

Request for Proposals
for
Construction Manager/General Contractor

Issue Date: August 2, 2022

Proposal Due Date:
August 30, 2022 at 3:00PM PST

City of Manzanita
PO Box 129
Manzanita, Oregon 97130
503 368-5343

Request for Proposals
City of Manzanita—Construction Manager/General Contractor

The City of Manzanita (City) is seeking proposals from qualified and experienced General Contractors (GCs) for the purpose of providing Construction Manager/General Contractor (CM/GC) services for development of a new City Hall. The City's objective is to enter into a CM/GC Agreement with a qualified GC that will provide these comprehensive services.

The City's expectation of any contractor the City contracts with is that the contractor's values align with the City's values of highly ethical conduct, fiscal responsibility, respect for City and others, and responsiveness to City's customers.

The Request for Proposals (RFP) documents may be obtained from the City's website and viewed. <https://ci.manzanita.or.us/>. Or, the RFP documents may be viewed at 167 S 5th Street, Manzanita, Oregon 97130, by appointment. Appointments may be scheduled by contacting Jessie Steiger (see contact information below).

Successful proposers will be asked to sign a Construction Contract for preconstruction services, and after a GMP is agreed to, a GMP Amendment to the Construction Contract with the City. The Construction Contract is a public work subject to ORS 279C.800 to 279C.870. A sample of the agreements are attached as part of the RFP documents. City will require specific levels of insurance, a Manzanita business license, and a tax identification number. Proposers must evaluate these sample agreements and agree with the terms and conditions contained therein unless written objections are included as an addenda with their proposal. City will review the addenda and content of any such objection in the proposal evaluation process. Objections after the awarding of the contract will not be considered and are grounds for subsequent denial of the contract.

Proposals shall be submitted by email with a subject line plainly identifying the RFP and proposers name and address. Proposals shall be delivered to Jessie Steiger, Klosh Group, Jessie@kloshgroup.com.

Proposals will be received until 3:00PM PST on August 30, 2022. Proposals received after the 3:00PM deadline will not be considered.

For additional information regarding this RFP, please contact Jessie Steiger, Jessie@kloshgroup.com. The City of Manzanita reserves the right to reject any and all proposals or to negotiate individually with one or more consultants, and to select one or more consultants if determined to be in the best interest of City.

The City will not hold a pre-proposal meeting.

I. INTRODUCTION

The City of Manzanita (City) is seeking the services of an GC with demonstrated experience in working with public facilities for the construction of a City Hall (the Project). The site of the Project is a 2.67 parcel located on the Northeast corner of Manzanita Avenue and Division Street. The scope of work consists of preconstruction services necessary to develop a GMP and construction phase services as outlined in Exhibit A and the sample Construction Contract attached to this RFP as Exhibit B. Anticipated contract start date is November 2022.

II. PROJECT BACKGROUND

Manzanita is surrounded by the natural beauty of the Pacific Ocean, Neah-Kah-Nie Mountain, and state and private forests on the north Oregon coast, just two hours west of Portland. Manzanita is home to 625 full time residents and 1,600 part-time homeowners, and it is a destination for visitors from around the world. Manzanita is a vibrant and complex city with an active and engaged community. The Project will require a construction team with excellent communication skills and experience working with the public.

City staff are currently housed in a temporary space due to the presence of mold and other environmental contaminants discovered in the existing City Hall building. This discovery has hastened the need for a safe work environment for staff and the community. The existing City Hall building on Laneda was initially constructed as a service station in the late 1940's and was later acquired by the City for use as its City Hall.

In 2017, City acquired 2.67 acres (635-655 Manzanita Avenue) for a future City Hall and additional public facilities. In 2017, City initiated a community-based process to identify what elements the new City Hall should have. Part of the process included the creation of a Public Facilities Advisory Committee (PFAC) that identified several potential options. PFAC issued a report which is included for reference as project information as Exhibit C to this RFP. In November 2019, City put a bond measure on the ballot to fund the selected option but the measure failed and City regrouped efforts to engage further with the community.

In January 2020, the City Council committed to a broad community outreach and public engagement. In August 2020, City initiated the "Manzanita Listens" process to gather further community input. Manzanita Listens included a community survey, focus groups and five community meetings. The findings from the Manzanita Listens process provided the foundation for the City Council to set goals for the Project. The Project goals will ultimately guide City decisions around Project design, budgeting and construction and are described in the next section.

A report that summarizes information collected during the Manzanita Listens survey and focus groups is included as Exhibit D. The report that summarizes the public meetings is included as Exhibit E.

III. PROJECT DESCRIPTION

The Project will be located on the 2.67 site and must provide appropriate spaces and services for City Administration, Police and City Council. The Project is anticipated to be approximately 6,500 square feet in size based on previous programming. The Project is expected to take approximately 28 months to complete in two phases. The overall program, scheme, budget, and funding source will be determined in Phase 1. The preliminary estimated construction budget is \$3.5M-\$5.5M. Phase 1 of the Project will include hiring of the Project Architect and CM/GC, a community outreach process to solicit input and feedback from the public to help inform the design process, development and pricing for multiple schemes, and development of a 30% schematic design set and cost estimate. Phase 2 will begin once a design concept has been determined and a financing strategy has been approved by City Council. Phase 2 will include the completion of the design, establishment of a GMP, construction of the new facility, and move in and occupation by the City.

Using feedback from the Manzanita Listens project, the City Council established Community Goals and Values for this project. It is imperative that the development team be cognizant of these throughout the Project in order to develop a plan to meet them.

