 7.5.1 Notwithstanding the provisions of Sections 7.1 through 7.4 and other provisions of the Contract, in no event shall the Contractor be entitled to adjustments in the Guaranteed Maximum Price or Contract Time as a result of changes in the Work to the extent such changes were made necessary by the negligent or other wrongful acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract.

§ 7.5.2 Nothing in Sections 7.1 through 7.4 or other provisions of these General Conditions shall excuse the Contractor from performing its obligations under (1) Article 15 related to Claims and disputes or (2) Article 8 related to adjustments in the Contract Time. Failure of the Contractor to perform its obligations under those provisions of these General Conditions when required shall result in a waiver of any right it may have to an adjustment in the Guaranteed Maximum Price.

§ 7.6 The Contractor shall keep full and detailed cost accounts and records of all Work compensated on a cost basis pursuant to Change Orders and Construction Change Directives, and shall maintain such accounts and records for three (3) years after final payment or longer if required by law. The Owner and its personnel, consultants and accountants shall have full access to inspect or audit such accounts and records during the course of the Project and the period referenced in this Section 7.6. In the event an audit of such accounts and records determines that the Contractor was paid more or less than the amount actually due for such Work, the appropriate payment shall be made by the appropriate party together with accumulated interest. In the event an audit determines that the Contractor submitted one or more Applications for Payment that resulted in it being paid more than one hundred and two percent (102%) of the amount actually due, the Contractor also shall pay for the cost of the audit.

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including but not limited to authorized adjustments, allotted in the Contract Documents for Substantial Completion and Final 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 dates of Substantial Completion and Final Completion are the dates satisfying the requirements of Sections 9.8 and 9.10, respectively.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the 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; by changes ordered in the Work; or by labor disputes not caused or contributed to by the Contractor, Subcontractors, or any person or entity for whose acts or omissions any of them are responsible; or fire, abnormally adverse weather conditions, cessation of the Work pursuant to Section 10.3.1; by delay authorized by the Owner pending mediation; or by other causes that the Owner agrees may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may agree.

§ 8.3.1.1 No extensions of the Contract Time shall be allowed for delays or suspensions to the extent caused by the negligent or other wrongful acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by the failure of such persons or entities to perform as required by the Contract.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Guaranteed Maximum Price

§ 9.1.1 The Guaranteed Maximum Price, as stated in the Agreement and subject to authorized adjustments, is the maximum amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 9.1.2.1 Unit prices are inclusive of all costs for the unit price Work, including but not limited to costs of labor, services, materials, equipment, supervision, insurance, bonds and "general conditions," as well as applicable taxes and overhead and profit for that Work.

§ 9.2 Schedule of Values

§ 9.2.1 Promptly after execution of the Agreement, the Contractor shall deliver to Owner an initial schedule of values, allocating the entire Guaranteed Maximum Price to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy required by the Owner and Architect. The schedule of values shall be revised by the Contractor for the Owner's approval as necessary to reflect adjustments in the Guaranteed Maximum Price, allocations of contingencies and other changes in the allocations of the Guaranteed Maximum Price. The current, approved schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment. If approved by Owner, the proposed initial schedule of values shall be attached to the GMP Amendment.

§ 9.2.2 Unless otherwise provided in the Contract Documents, the allocation of the Guaranteed Maximum Price under this Section 9.2 shall not constitute a separate stipulated sum or guaranteed maximum price for each individual line item in the schedule of values.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for completed portions of the Work based upon the percentage of Work performed pursuant to the current schedule of values approved by the Owner and submitted with the Application for Payment. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and

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waivers of claims and liens from Subcontractors, 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 Owner, 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, unless such Work has been performed by others whom the Contractor intends to pay. The Contractor shall include a written notice, on Contractor's letterhead, stating the name of and amount owed to such Subcontractor which has requested payment but which has not been included on the Application for Payment.

§ 9.3.1.3 Each Application for Payment shall be accompanied by waivers and releases executed by Contractor and Subcontractors, using the forms attached as Exhibit B. The waiver and release forms shall be conditional as to the payment sought by the current Application for Payment and shall be unconditional as to the payment received pursuant to the prior Application for Payment. If the Contractor is unable to obtain such executed waiver and release forms and satisfactions from particular Subcontractors, the Contractor as a condition of payment for such Subcontractors' performance of the Work shall provide the Owner with a bond or other form of security acceptable to the Owner to protect the Owner from claims of such Subcontractors. If any such claim remains unsatisfied after payments are made, upon the Owner's demand, and without waiver of any other remedies the Owner may have under the Contract or applicable law, the Contractor shall refund to the Owner all money that the Owner pays in discharging such claim, including but not limited to the Owner's attorneys' fees and costs and disbursements resulting therefrom.

§ 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 and in writing 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 upon physical incorporation into the construction at the site or upon Contractor's receipt of payment, whichever occurs first. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Applications 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 or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections or observations to check the quality or quantity of the Work; (2)

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reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors 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.

§ 9.4.3 The Owner shall have the right to perform the Architect's roles, responsibilities and obligations under this Section 9.4, in which event the provisions of this Section 9.4 and of Article 5 of the Agreement and other related provisions of this Agreement shall be interpreted accordingly with respect to the Contractor's Applications for Payment being reviewed and acted upon by the Owner rather than by the Architect.