The Community Values and Goals adopted by resolution are:

- Getting the most value for the community's investment. The community wants a city hall that is durable, adaptable, scalable, functional, and efficient. It wants a building able to withstand coastal conditions and that is resilient in the event of an earthquake.
- Matching the unique culture and norms of the community.
- Being environmentally sustainable.

The City Council is committed to incorporating these themes as it implements all phases of the Project.

Together we will build a City Hall that:

- Reflects the culture and diverse values of our community
- Creates an inspiring workplace for our staff
- Provides for user-friendly, efficient customer service
- Embraces innovation

IV. ISSUANCE OF RFP DOCUMENTS

The RFP documents may be obtained at no cost from the City website at <https://ci.manzanita.or.us/> or viewed at 167 S 5th Street Manzanita, Oregon 97130, by appointment. Appointments may be scheduled by contacting Jessie Steiger.

Jessie Steiger is the sole point of contact for all questions, concerns, and protests related to this RFP. She may be reached at 503-893-4085 or by email at jessie@kloshgroup.com

V. PROPOSAL SUBMISSION

Proposals (including attachments) shall be submitted and delivered by 3:00PM on Tuesday, August 30, 2022 in pdf format via email to:

Jessie Steiger
jessie@kloshgroup.com

Proposals will only be accepted via email.

A. SCHEDULE OF EVENTS

City anticipates the following general timeline for receiving and evaluating the proposals and selecting a consultant. This schedule is subject to change if it is in City's best interest to do so.

- | | | |
|------|--|-------------------------|
| i. | Posting of RFP | August 2, 2022 |
| ii. | Deadline for Clarifications/Questions/Changes to RFP | August 19, 2022, 5:00PM |
| iii. | Deadline for Protests of RFP | August 19, 2022 5:00PM |
| iv. | Proposal Due | August 30, 2022, 3:00PM |
| v. | Evaluation of Proposals Complete | September 9, 2022 |

vi.	Invitation to Proposers for Interview & Presentation	September 12, 2022
vii.	Interview & Presentation Meetings	September 28, 2022
viii.	Evaluation of Interview & Presentation	October 4, 2022
ix.	Posting Notice of Intent to Award	October 5, 2022
x.	Deadline for Protests of Award	October 12, 2022, 5:00PM
xi.	City Council Approval	November 9, 2022
xii.	Commencement of Preconstruction Services	November 10, 2022
xiii.	GMP Approved/Permit Secured	December 2023
xiv.	Construction Begins	January 2024
xv.	Substantial Completion	December 2024

Upon request, the City will meet with proposers that it did not select for the award of contract from November 10 to December 2, 2022.

B. RFP CLARIFICATION AND PROTESTS; ADDENDA

- i. Informal Questions or Requests for Clarification. Any proposer requiring clarification of the information provided in this RFP may submit specific questions or comments in writing to the contact set forth in Section IV of this RFP. Email is the preferred form of written communication. The deadline for submitting such questions is set forth in Section V(A)(ii).
- ii. Request for Change. Any proposer wishing to request a change to the specification or contract term contained in the solicitation documents, must submit the request to the contact set forth in Section IV of this RFP. The deadline for submitting such requests is set forth in Section V(A)(iii). The request for change must include a statement of the requested change(s) to the contract terms and conditions, including any specifications, together with the reason for the requested change. The request must be marked "Contract Provision Request for Change" and contain sufficient information to identify the solicitation that is the subject of the request for change.
- iii. Protest. Any proposer wishing to protest this RFP or specifications, or contract terms contained in the solicitation documents, must submit such protests to the contact set forth in Section IV of this RFP. The deadline for submitting such protests is set forth in Section V(A)(iii). The proposer's written protest must include all of the following and otherwise comply with OAR 137-049-0260(3):
 - i. A detailed statement of the legal and factual grounds for the protest;
 - ii. flawed description of the resulting prejudice to the proposer;
 - iii. A statement of the desired changes to the contract terms and conditions, including any specifications; and Marking of the protest as follows: "Contract Provision Protest" with sufficient information to identify the solicitation that is the subject of the protest.
- iv. Addenda. City reserves the right to make changes to the RFP by written addenda. If City determines that a change or clarification to the solicitation documents is necessary, such information, clarification, or interpretation will be supplied in a written addendum, posted to City's website at <https://ci.manzanita.or.us>.

- a. Proposers should consult City's website regularly until the proposal due date and time to assure that they have not missed any addendum announcements. By submitting a proposal, each proposer thereby agrees that it accepts all risks, and waives all claims, associated with or related to its failure to obtain addendum information. Proposers will also be required to acknowledge receipt of each addendum in writing as part of their proposals. Additionally, City will send addenda to all prospective proposers known to have obtained the solicitation documents at the time addenda is issued. Statements made by City's representatives, including but not limited to oral or written responses to a request for clarification, are not binding on City unless confirmed by written addendum.
- b. No addenda will be issued later than five days before the date that proposals are due, except an addendum, if City deems necessary, postponing the due date for proposals, withdrawing the RFP, or modifying elements of the RFP resulting from delayed process.

C. CONFIDENTIALITY

City is subject to the Oregon Public Records Law (ORS 192.311 to 192.478), which requires City to disclose all records generated or received in the transaction of City business, except as expressly exempted under ORS 192.338 to 192.355, or other applicable law.

Pursuant to ORS 279C.107, City need not open proposals for public inspection until after execution of the contract(s) awarded under this RFP. Thereafter, City will not disclose records submitted by a proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations:

The proposer must mark all proposal pages containing the records it has determined as confidential under Oregon Public Records Law and must segregate those pages in the following manner:

- i. Such pages must be clearly marked "Confidential" on each page of the confidential document.
- ii. Proposer must separate confidential pages from its other proposal pages by providing the confidential pages to City in a separate envelope or package. Proposer must separate confidential pages from its other proposal pages by providing the confidential pages to City in a separate e-mail file attachment.
- iii. In its proposal, proposer must cite the specific statutory exemption in Oregon Records Law exempting such pages from disclosure.
- iv. Subsections (i) and (ii) above will prevail in the event these provisions conflict with formatting or response instructions elsewhere in this document.
- v. Proposers may not mark an entire proposal confidential. Should a proposal be submitted in this manner, City will hold no portion of the proposal as confidential, unless such a portion is segregated as required under subsection (b) above and is determined exempt from Oregon Public Records Law.

Notwithstanding the above procedures, City reserves the right to disclose information that City determines, in its sole discretion, is not exempt from disclosure or that City is directed to disclose by the district attorney or a court of competent jurisdiction.

Prior to disclosing such information, City will make reasonable attempts to notify the Proposer of the pending disclosure.

D. CANCELLATION

City reserves the right to cancel this RFP at any time or to reject any and all proposals if City determines that doing so is in the public interest.

E. LATE PROPOSALS

All proposals that are not received by the proposal due date in Section V(A) will not be considered and will be returned unopened to the Proposer(s). Phone and facsimile proposals will not be accepted. Delays due to mail and/or delivery handling, including but not limited to delays within City's internal distribution or email systems, do not excuse the Proposer's responsibility for submitting the proposal to the correct location by the proposal due date.

F. DISPUTES

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

G. PROPOSER'S REPRESENTATION

Each proposer, by the act of submitting its proposal, represents that:

- i. It has read and understand the proposal documents and its proposal is made in accordance therewith;
- ii. It has familiarized itself with the local conditions under which services solicited in this RFP will be performed;
- iii. Its proposal is based upon the requirements described in the RFP without exception, unless clearly stated in the response.

H. CONDITIONS OF SUBMITTAL

By the act of submitting a proposal in response to this RFP, the proposer certifies that:

- i. To its best knowledge and belief, no elected official, officer, employee, or person, whose salary is payable in whole or part by City, has a direct or indirect financial interest in the proposal, or in the services to which it relates, or in any of the profits thereof other than as fully described in the proposer's response to this solicitation.
- ii. The proposer has examined all parts of the RFP, including all requirements and contract terms and conditions thereof, and, if its proposal is accepted, the proposer shall accept the contract documents thereto, unless substantive changes are made in same, without the approval of the proposer.
- iii. The proposer is of lawful age (if an individual); is the only one interested in this proposal; and no person, firm, or corporation, other than that named, has any interest in the proposal, or in the proposed contract.
- iv. The proposer has quality experience providing requested services in a capacity similar to the duties outlined within the scope of services.

I. COST OF REQUEST FOR PROPOSALS AND ASSOCIATED RESPONSES

Proposers will bear sole responsibility for all costs incurred in preparing and providing their proposals in response to this RFP. City is not liable to any proposer for any loss or expense caused by or resulting

from the cancellation of a solicitation or rejection of a proposal.

J. CITY REQUESTS FOR CLARIFICATION, ADDITIONAL RESEARCH, & REVISIONS

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

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

City may perform, at its sole option, investigations of the responsible proposer. Information may include, but shall not necessarily be limited to current litigation and contracting references. All such documents, if requested by City, become part of the public records and may be disclosed accordingly.

City reserves the right to request clarifications of proposals after the submission of proposals and before award.

K. REJECTION OF PROPOSALS

As set forth in Section V(D), City reserves the right to reject any or all proposals received as a result of this RFP if City determines that rejection is in the public interest. Reasons for proposal rejection may include but are not limited to the following:

- i. Failure of the proposer to adhere to one or more of the provisions established in the RFP.
- ii. Failure of the proposer to submit a proposal in the format specified herein.
- iii. Failure of the proposer to submit a proposal within the time requirements established herein.
- iv. Failure of the proposer to adhere to ethical and professional standards before, during, or following the proposal process.
- v. Failure of proposer to otherwise comply with all prescribed public procurement procedures and requirements.

L. MODIFICATION OR WITHDRAWAL OF PROPOSAL BY PROPOSER

A proposal may not be modified, withdrawn, or canceled by the proposer for 60 calendar days following the time and date designated for the receipt of proposals. Proposals submitted before the proposal due date may only be modified or withdrawn in person with proper identification, or by issuing a written request on company letterhead, signed by an authorized representative, prior to the proposal due date and time. Written requests for withdrawal must be so worded as not to reveal material contents of the original proposal.

Withdrawn proposals may be resubmitted up to the proposal due date and time, provided that they are then fully in conformance with the RFP.

M. PROPOSAL OWNERSHIP

All material submitted for any portion of a proposal in response to this RFP, or during any phase of this solicitation, will become the property of City and will not be returned to proposers.

N. DURATION OF PROPOSAL

Proposal terms and conditions shall be firm for a period of at least 60 days from the proposal due date. The successful proposal shall not be subject to future price escalation or changes of terms if accepted during the 60-day period. Price decreases or changes in terms by others after the acceptance of a proposal will not be considered.