§ 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 but not limited to loss resulting from acts and omissions described in Section 3.3.2, because of

- **.1** defective or nonconforming Work not remedied or incomplete work;
- **.2** third party claims, including but not limited to construction lien claims and bond 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 Contractor's employees or Subcontractors for labor, services, materials or equipment;
- **.4** reasonable evidence that the Work cannot be completed for the unpaid balance of the Guaranteed Maximum Price;
- **.5** damage or potential damage to the Owner that is caused by or is the responsibility of Contractor or any Subcontractor or other person or entity for which Contractor is responsible;
- **.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;
- **.7** repeated or substantial failure to carry out the Work in accordance with the Contract Documents; or
- **.8** determination that the Work has not progressed to the point indicated in Contractor's Applications for Payment and already paid by Owner;

§ 9.5.1.1 In withholding or nullifying certification pursuant to Section 9.5.1, the Architect shall designate one hundred fifty percent (150%) of the estimated cost to cure the reason for the withholding or nullification.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding or nullifying certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 Notwithstanding the issuance of a Certificate for Payment by the Architect, the Owner may withhold payment for those reasons set forth in Items .1 through .8 of Section 9.5.1 or for any other breach of the Contract; and the Owner shall not be deemed in breach by reason of withholding payment while any such circumstances or breaches remain uncured. If Owner withholds payment, Owner shall notify Contractor and Architect in writing of Owner's reasons for withholding. Owner may withhold from a payment up to one hundred fifty percent (150%) of the estimated or actual cost associated with the reason for withholding. 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 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 Contractor.

§ 9.6 Progress Payments

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§ 9.6.1 After the Architect has issued a Certificate for Payment and the Owner has not yet withheld payment pursuant to Section 9.5.4, the Owner shall make payment in the manner and within the time provided in the Contract Documents, absent any material breaches by Contractor or Owner's good faith belief that a withholding of payment is necessary to protect Owner from Contractor's failure to perform its obligations hereunder.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 Should the Contractor withhold payment from a Subcontractor due to a bona fide dispute, the Contractor shall notify the Owner. The Owner shall then withhold such funds from the Contractor until the dispute is resolved; provided that this Section 9.6.2.1 shall not be construed or applied to prevent the Contractor from receiving payment from the Owner for Work performed by the Contractor or by another Subcontractor when such Work is the subject of a backcharge by the Contractor against the Subcontractor involved in the bona fide dispute.

§ 9.6.3 Neither the Owner nor Architect shall have an express or implied obligation to (1) pay or to see to the payment of money to a Subcontractor, or (2) track, monitor, or investigate Contractor's disbursement of Project funds for the benefit of any Subcontractor, surety, creditor, or any other person or entity. The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.4 Upon reasonable evidence of the unjustified nonpayment of one (1) or more Subcontractors by the Contractor, the Owner may, after giving reasonable notice and opportunity to cure to the Contractor, make payment of amounts due to Subcontractors by direct payments or by means of multiple-payee checks. Upon request of the Owner, the Contractor shall timely furnish to the Owner such information as the Owner reasonably will need to make such direct or multiple-payee check payments, including but not limited to the names and addresses of the Subcontractor payees and the amounts due to each. In no event shall any direct or multiple-payee payment be construed to create (1) any contract between the Owner and Subcontractors or (2) rights of any Subcontractor against the Owner. In addition, should Contractor neglect or refuse to pay promptly any bill or charge legitimately incurred by it, Owner shall have the right, but not the obligation, to pay the bill directly, and Contractor shall immediately reimburse Owner for same, provided Owner notifies Contractor of its intent to pay such bill directly and Contractor fails to provide Owner, within seven (7) days following Owner's written notice, of an acceptable explanation in writing regarding Contractor's failure to promptly pay the bill or charge legitimately incurred by Contractor. If Contractor does not reimburse Owner prior to the next payment by Owner to Contractor, Owner may offset the amount of the bill against amounts owed by Owner to Contractor hereunder.

§ 9.6.5 [Intentionally deleted.]

§ 9.6.6 A Certificate for Payment, a progress payment, final payment or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work that is defective or 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 Guaranteed Maximum Price, payments received by the Contractor for Work properly performed by Subcontractors shall be held by the Contractor for those Subcontractors who performed Work or furnished materials or equipment, 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.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including but not limited to reasonable attorney's fees, arbitrations and/or litigation expenses, arising out of any lien claim or other claim for payment by

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any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, within seven (7) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven (7) 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 (7) additional days' written notice to the Owner and Architect, stop the Work and thereby suspend or terminate the Contract, unless within such seven (7) additional days payment is made to Contractor of all undisputed amounts and Owner's good faith basis for contesting any disputed amounts is delivered to Contractor. If Contractor so terminates the Contract, Contractor's exclusive remedies will be governed by Article 14 below.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof, which the Owner agrees in writing to accept separately, is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use without any meaningful interference or disruption.

§ 9.8.1.1 For Substantial Completion of the Work or designated portion thereof to be achieved, the Owner also must have received a temporary or final certificate of occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion for its intended purpose. The requirement shall be deemed satisfied if all construction, submittals and other performance by the Contractor required for issuance of the certificate of occupancy and other approvals have been completed but the certificate and approvals have not been issued solely because of factors beyond the reasonable control of the Contractor.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees in writing to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a written punch list of items to be completed or corrected prior to final payment. Failure to include an item on such punch 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 punch list, the Owner, Contractor and Architect will make an observation to determine whether the Work or designated portion thereof, which the Owner agrees in writing to accept separately, is substantially complete. If the Owner's and Architect's observation discloses any item, whether or not included on the Contractor's punch 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 observation by the Owner, Contractor and Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof, which the Owner agrees in writing to accept separately, is substantially complete, the Architect shall prepare and issue a Certificate of Substantial Completion that establishes the date of Substantial Completion; establishes responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; includes a punch list of items remaining to be completed or corrected notwithstanding achievement of Substantial Completion; and fixes the time within which the Contractor shall finish all items on the punch 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; provided that with respect to components or portions of the Work for which Substantial Completion is achieved after the date of Substantial Completion of the Work as a whole, such warranties shall commence on the dates of Substantial Completion of such components or portions.