O. AFFIRMATIVE ACTION/NONDISCRIMINATION

By submitting a proposal, the proposer agrees to comply with the Fair Labor Standard Act, Civil Rights Act of 1964, Executive order 11246, Fair Employment Practices, Equal Employment Opportunity Act, Americans with Disabilities Act, and Oregon Revised Statutes. By submitting a proposal, the proposer certifies that it has not discriminated and will not discriminate, in violation of ORS 279A.110, a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business in awarding a subcontract.

P. TAX COMPLIANCE

By submitting a proposal, the proposer represents and warrants that the Proposer has complied with the applicable tax laws of this state or a political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318. The Proposer and any consultants listed on BOLI's List of Ineligibles will be rejected.

Q. PREVAILING WAGE REQUIREMENT

By submitting a proposal, the proposer agrees to be bound by and will comply with the provisions of 279C.838, 279C.840 or 40 U.S.C. 3141 to 3148.

R. SAVINGS AND COST LIMITATIONS

Any savings realized in performing the Construction Contract awarded under this RFP will accrue to the City unless the Construction Contract provides otherwise. The City will not pay for any amount that exceeds the guaranteed maximum price established under the Construction Contract except as otherwise provided in the Construction Contract.

S. PROPOSAL AND SUBMISSION REQUIREMENTS

Proposer shall respond to specific criteria that shall facilitate proposal evaluation. Responses should be prepared simply and economically, providing a straightforward, concise description of provider capabilities to satisfy the requirements of the request. All proposals submitted in response to this RFP must include the following:

T. INTRODUCTORY LETTER

An introductory letter indicating the proposers differentiating characteristics, why the firm is the right-fit for this project, and how the City benefits from the firm's services. [1 page maximum]

U. QUALIFICATIONS

This criteria relates to the proposer's capabilities and resources in relation to this Project. Please address the following:

- I. Relevant Experience as CM/GC for Public Construction [4 pages maximum]:
 - Describe your company's experience with the construction of publicly-owned buildings, and describe how this previous experience will benefit the City.

- Provide 4 examples of comparable projects that demonstrate the range of construction services you have provided for public or private sector CM/GC projects with a GMP. Include a brief description, year completed, total dollar value, contracting method, and location. Of the 4 project examples, provide at least 1 least new construction project and 1 renovation project. Preference will be given to bidders who can demonstrate experience managing a public works project on the Oregon Coast or other rural community.
- II. Community and Project Engagement [2 pages maximum]
- Describe your plan to establish and maintain good relationships and foster open and productive communication with the City, City's architect (Bearing Architecture) and owner's representative for this Project.
 - Describe how you plan to promote and support the Community Values and Goals described in Section III of this RFP.
 - Provide an example of a costing exercise evaluating 2 or more design schemes to assist an Owner in deciding which scheme to proceed with.
- III. Proposed Key Personnel and Project Organization [3 pages maximum]
- Provide resumes and relevant project experience for proposed key personnel including, but not limited to, the preconstruction manager, project manager, and superintendent. Describe their anticipated time commitment to this project for preconstruction and construction phases (e.g. Project Manager, 30% Preconstruction and 75% Construction)
- IV. Bidding and Contracting Strategy [1 page maximum]:
- Describe your approach to subcontractor bidding and contracting once the construction funding and design scheme have been approved (30% SD phase). What drawing submission phase do you propose to set the GMP? Which trades, if any, do you propose adding to the team during design to assist in pre-construction efforts? Discuss any risks and/or opportunities in your proposed strategy as it relates to subcontractor availability, early procurement of materials, labor shortages, etc.
- V. Approach to Maintaining Budget [1 page maximum]:
- Provide your company's approach to preconstruction collaboration to achieve the budget goals. What methodologies, recommendations, or practices does your company propose on this project to ensure the budget is maintained through GMP? What practices does your company use to control costs during construction?
 - Describe how you manage price volatility and market conditions when providing cost estimates during the design phase without being unreasonably conservative.
 - Describe your approach to establishing and maintaining contingency funds to ensure that the budget will not be exceeded. Describe potential constraints you foresee and how you would resolve them.
 - What is your company's willingness to put its fee or a portion thereof at risk for not meeting the budget target?
- VI. General Conditions and Fee Proposal [3 pages maximum]:
- Provide detailed general conditions budget including all project staff and job site office functions. Include your assumptions to develop the General Conditions budget such as construction duration, final budget, design scheme (new vs. reno), etc. General conditions are defined as any professional staff to oversee the construction as well as any job site office costs. Provide hourly rates for all CM/GC staff. General requirements would include any non-permanent field costs related to the construction of the project.
 - Provide a lump sum fixed fee for the preconstruction phase. This will include the time period from CMGC contract award in November 2022 to completion of the 30% schematic design set, anticipated in March 2023. The preconstruction fee is to include

at a minimum: attendance at 2 public workshops and 2 City Council meetings; schedule development; contracting strategy development; costing exercises for various schemes including new construction, renovation or a hybrid; cost analysis and document preparation for the public and City Council meetings to compare and contrast various design schemes; site investigation (note that subcontracted destructive or non-destructive testing will be reimbursable and not included in the precon fee); development of value engineering ideas; detailed 30% SD construction estimate; drawing and document review; budget reconciliation; other tasks common in the preconstruction phase; and other tasks identified in the CMGC contract.

- Provide fees and markups “below the line” expressed as a percentage of the cost of work. Cost of work is defined in the sample Construction Contract attached to this RFP as Exhibit B. These amounts will be carried into the contract and GMP amendment.