§ 9.8.5 [Intentionally deleted.]

§ 9.9 Partial Occupancy or Use

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§ 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 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 punch list to the Owner and 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 observe 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 by the Owner of the Contractor's written notice that the Work, or designated portion thereof which the Owner agrees in writing to accept separately, is ready for final observation and acceptance and upon receipt of a final Application for Payment, the Owner, Contractor and Architect will promptly make such observation and, when the Owner and Architect find 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 observations, the Work has been completed in accordance with the 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. Should it become necessary for the Owner and Architect to conduct additional observations because of acts or omissions of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, the Owner and Architect will conduct such observations at the Architect's standard hourly rate and such costs will be deducted from monies due to the Contractor.

§ 9.10.1.1 For Final Completion of the Work or designated portion thereof to be achieved, (1) Substantial Completion of the Work or designated portion thereof must have been achieved, (2) the Owner must have received a final certificate of occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose, (3) the Contractor must have submitted all warranties, operating and maintenance manuals, As-Built Drawings and Specifications, keys and other submittals required for the Work or designated portion thereof and (4) the Contractor otherwise must have fully performed and completed all of its other obligations required for Final Completion under the Contract Documents with respect to the Work or designated portion thereof. Solely for purposes of determining Final Completion under this Section 9.10.1.1, the requirement in Item (2) shall be deemed satisfied if all construction, submittals and other performance by the Contractor required for issuance of the certificate of occupancy and other approvals have been completed but the certificate and approvals have not been issued solely because of factors beyond the reasonable control of the Contractor. This exception does not exclude compliance with Items (1), (3) and (4).

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner (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 thirty (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, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and

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releases and waivers of claims arising out of the Contract, to the extent and in such form as may be designated by the Owner. In addition to the foregoing submissions, neither final payment nor any remaining retained percentage shall become due until (7) the grounds for the Architect withholding certification of payment under Section 9.5.1 or the Owner withholding payment under Section 9.5.4 have been removed or no longer exist, and (8) the Work has been completed in compliance with the Contract Documents. 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 claims. If such claims remain 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 claims, including all costs, disbursements, expenses 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, Subcontractors, or anyone for whose acts or omissions any of them are responsible, or by issuance of Change Orders affecting Final Completion, and the Owner or Architect so confirms, the Owner shall, upon application by the Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work that is fully completed and accepted. If the remaining balance for Work that is not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.3.1 The Owner shall retain an amount equal to two hundred percent (200%) of the estimated costs of finally completing the Work as determined by the Owner, if the Owner makes payment in advance of Final Completion pursuant to Section 9.10.3.

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner.

§ 9.10.5 Acceptance of final payment by the Contractor or a Subcontractor 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

§ 10.1.1 The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract and the entirety of the Work.

§ 10.1.1.1 The Contractor's safety obligations under this Article 10 shall apply, without limitation, to the areas of the Owner's property where the Work is performed, or which are used for any purpose in connection with the performance of the Work, by the Contractor or Subcontractors.

§ 10.1.1.2 The Contractor shall coordinate its safety program with the safety programs of the Separate Contractors and of any other contractors working at the site.

§ 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** those performing labor or services or furnishing materials or equipment at the Work site and other persons who may be affected thereby, including, but not limited to, licensees, trespassers, and persons on adjacent or adjoining properties;
- **.2** the Work and materials and equipment to be incorporated or utilized therein, whether in storage on or off the site, under care, custody, or control of the Contractor or Subcontractors;
- **.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;
- **.4** other structures contiguous to the Work site and otherwise located at or contiguous to the premises, and trees, shrubs, lawns, walks, pavements, roadways and utilities serving such structures and premises; and
- **.5** the work, materials, equipment, tools, machinery and facilities of or being utilized by the Owner's own forces or their separate design professionals, consultants or contractors.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including but not limited to posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel and give the Owner and Architect reasonable prior notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons, property damage, or contamination of air, water, soil, materials for the Work or other property resulting from a material or substance, including but not limited to asbestos, lead paint, mold, 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 by telephone or other appropriate means followed by prompt confirmation in writing.

§ 10.3.2 Upon receipt of the Contractor's notification, the Owner, in consultation with the Architect and Contractor, shall obtain the services of a licensed laboratory or other consultant to verify the presence or absence of the hazardous material or substance reported and, in the event such hazardous materials are found to be present, to cause them 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 hazardous materials or who are to perform the task of removal or safe containment of such hazardous materials. 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 hazardous materials have been rendered harmless, Work in the affected area shall resume upon the directive of the Owner. By Change Order, the Contract Time shall be extended appropriately and the Guaranteed Maximum Price shall be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors 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 hazardous materials present the risk of bodily injury or death as described in Section 10.3.1 and have not been

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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 but only to the extent that such damage, loss or expense is not due to the fault or negligence or other wrongful acts or omissions 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, or by the failure of Contractor to perform as required by this Section 10.3.

§ 10.3.5 The Contractor shall indemnify, hold harmless, reimburse, and defend the Owner from, for, and against suits, actions, awards, penalties, liabilities, claims, damages, losses, and expenses, including but not limited to attorneys' fees and expert witness fees and related costs, arising out of or related to (1) remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) the Contractor's failure 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 fault or negligence or other wrongful acts or omissions on the part of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

§ 10.4 Spill Responsibility

§ 10.4.1 The Contractor is responsible for any and all releases of hazardous substances or materials or environmental pollutants during performance of the Contract which occur as a result of, or are contributed to by, actions of its agents, employees, or Subcontractors. The Contractor agrees to promptly remediate such releases to the satisfaction of the Owner and proper regulatory agencies in a manner that complies with applicable federal, state, and local laws and regulations. Cleanup shall be at no cost to the Owner.

§ 10.4.2 Contractor shall obtain the Owner's written consent prior to bringing onto the Work site any (i) environmental pollutants or (ii) hazardous substances or materials, as the same or reasonably similar terms are used in any applicable federal, state, or local statutes, rules or ordinances. Notwithstanding such written consent from the Owner, the Contractor, at all times, shall:

.1 properly handle, use and dispose of all environmental pollutants and hazardous substances or materials brought onto the Work site, in accordance with all applicable federal, state, or local statutes, rules, or ordinances;

.2 be responsible for any and all spills, releases, discharges, or leaks of (or from) environmental pollutants or hazardous substances or materials that the Contractor has brought onto the Work site; and

.3 promptly clean up, without cost to the Owner, such spills, releases, discharges, or leaks to the Owner's satisfaction and in compliance with all applicable federal, state, or local statutes, rules or ordinances.

§ 10.4.3 The Contractor shall be liable for any and all costs, expenses, damages, claims, and causes of action, or any of them, related to or arising out of a spill, release, discharge, or leak of (or from) any environmental pollutant or hazardous substance or material, to the extent such spill, release, discharge, or leak was caused or contributed to by the Contractor's (i) fault or (ii) failure to perform in accordance with the Contract Documents. Nothing in this Section 10.4.3 shall limit the Contractor's liability or responsibility under any other provision of the Contract Documents.

§ 10.4.4 The Contractor shall report all reportable quantity releases described in this Section 10.4 to applicable federal, state, and local regulatory and emergency response agencies. Upon discovery, regardless of quantity, the Contractor must telephonically report all releases to the Owner. A written follow-up report shall be submitted to the Owner within forty-eight (48) hours of the telephonic report. Such written report shall contain, at a minimum:

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.1 Description of items released (identity, quantity, manifest number, and all other documentation required by law);
.2 Whether amount of items released is EPA/DEQ reportable and, if so, when it was reported;
.3 Exact time and location of release, including a description of the area involved;
.4 Containment procedures initiated;
.5 Summary of communications about the release the Contractor has had with members of the press or state officials other than the Owner;
.6 Description of cleanup procedures employed or to be employed at the site, including disposal location of spill residue; and
.7 Personnel injuries, if any, resulting from, or aggravated by, the release.

§ 10.5 Emergencies

§ 10.5.1 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.

§ 10.5.2 If Contractor does, or omits to do, anything where safety may be endangered or where damage or injury may result to person or property (including the Work itself), Owner may, in its sole discretion, after one (1) day's written notice to the Contractor, or in case of imminent danger, immediately after delivery of written notice to Contractor, make good all Work, material, omissions, or deficiencies to remove the dangerous condition(s) and prevent damage or injury. Owner may deduct Owner's costs incurred under this Article 10 from the amount included in the Guaranteed Maximum Price due or which may thereafter become due to Contractor. No action taken by Owner under this Section 10.5 shall affect any of the other rights or remedies of Owner granted by the Contract or by law, or relieve Contractor from any consequences or liabilities arising from such acts or omissions. Contractor shall not be responsible for costs of emergency work, unless the emergency was due to the negligence or other misconduct of the Contractor or any Subcontractors, or anyone for whose acts any of them may be liable.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 Contractor and Subcontractors shall comply with the terms of Exhibit C.

§ 11.1.2 [Intentionally deleted.]

§ 11.1.3 [Intentionally deleted.]

§ 11.1.4 [Intentionally deleted.]

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance. If requested by Contractor, Owner will provide to Contractor copies of all relevant policies.

§ 11.2.2 Property Insurance

§ 11.2.2.1 The Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis subject to self-insurance retention and deductibles. The Owner's property insurance coverage shall be no less than the amount of the initial Guaranteed Maximum Price, plus the value of subsequent Modifications and labor performed or materials or equipment supplied by others. 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 11.2.2.1 to be covered, whichever is later. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ 11.2.2.1.1 The Contractor shall be responsible for property losses to the Work not paid by the insurance discussed in Section 11.2.2.1 due to self-insurance retention and deductibles, to a maximum of Ten Thousand Dollars ($10,000) per occurrence, except to the extent such losses are caused by (1) the negligent or other wrongful acts or

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omissions of the Owner, Architect or its consultants, Owner's separate consultants or contractors, or their respective agents or employees or (2) Acts of God.

§ 11.2.2.2 [Intentionally deleted.]
§ 11.2.2.3 Waiver of Subrogation
§ 11.2.2.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; and (2) Architect, Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered and paid by property insurance obtained pursuant to this Agreement, if any, or other property insurance applicable to the Project, (a) except such rights as they have to proceeds of such insurance and (b) except to the extent such damages are covered by Commercial General Liability or other insurance of the Contractor or one or more Subcontractors. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Separate Contractors, Subcontractors, and sub-Subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this Section 11.2.2.3 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

§ 11.2.2.4 A loss insured under the Owner's property insurance shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, the Contractor shall make payments to its Subcontractors, and by appropriate written agreements shall require its Subcontractors to make payment to their sub-subcontractors in similar manner.