Include at a minimum:

- Subcontractor default insurance or Subguard (if needed)
- Liability insurance per section B.3.2.2 of Exhibit B
- Performance and Payment Bond per section B.3.4 of Exhibit B
- CM/GC fee

- VII. Lawsuits and Claims [no page limit]: Provide a list of any outstanding lawsuits including claims, both settled and unsettled, for the past five (5) years.

V. PROPOSER REQUIREMENTS

Any contractor submitting a proposal must meet the following minimum requirements:

- All Proposers must be licensed to perform business in the State of Oregon and properly licensed to perform the services described in this RFP, including but not limited to being registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board, as specified in OAR 137-049-0230;
- All proposers must be licensed under ORS 468A.720 regarding asbestos abatement projects.
- All Proposers must be experienced in those services requested of City;
- All Proposers must agree to execute City’s Construction Agreement, if awarded; and
- All Proposers must carry required insurance, naming City an additional insured.

VI. SELECTION COMMITTEE & INTERVIEW PANEL

A selection committee will be comprised of at least four (4) members, and an interview panel will be comprised of at least four (4) members. The interview panel may or may not consist of the same selection committee members. Each proposal shall be evaluated on its completeness and quality in accordance with the criteria identified in this RFP by the selection committee. City has the right to require any clarification or change needed to understand the proposer’s approach to the Project.

Each proposal shall be evaluated as a demonstration of the proposer’s capabilities and understanding of the Project. Evaluation criteria and weighting factors for the proposal shall be as follows:

Criteria	Maximum Points
Introductory Letter	5

Relevant Experience	20
Community Engagement	15
Proposed Personnel and Project Organization	20
Bidding and Contracting Strategy	10
Approach to Maintaining Budget	10
GCs and Fee Proposal	20
TOTAL	100

Each member of the selection committee will independently score proposals in accordance with the evaluation criteria above. The City will then average the proposal scores per category and sum the category averages for a total score for each proposal.

The interview panel shall interview the three (3) highest-scored proposers whose proposals evidence the highest level of qualification and experience to proceed to an oral interview and presentation. Should fewer than three (3) proposals be received, the proposers submitting a proposal that meets minimum requirements will be interviewed. Each proposer selected to interview and present will require the proposer's proposed project manager for the Project to attend the interview and presentation.

The interview panel will score the interviews using the criteria below. No additions, deletions or substitutions may be made to proposals during the interview and presentation that cannot be viewed as clarification. Evaluation criteria and weighting factors for the interview are listed below.

Criteria	Maximum Points
Team Capacity and Experience	25
Approach to collaboration with the Design team	25
Approach to Preconstruction Services	25
Overall quality of Interview and Presentation	25
TOTAL	100

Each member of the interview panel will independently score the interviews in accordance with the evaluation criteria above. The City will then average the interview scores per category and sum the category averages for a total score for each interview. The sum of the total score for the proposal and the total score for the interview will be used to determine the highest-ranked proposer.

City reserves the right to:

- Reject any and all proposals not in compliance with all public procedures and requirements including but not limited to the requirement to demonstrate responsibility under ORS 279C.375(3)(b);

- Reject any proposal not meeting the specifications set forth herein;
- Waive any or all irregularities in proposals submitted;
- Award contracts for any or all parts of the services solicited under this RFP; and
- Request references and other data to determine responsiveness.

Following evaluations and interviews of the proposers, City will provide written notice of its intent to award the contract to the highest-ranked proposer.

X. PROTEST OF CONTRACT AWARD.

- i. A proposer may protest the intent to award a contract in accordance with OAR 137-049-0450, provided:
 1. The Proposer is adversely affected because the Proposer would be eligible to be awarded the contract in the event that the protest is successful; and
 2. The reason for the protest is:
 - All higher-ranked proposals (or, in the event multiple contracts are awarded, a sufficient number of proposals) are non-responsive or failed to meet the requirements of this RFP, or all higher-ranked proposers; or
 - City committed a substantial violation of a provision in this RFP or of an applicable procurement statute or administrative rule, and the protesting proposer was unfairly evaluated and would have, but for such substantial violation, been the responsible proposer offering the highest-ranked proposal.
 3. The protest is clearly marked as a protest, includes a description of this RFP, and is delivered to the point of contact and address set forth in Section V of this RFP.
 4. All protests of Award must be in writing and physically received by the title of procurement official no later than 5:00 p.m. on the deadline for submitting such protests set forth in Section V(A)(x).
 5. Protests must specify the grounds for the protest including the specific citation of law, rule, regulation, or procedure upon which the protest is based. The judgment used in scoring by individual evaluators is not grounds for protest.
- ii. Protests not filed within the time specified in this Section VII(A), or which fail to cite the specific law, rule, regulation, or procedure upon which the protest is based will be dismissed. An issue that could have been raised by request for clarification or protest of the solicitation documents is not a ground for protest of award.
- iii. City will resolve all protests in accordance with OAR 137-049-0450.

XI. CONTRACT REQUIREMENTS

City reserves the right to negotiate final terms of a Construction Contract as City determines to be in its best interest.

City will negotiate the Construction Contract once the selection committee and interview panel have chosen the top-ranked proposer. If City cannot come to terms with the top-ranked proposer, City may enter into negotiations with the second-ranked proposer. This process may continue until City reaches an agreement which City deems appropriate for the services.

The award of a contract is accomplished by executing a written Construction Contract that incorporates the proposer's proposal, clarifications, addenda, additions, and insurance. All such materials constitute the contract documents.