§ 11.3 [Intentionally deleted.]

§ 11.4 [Intentionally deleted.]

§ 11.5 [Intentionally deleted.]

§ 11.6 Performance Bond and Payment Bond
§ 11.6.1 Contractor shall furnish separate bonds covering the faithful performance of the Contract and the payment of obligations arising thereunder. The amount of each bond shall be equal to one hundred percent (100%) of the Guaranteed Maximum Price, and such amount shall be adjusted as the Guaranteed Maximum Price is adjusted pursuant to the Contract Documents. The bonds shall be in the forms attached as Exhibit D and shall identify the issuing surety. The surety on such bonds shall be authorized to do business in the State of Oregon and shall have an A.M. Best Financial Strength Rating of A or better.

§ 11.6.2 The Contractor shall deliver the required bonds to the Owner not later than three (3) business days following the Contractor's execution of the Contract.

§ 11.6.3 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

§ 11.6.4 Surety Obligations
§ 11.6.4.1 Any Change Order, Construction Change Directive, order for a minor change in the Work or other Modification under the Contract shall not be subject to inspection or approval by any surety on any required bond. The surety on such bond, by issuing the bond, expressly waives its right to approve, and consents to, any such Change Order, Construction Change Directive, order or Modification.

§ 11.6.4.2 The surety on any required bond shall be bound to mediate and litigate any disputes between and among it, the Owner, Owner's separate consultants and contractors and their subconsultants and subcontractors, Contractor, Subcontractors, Subcontractors' sureties, Architect, Architect's consultants, and other persons or entities under contract or otherwise engaged to furnish labor, services, materials or equipment for the Project, in the same way and to the same extent that the Contractor shall be bound to mediate and litigate any disputes between and among such parties. The surety shall be bound by the decisions and award/judgment of the court in the same way and to the same extent that the Contractor shall be bound.

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§ 11.6.5 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.6.6 With the Owner's prior written approval, the Contractor may require one (1) or more Subcontractors to furnish payment and performance bonds covering faithful performance of the particular subcontract and payment of obligations arising thereunder.

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 Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for the Owner's or Architect's examination and be replaced at the Contractor's expense without change in the Contract Time or Guaranteed Maximum Price.

§ 12.1.2 If a portion of the Work has been covered that the Owner or Architect has not specifically requested to examine prior to its being covered, the Owner or 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, the Contractor shall be entitled to an equitable adjustment to the Guaranteed Maximum Price and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect or Owner as defective 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 but not limited to additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses and the Owner's attorneys' and consultants' fees and related costs, disbursements 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 the Contract Documents (including but not limited to Section 3.5), and without limiting Owner's other rights and remedies under the Contract Documents or at law, if, within two (2) years after the date of Substantial Completion of the Work or designated portion thereof which the Owner agrees in writing to accept separately, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be defective or 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. If the Contractor fails to correct defective or nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5 provided that if payment of the Contract Sum has already been made by the Owner then upon demand the Contractor shall reimburse the Owner pursuant to Section 2.5.

§ 12.2.2.2 The two (2) year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion of the Work as a whole by the period of time between Substantial Completion of the Work as a whole and the actual completion of that portion of the Work.

§ 12.2.2.3 The two (2) year period for correction of Work performed by the Contractor pursuant to this Section 12.2 shall only be extended for that period of time that equals the amount of time after Substantial Completion of the Work as a whole that the corrected portions of the Work were defective or nonconforming. Such extensions shall be applicable only to corrected portions of the Work.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are defective or not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

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§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is defective or 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 or applicable law. Establishment of the two (2) 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 nor shall otherwise be deemed to limit the time within which the obligation to comply with the Contract Documents or applicable law 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 defective or not in accordance with the requirements of the Contract Documents, the Owner may do so in writing instead of requiring its removal and correction, in which case the Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. Contractor may not rely upon any non-written statements that purport to accept non-conforming Work.

§ 12.4 No earlier than twenty-two (22) months and no later than twenty-three (23) months after the date of Substantial Completion of the Work, the Owner, Architect and Contractor at a time reasonably determined by the Owner shall jointly observe the Project to identify defective or nonconforming Work to be corrected pursuant to Section 12.2, if any. Neither the Contractor's performance of its obligation under this Section 12.4 nor its correction of defective or nonconforming Work identified during the observation required by this Section 12.4 shall negate, abridge or reduce the Contractor's obligations to otherwise correct the same or other defective or nonconforming Work identified either before or after the observation required by this Section 12.4.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located.

§ 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. Contractor shall not assign its rights or obligations under the Contract as a whole without written consent of the Owner. If Contractor attempts to make such an assignment without such consent, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign its rights under the Contract to any person or entity (the "Assignee"). If Owner assigns all of its rights and delegates all of its duties and gives written notice of the assignment to Contractor, Contractor agrees: (a) to regard the Assignee as Owner's successor for all purposes of this Contract, with all of the rights and duties that Owner had before the assignment was made; (b) not to look further to Owner for payment under this Contract; (c) not to look further to Owner for satisfaction of any claims it may have asserted or will assert with regard to the Work; (d) without deleting Contractor's continuing indemnity obligation to Owner, Contractor will include the Assignee as a beneficiary of the indemnity obligations that Contractor owes to Owner under this Contract; and (e) without deleting Owner's additional insured status under this Contract, Contractor will include Assignee as an additional insured under Contractor's liability insurance policies. The Contractor shall execute all consents reasonably required to facilitate such assignment. If requested by Contractor, Owner will provide reasonable evidence that Assignee has made financial arrangements or otherwise has the ability to fulfill the payment obligations under the Contract.