EXHIBIT A

SCOPE OF WORK (SERVICES TO BE PROVIDED)

In addition to the scope set forth in the sample Construction Contract attached as Exhibit B, the scope of work includes the following Preconstruction services:

1. Constructability reviews including
 - a. Review design drawings and specifications concept design, schematic design, design development, and construction documents. Conduct page-turns with design team to present issues discovered.
 - b. Review drawings and specifications for inaccuracies, oversights, coordination, and thoroughness and during the construction document phase request clarifications to the plans based on the same to ensure bid out plans are as clear and complete as possible to reduce construction delays and additional costs.
 - c. Evaluate proposed systems and materials in terms of product delivery and installation in collaboration with project team. Provide feedback and alternate solutions as appropriate to benefit the design intent, project schedule and budget.
 - d. Evaluate proposed systems and materials in terms of maintenance and first costs vs life cycle costs in collaboration with project team. Provide feedback and alternate solutions as appropriate to benefit the design intent, project schedule and budget.
 - e. Solicit subcontractors and supplier input in terms of constructability, lead times, and pricing for any items deemed questionable by the project team.
2. Real-time estimating, Target Value Design (TVD), or similar approach to properly inform the design team to keep the project on budget, including estimating for multiple schemes such as new construction, renovation, or a hybrid approach.
 - a. Cost estimates should be developed and maintained in "Unit Price" format. CMGC may convert format to CSI format for bidding purposes; however, CMGC must show budget progression and variance reporting throughout and to GMP. Unit pricing shall include material costs, labor rates, and quantities. Ensure quantities correspond with drawings and specifications and provide take-offs. Deliver a detailed construction estimate for the 30% SD set.
 - b. GMP submission shall include
 - i. GMP Cost Summary per division and/or trade package
 - ii. Trade package bid analysis showing bid values, any yet-to-buys, allowances, contingencies and total cost with recommendation for award any reasoning. The recommended bidder's value should align with the GMP Cost Summary.
 - iii. All bids organized by trade package with all price adjustments and correspondence
 - iv. List of allowances and derivation and reasoning for allowances
 - v. General requirements (GRs) summary and detailed derivation, takeoffs, estimates on how GRs were developed
 - c. This includes providing solutions for Value Engineering (VE) options, problem-solving ideas for issues discovered during the design and/or construction phase to mitigate, reduce, or eliminate cost and/or schedule impacts. Any necessary VE process or similar to resolve budget issues will be considered included in the preconstruction services. In other words, if the preconstruction time frame is extended due to a VE exercise it will not be considered additional services and will therefore not be reimbursed. It's expected that the team own any budget overruns and

mitigate them as part of goal to delivering a final set of design documents that meets the budget.

- d. Preparation of materials and attendance for public meetings and City Council meetings analyzing costs, risks, and opportunities for 2-4 design schemes.
3. Site investigations as needed to pre-plan and mitigate any issues discovered or anticipated prior to construction activities in the subject area.
 - a. It shall be the CMGC's responsibility to obtain all information available including information from jurisdictional agencies and public records pertaining to the site
 - b. The CMGC shall exercise due diligence and professional competence in analyzing all documents and data which may be furnished by the Owner and shall be responsible for requesting any additional information required
 - c. The CMGC shall make personal examinations of the designated building site
 - d. The CMGC shall perform investigative demolition and exploratory work in portions of the existing building and/or site during the preconstruction phase as agreed upon by AE team and Owner to assist with development of design and mitigation of risks associated with concealed conditions. Any areas uncovered during the investigative phase may necessitate temporary patching or reconstruction by CMGC
4. Refine the construction schedule including maps to clearly communicate the sequence of construction activities from preconstruction to closeout, develop and finalize the baseline construction schedule including owner activities necessary to operate and open building for use.
5. Plan, detail, and execute the necessary logistics routes, construction access provisions, construction protocols including all temporary provisions.
6. Assist the team in FF&E coordination allowing for the optimal schedule engagement of owner direct vendors.
7. Preconstruction services end after the GMP, the baseline schedule, and the logistics plan is approved.

EXHIBIT B

Sample Construction Agreement

And

General Conditions



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 2022
(In words, indicate day, month, and year.)

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

City of Manzanita
167 S. 5th Street
Manzanita, OR 97130

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

TBD

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

City of Manzanita's New City Hall Building
Construction of a City Hall and additional public facilities at 635-655 Manzanita Avenue,
Manzanita OR 97130

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

TBD

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

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.")

§ 1.1.0 The Project will be divided into two phases. Phase 1 will include all Preconstruction Phase services of the CM/GC performed up to the Architect's completion of 30% complete Schematic Design Documents. Owner will use the 30% complete Schematic Design Documents determine, in Owner's sole discretion, whether to authorize Phase 2 of the Project. Phase 2 of the Project will consist of CM/GC's completion of the Preconstruction Phase services, the Construction Phase services, and all other Work required under the Contract. CM/GC will not commence any Phase 2 services or Work unless authorized by Owner in writing. Owner is under no obligation to authorize Phase 2 services or Work. In the event that Owner chooses not to authorize Phase 2 services or Work, Owner may terminate this Agreement as set forth in Section 13.1.0 below. A delay between completion of Phase 1 and Owner's authorization (or, non-authorization) of Phase 2 services and Work will not constitute a stoppage, suspension, delay, or interruption of the Work under Section 14.1 of 14.3.2 of the General Conditions.

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

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

[TBD]

§ 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.)

[TBD]

§ 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.)

The estimated construction cost budget for the Project is \$[TBD].

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

.1 Design phase milestone dates, if any:

[TBD]

.2 Construction commencement date:

August 2023

.3 Substantial Completion date or dates:

July 2024

.4 Other milestone dates:

[TBD]

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

(Identify any requirements for fast-track scheduling or phased construction.)