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law, in equity, or by any other agreement, and any such rights or remedies shall survive the acceptance of the Work and termination or expiration of the Contract.

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§ 13.3.2 No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority. The Contractor shall give the Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and Architect may be present for such procedures. The Owner shall bear costs of all such tests, inspections, or approvals; provided that if defective or nonconforming Work or other fault of the Contractor or one or more Subcontractors results in repeat tests, inspections or approvals of portions of the Work, the contractor shall reimburse the Owner for the cost of such repeat tests, inspections, or approvals.

§ 13.4.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.4.1, the Owner and Architect will instruct the Contractor to make arrangements for such additional testing, inspection or approval, by an entity acceptable to the Owner and Architect, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Owner and Architect.

§ 13.4.5 [Intentionally deleted.]

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.4.7 The conducting of any inspection, test, or observation and the receipt of any approval shall not operate to relieve the Contractor from its obligations under the Contract Documents unless specifically so stated by Owner, in writing. The Owner's and Architect's observations, reviews, or approvals of tests and inspections shall not relieve the Contractor from its responsibility for construction means, methods, and techniques, nor shall it relieve Contractor of its responsibility to strictly adhere to the Contract Documents.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

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 entire Work is stopped for a period of sixty (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** The Owner has not made a required payment within the time stated in the Contract Documents; or

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.4 The Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters critical to the progress of the Work.

§ 14.1.2 [Intentionally deleted.]

§ 14.1.3 If a basis for termination described in Section 14.1.1 exists, the Contractor may, upon seven (7) days' written notice to the Owner, and if the Owner fails to cure such reason during the seven (7) day period, terminate the Contract in whole or in part and recover from the Owner payment for Work executed at the Contract rate.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract, in whole or in part pursuant to Section 14.2.2, if the Contractor

.1 substantially refuses or fails to supply enough properly skilled workers or enough proper materials or equipment;

.2 fails to make payment to its employees or fails to make payment to its Subcontractors for materials, services, equipment or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 substantially disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;

.4 fails to carry out the Work pursuant to the Contract Documents;

.5 fails to comply with the current Contractor's construction schedule;

.6 submits one (1) or more Applications for Payment in which the Contractor overstates the amount to be paid by the Owner; or

.7 otherwise is guilty of material breach 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 (7) days' notice, terminate the Contract in whole or in part and may:

.1 Exclude the Contractor from the site and take possession of all or a portion of materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

.2 Accept assignment of some or all subcontracts, purchase orders and similar agreements pursuant to Section 5.4; and

.3 Finish the Work or a portion thereof by whatever reasonable means and method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract in whole or in part for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment for the terminated Work until that Work is finished.

§ 14.2.4 If the unpaid balance of the Guaranteed Maximum Price exceeds costs of finishing the Work, including but not limited to compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner, 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 survive termination of the Contract. In no event, however, shall Contractor be entitled to payment of overhead, profit, markup, or any other payment on account of Work not performed.

§ 14.2.5 In the event the Owner terminates the Contract for cause and such termination subsequently is determined in a final judgment to have been wrongful, the termination shall automatically be converted to a termination for the Owner's convenience pursuant to Section 14.4.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, with or without cause or prior notice, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include application of reasonable overhead and profit on actual costs incurred. 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

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.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 in whole or in part 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, and also except for Work not covered by the termination, terminate all existing subcontracts and purchase orders and similar agreements and enter into no further subcontracts and purchase orders, and similar agreements.

§ 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 termination expenses as follows: (1) the actual cost incurred by the Contractor to the date of termination, (2) a reasonable amount of overhead and profit based on the actual cost incurred, and (3) reimbursement of the Contractor's reasonable demobilization costs and other costs directly incurred relating to the termination which are not otherwise included in the actual cost incurred under Item (1). In no event, however, shall Contractor be entitled to payment of overhead, profit, markup, or any other payment on account of Work not performed.

§ 14.5 TERMINATION AND SUSPENSION BY THE OWNER

§ 14.5.1 In the event the Owner terminates or suspends the Contract, the Contractor shall cooperate with the Owner and all other persons and entities performing work or services on the Project as necessary and required to facilitate the efficient and proper performance and completion of (1) the overall Project, if the Owner completes the entire Project, or (2) the portion of the Project the Owner completes, if the Owner completes less than the entire Project. In the event of a termination, whether for cause or convenience, Owner reserves the right to recover damages arising out of or related to Contractor's performance of the Contract, regardless of whether (a) such performance occurred before or after the effective date of termination or (b) Owner provided Contractor with the opportunity to cure.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than ten (10) years after the date of Substantial Completion of the Work. For all claims by Owner against Contractor, the applicable period of limitations shall not commence to run and any alleged cause of action shall not be deemed to have accrued, whether such claims or actions involve strict liability, indemnity, intentional tort or other tort, breach of contract, breach of implied or express warranty, or any other legal or equitable theory, unless and until the party making the claim is fully aware of all three (3) of the following: (a) the identity of the party(ies) responsible; (b) the magnitude of the damage or the injury; and (c) the cause(s) of the damage or injury. The discovery rule provided herein applies in lieu of any other applicable statute or related case law. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

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§ 15.1.3.1 Claims by Contractor must be initiated by written notice to the Owner within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Contractor first recognizes or reasonably should have first recognized the condition giving rise to the Claim, whichever is later. Failure of Contractor to deliver the notice within the time set out in this Section 15.1.3.1 shall result in a complete and final waiver of the Claim and all rights and remedies arising therefrom.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.5 Claims for Additional Cost

If the Contractor knows or has a reason to know before performing a particular portion of the Work that it will have a Claim for an increase in the Guaranteed Maximum Price for performing that portion of the Work, written notice as provided herein shall be given by the Contractor before proceeding to execute that particular portion of the Work. Otherwise, a Claim for an increase in the Guaranteed Maximum Price shall be made as required by Section 15.1.3. Notice under this Section 15.1.5 shall contain sufficient detail and substantiating data to permit evaluation of the Claim by the Owner. No such Claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.5.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given to the Owner. Such notice shall include detailed documentation of the cause or event resulting in the need for the extension of time, and a schedule analysis based upon the approved Contractor's construction schedule, showing the impact of the cause or event on the critical path of the approved Contractor's construction schedule. No Claim under this Section 15.1.6 shall be valid unless so made. If a Claim for additional cost related to this Claim is to be asserted, it shall be made as provided in Section 15.1.3.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 15.2 MEDIATION

§ 15.2.1 Any Claim, dispute or other matter in question arising out of or related to this Contract shall be subject to mediation as a condition precedent to either party prosecuting legal or equitable proceedings concerning that matter. A party may institute such proceedings concurrently with a request for mediation to preserve its rights, subject to the stay provided in Section 15.2.2.

§ 15.2.2 Request for mediation shall be filed in writing with the other party to this Contract. The request may be made concurrently with the institution of legal or equitable proceedings but, in such event, mediation shall proceed in advance of legal or equitable 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.

§ 15.2.3 If the parties cannot agree on the choice of a mediator, the parties shall apply to the local state court to appoint a mediator.

§ 15.2.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Written and signed agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in

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writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 15.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.

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§ 15.5 Attorneys' Fees

§ 15.5.1 Should any arbitration, legal proceeding or court action be commenced in connection with any Claim, dispute or other matter in question arising out of or relating to the Contract or the breach thereof, to obtain a construction of or to enforce any provision of the Contract, to rescind the Contract, or to enforce or collect any judgment, order or decree of any court relating to the Contract, the prevailing party shall be entitled to recover its attorneys' and expert witnesses' fees and related costs, disbursements and expenses incurred prior to and during the arbitration, trial, on review for appeal, on appeal, on review for or on reconsideration, regardless of when such reconsideration should be sought or granted, as the court or arbitrator shall adjudge reasonable.

§ 15.6 Miscellaneous

§ 15.6.1 Operation and Maintenance Manuals

As part of the Work, Contractor shall submit one (1) hard copy and two (2) electronic media copies (on memory stick, CD or DVD and in standard Microsoft or Adobe format) of the completed operation and maintenance manuals for review by the Owner's Representative prior to any pay request for retainage. No retainage payments will be made by the Owner until the O & M Manual has been received. The O & M Manual shall contain a complete set of all submittals; all product data as required by the Specifications; training information; a telephone list of consultants, manufacturers, installers and suppliers; manufacturer's printed data; balance reports; record and shop drawings; schematic diagrams of systems; appropriate equipment indices; warranties; bonds; and other information and documents relevant to operations or maintenance of the Project. The Owner's Representative shall review and return one (1) O & M Manual for any modifications or additions required. Prior to submission of its final Application for Payment, complete and approved sets of O & M Manuals shall be delivered to the Owner's Representative by the Contractor.

§ 15.6.2 Training

As part of the Work, and prior to submission of the request for final payment, the Contractor shall schedule with the Owner's Representative training sessions for all equipment and systems related to the Work, as required in the Specifications. The Contractor shall schedule training sessions at least two (2) weeks in advance of the date of training to allow the Owner's personnel adequate notice. The O & M Manual shall be used as a basis for training. Training shall be a formal session, held after the equipment or system is completely installed and operational in its normal operating environment.

§ 15.6.3 Other Contractor Responsibilities

The Contractor shall be responsible for returning to the Owner all items issued during construction such as keys, security passes, site admittance badges, and all other pertinent items. The Contractor shall be responsible for notifying the appropriate utility companies to transfer utility charges from the Contractor to the Owner. The utility transfer date shall not be before Substantial Completion and, at Owner's discretion, may not be until Final Completion.

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Appendix C

CERTIFICATION OF NONDISCRIMINATION

The undersigned Proposer is aware that, under ORS 279A.110, no Proposer who contracts with a public contracting agency may discriminate against minority, women, or emerging small business enterprises certified under ORS 200.055 or a business enterprise that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225, in the awarding of subcontracts. Accordingly, the undersigned Proposer hereby certifies as part of its Proposal submission that it has not and will not discriminate against any minority, women, or emerging small business enterprises or a business enterprise that is owned or controlled by or that employs a disabled veteran in obtaining any of the required subcontracts for this project.

Firm Name _____

Authorized Signature _____

Printed Name_____

Title_____

Date_____

Appendix D

PROPOSER RESIDENCY STATEMENT

Pursuant to ORS 279A.120, Oregon's reciprocal preference law, public contracting agencies shall, for the purposes of determining the lowest responsible bidder/proposer and the awarding of a contract, add a percent increase on the bid of a non-resident bidder/proposer equal to the percent, if any, of the preference given to that bidder/proposer in the state in which the bidder/proposer resides.