[TBD]

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:

(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

[TBD]

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

§ 1.1.7 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere.)

[TBD]

§ 1.1.8 The Owner identifies the following representative in accordance with Section 4.2:

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

[TBD]

§ 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.)

[TBD]

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

.1 Geotechnical Engineer: [TBD]

.2 Civil Engineer: [TBD]

.3 Other, if any: [TBD]
(List any other consultants retained by the Owner, such as a Project or Program Manager.)

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

[TBD]

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

[TBD]

§ 1.1.13 The Owner’s requirements for the Construction Manager’s staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

[TBD]

Init.

§ 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 Section 9.3.

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

[TBD].

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

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

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the 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 or 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 For the Preconstruction Phase, AIA Document A201™-2017, General Conditions of the Contract for Construction, as amended, (the "General Conditions"), shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in the General Conditions which document is incorporated herein by reference. The term "Contractor" as used in the General Conditions shall mean the Construction Manager.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of the General Conditions referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case,

Init.

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

§ 3.1.1 Extent of Responsibility

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

§ 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 construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

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

§ 3.1.4 Project Schedule

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations for schedule recovery to the Owner and Architect.

§ 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager's recommended phased construction shall consistent with any proposed phase construction set forth in the Owner's Request for Proposals.

§ 3.1.6 Cost Estimates

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

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

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall seek to develop subcontractor interest in the Project, and identify availability of subcontractors and vendors necessary to perform the project. In addition, the Construction Manager shall identify any potential subcontracts for which prequalification or qualification at time of bid, or selection by competitive proposal as opposed to bid, shall be necessary or advantageous to the Owner.

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items and, upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

See Exhibit **X** for additional detail to the scope set forth in this Section 3.1 and for additional Preconstruction Phase services.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

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

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- .5 A date by which the Owner must accept the Guaranteed Maximum Price;
- .6 A construction schedule identifying commencement and completion dates for Project milestones; and
- .7 A detailed and summary of the competitive bids received from prospective subcontractors for each portion of the Work, with the Construction Manager's recommendations for retention of subcontractors and the assumptions and effects of subcontractor selection on the proposed Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The contingency will not exceed 5% of the Guaranteed Maximum Price. Use of this contingency requires the Owner's prior approval in writing. Such approval shall not be withheld if it would unreasonably impact the ability of the Construction Manager to meet its contractual obligations related to budget, schedule, and quality. The Construction Manager will keep a log with line items of each contingency expenditure. Owner will initial approvals of expenditures per lined item.

§ 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 or 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.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

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

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.2.10 **Bid Alternates.** The Owner will not pay any amount that exceeds the Guaranteed Maximum Price specified under this Contract unless the amount results from material changes to the scope of the work set forth in this Contract and parties agree in writing to the material changes as provided herein.

§ 3.2.10.1 The Construction Manager, Owner, and Architect shall agree on appropriate bid alternates for every bid package such that if the Cost of the Work in connection with the Guaranteed Maximum Price is less than (or more than) the Guaranteed Maximum Price, the Owner shall have the opportunity to authorize additive (or deductive) alternates, as appropriate. It is understood that the Owner and Construction Manager may choose to defer the award of alternates in order to ensure the successful outcome of later bid packages.

§ 3.2.10.2 Bid alternates for subcontractor packages, authorized by the Owner under the above provisions, shall be performed by the Construction Manager with no increase to the Guaranteed Maximum Price, with no time extension, and with no increase in Construction Manager's fee, unless both the Owner and the Construction Manager agree in writing at the time of the designation of alternates that awarding of the alternates will result in an increase in fee, and/or time extension.

§ 3.2.10.3 If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price is not exceeded, then the Construction Manager shall not be eligible for an increase in fee. However, the Construction Manager may be eligible for a time extension, if such extension is determined to be warranted.

§ 3.2.10.4 If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price will be exceeded, then the Construction Manager shall be entitled to an increase in fee, for the increase in the Cost of the Work above the Guaranteed Maximum Price, and as described in this document.

§ 3.2.11 All cost savings resulting from completion of the Work below the Guaranteed Maximum Price shall accrue to the Owner.

§ 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 Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

§ 3.3.1.3 "Early Work" means construction services, construction materials and other Work authorized by the parties to be performed under the Contract in advance of the establishment of the Guaranteed Maximum Price. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to entering into the Guaranteed Maximum Price Amendment will materially and positively affect the development or completion of the project.

§ 3.3.2 Administration

§ 3.3.2.1 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 of the meetings to the Owner and Architect.

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of the General Conditions.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs 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 3.3.2.3 above.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, 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.

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

§ 4.2 Owner's Designated Representative

The Owner shall designate in writing a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish timely requested information expeditiously. The Owner's representative shall not have the authority to waive any provisions of the Contract Documents or to approve or authorize any change in the Guaranteed Maximum Price or the Contract Time except in writing. Except as otherwise provided in Section 4.2.1 of the General Conditions, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 4.3 Architect

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

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

[TBD]

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

[TBD]

Individual or Position

Rate

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

§ 5.1.3 [Deleted.]

§ 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 after the date on which payment is due 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. Interest on payments due and unpaid under the Contract Documents shall bear interest as specified in ORS 279C.570.
(Insert rate of monthly or annual interest agreed upon.)

%

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

§ 6.1.2 The Construction Manager's Fee:

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

[TBD].

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

The Construction Manager's Fee shall remain equal to the rate set in Section 6.1.2 of the total Cost of the Work, inclusive of all additive or deductive changes.