As defined in ORS 279A.120, "Resident Bidder/proposer" means a bidder/proposer that has paid unemployment taxes or income taxes in this state in the twelve calendar months immediately preceding submission of the bid, has a business address in this state, and has stated in the bid whether the bidder/proposer is a "Resident Bidder/proposer". A "non-resident Bidder/proposer" is a bidder/proposer who does not meet the definition of a "Resident Bidder/proposer" as stated above.

Bidder/proposer/Proposer ____ IS/ ____ IS NOT a "Resident Bidder/proposer" as set forth above.

2. If a Resident Bidder/proposer, enter your Oregon Business address below**:**

_____

_____

3. If a Non-resident Bidder/proposer, enter state of residency:

_____

Bidder/proposer/Proposer hereby certifies that the information provided is true and accurate.

Signature: _____ Date: _____

Printed or Typed name: _____

Title: _____

Telephone: _____

Appendix E

CLATSOP CARE CENTER HEALTH DISTRICT
Acknowledgement of Addenda

I/we have received and reviewed the RFP, the Attachments to the RFP, and any Addenda issued by the District and this submission is our entire proposal. Addenda Received:

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

Addendum No. _____ Date Received _____

If no addendum received write "None" _____

Firm Name _____

Authorized Signature _____

Printed Name_____

Title_____

Date_____

Appendix F

Clatsop Care Center Health District
Acknowledgement of Prevailing Wage Requirement

The undersigned agrees to be bound by and will comply with the applicable prevailing wage requirements, including but not necessarily limited to ORS 279C.838, 279C.840 and 40 U.S.C. 3141 to 3148.

Firm Name _____

Authorized Signature _____

Printed Name_____

Title_____

Date_____

Appendix G

Clatsop Care Center Health District
CM/GC Fee Proposal

1. Preconstruction Phase Services. The undersigned agrees to the Guaranteed Maximum Price set forth below for the Preconstruction Phase Services as defined in the Contract.

   $_____

2. Construction Manager's Fee. The undersigned agrees to accept the percentage set forth below, as applied to the Cost of Work, as full payment for its fee for the performing the Construction Phase Services as defined in this RFP. Such amount shall be inclusive of the Construction Manager's profit, overhead, and all other direct or non-reimbursable costs as more fully described in Contract.

   ___ % (_____ percent)

Firm Name _____

Authorized Signature _____

Printed Name_____

Title_____

Date_____

Appendix H
Cost Responsibility Matrix
(*See the modified AIA A133, A201 and Exhibits for more information*)

A133 Section and Cost Description	**Cost of the Work**	**CM/GC Fee**
§ 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 written approval, at off-site workshops.	**X**	
§ 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 written approval except for the Construction Manager's superintendent and project engineer who both will be stationed at the Project site.	**X**	
§ 7.2.2.1 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:	**X**	
§ 7.2.3 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.	**X**	
§ 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.	**X**	
§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.	**X**	
Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.	**X**	
§ 7.4.1 Costs, including transportation and storage at the Project site, of materials and equipment incorporated, or to be incorporated, in the completed construction.	**X**	
§ 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	**X**	

A133 Section and Cost Description	Cost of the Work	CM/GC Fee
Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.		
§ 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.	X	
§ 7.5.2 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, fuel, lubrication, 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 written approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.	X	
§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.	X	
§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.	X	
§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior written approval.	X	
§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.	X	
§ 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 written approval.	X	
§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior written approval.	X	
§ 7.6.2 Sales, use, or similar taxes (excluding Oregon's Corporate Activity Tax), imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.	X	
§ 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.	X	

A133 Section and Cost Description	Cost of the Work	CM/GC Fee
§ 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 the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.	X	
§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.	X	
§ 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 written approval.	X	
§ 7.6.7 Costs of document reproductions and delivery charges.	X	
§ 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.	X	
§ 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 written approval in each instance.	X	
§ 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, with the Owner's prior written approval in each instance.	X	
§ 7.7.1 Other costs incurred in the performance of the Work if, and to the extent, (1) approved in writing in advance by Owner as a Cost of the Work or (2) expressly identified as a Cost of the Work in the Contract.	X	
§ 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 the General Conditions.	X	
§ 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.	X	
§ 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 the General Conditions which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.	X	
§ 7.9.1 The Cost of the Work shall not include the items listed below:		

A133 Section and Cost Description	Cost of the Work	CM/GC Fee
§ 7.9.1 clause .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;		**X**
§ 7.9.1, clause .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 written approval;		**X**
§ 7.9.1 clause .3 Expenses of the Construction Manager's principal office and offices other than the site office;		**X**
§ 7.9.1, clause .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;		**X**
§ 7.9.1, clause .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;		**X**
§ 7.9.1, clause .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the 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;		**X**
§ 7.9.1, clause .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;		**X**
§ 7.9.1, clause .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;		**X**
§ 7.9.1, clause .9 Costs of parking or related access;		**X**
§ 7.9.1, clause .10 Costs of subcontractor default insurance (e.g., Subguard); and		**X**
§ 7.9.1, clause .11 Oregon's Corporate Activity Tax.		**X**
§ 7.9.1.1 The Cost of the Work shall not include costs incurred before the Owner's written approval thereof, when such prior approval is required by the Contract Documents, and costs incurred in excess of the Owner's limitations or contrary to the Owner's limitations or instructions, when such limitations or instructions are imposed by the Owner pursuant to the Contract Documents.		**X**
§ 7.9.1.2 The Cost of the Work shall not include costs expressly excluded from the Cost of the Work by the Contract Documents.		**X**
§ 7.9.1.3 The Cost of the Work shall not include fees and costs of business licenses and contractor, design professional and other licenses or registrations.		**X**

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