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

- .1 For Work performed by the Contractor's own forces or a related party as defined in Section 6.10, the Contractor may claim no more than ten percent (10.0%) of the actual Cost of the Work. There shall be no separate, additional markup by a related party.
- .2 For Work performed by a Subcontractor of any tier, the Contractor may claim no more than five percent (5.0%) of the actual amount due to the Subcontractor for the Cost of the Work.
- .3 For Work performed by a Subcontractor or Sub-subcontractor, the Subcontractor and Sub-subcontractors, collectively, may claim no more than ten percent (10.0%) of its actual Cost of the additional Work.

- .4 The Costs of the Work to which overhead and profit are to be applied at any tier are determined by Article 7 of this Agreement.
- .5 All general conditions or general requirements costs of the Contractor, related parties, and all Subcontractors of any tier are to be included in the overhead and profit allowance stated in this section and may not be separately stated or recovered as Costs of the Work.
- .6 Subcontractor's overhead and profit includes all costs regarding office, home office and site overhead (including project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants); taxes (except for sales tax); employee per diem, subsistence and travel; warranties; printing and copying; quality control/assurance; purchasing; small or hand tools that cost \$500 or less and are normally furnished by the performing contractor and expendable charges; preparation of as-built drawings; impacts on unchanged Work; Claim or Change Order preparation; and delay and impact costs of any kind.

§ 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.

§ 6.1.6 Liquidated damages, if any:
(Insert terms and conditions for liquidated damages, if any.)

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

§ 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.

§ 6.3 Changes in the Work

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

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

§ 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, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of 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 The Guaranteed Maximum Price established in the Guaranteed Maximum Price Amendment will include all elements necessary to complete the Work in accordance with the Contract Documents and, consequently, Change Orders adjusting the Guaranteed Maximum Price will not be necessary except in limited circumstances as set forth below:

- .1 Scope Changes.** Owner revisions on scope Project items previously approved by the Owner and incorporated in the pricing of the Guaranteed Maximum Price.
- .2 Concealed or Unknown Condition.** Concealed or Unknown Conditions as described in Section 3.7.4 of the General Conditions.
- .3 Regulatory Agency Changes.** Cost incurred as a result of changes in regulatory requirements but only where such requirements change after preparation of the Guaranteed Maximum Price Amendment.
- .4 Material Design Errors or Omissions.** Material errors or omissions in the Drawings or Specifications that could not have been reasonably anticipated or discovered by the Construction Manager before the Guaranteed Maximum Price was established, including but not limited to Work required or directed by the Owner that differs from any assumptions or clarifications included in the Guaranteed Maximum Price Amendment. Design errors and omissions do not include: (a) failure to coordinate between trades; or (b) design changes made at the request of the Construction Manager in order to facilitate the constructability of the Project.
- .5 Escalation.** Escalation in materials or equipment caused by tariffs, taxes, assessments, fees and other regulatory costs enacted after the effective date of this Agreement.

§ 6.3.6 Events for which the Guaranteed Maximum Price shall not be adjusted and no Change Order will be issued include the following:

- .1 Subcontractor Gaps.** Gaps in scope coverage between Subcontractors, including self-performed Work, that occur after the Guaranteed Maximum Price Amendment is signed.
- .2 Scope Gaps.** An item indicated in the Drawings or Specifications that was not picked up in the Guaranteed Maximum Price and not specifically excluded from the Guaranteed Maximum Price.
- .3 Document Ambiguities.** Ambiguities in the Construction Documents that the Construction Manager knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the Guaranteed Maximum Price.
- .4 Subcontractor Failure.** A Subcontractor goes bankrupt or otherwise fails to perform.
- .5 Price Escalations.** Subject to Section 6.3.5.5, escalation of materials, equipment, or labor prices.
- .6 Estimating Errors.** The Construction Manager's estimating errors.
- .7 Expediting Costs.** Expediting costs for critical materials.
- .8 Coordination Claims.** Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Construction Manager or among Subcontractors.

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 reasonably and 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. These costs may include:

- .1** Job costs due to delays beyond Construction Manager's control, as defined in Section 8.3 of the General Conditions.

- .2 All costs and fees associated with altering of public utilities, protection and repairs of adjoining property, and rental property for storage of materials to be incorporated into the Work.
- .3 Except for the instances where payments, expenses, fees, or Work are required as a result of the Construction Manager's failure to perform its obligations under this Agreement (in which case such payments, expenses, and Work shall be the Construction Manager's sole responsibility), whenever the Agreement or a governmental agency having jurisdiction over the Project requires that the Construction Manager make a payment, incur any expense or fee, or perform any Work, it will be understood to mean, in the absence of any language to the contrary, that such payment, the expense or Work, or both, shall be included in the Cost of the Work.

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

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

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval. Construction Manager will bill costs described in this Section 7.2.2 at the hourly rates established in Construction Manager's Proposal Fee Schedule for on-site management staff, which is attached as Exhibit X to this Agreement.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory, administrative, or home office estimating 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 only with Owner's prior written approval. Construction Manager will bill costs described in this Section 7.2.2.1 at the hourly rates established in Construction Manager's Proposal Fee Schedule for off-site management staff, which is attached as Exhibit X to this Agreement, 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, administrative, or home-office estimating 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 and only with Owner's prior written approval. Construction Manager will bill costs described in this Section 7.2.3 at the hourly rates established in Construction Manager's Proposal Fee Schedule for off-site management staff, which is attached as Exhibit X to this Agreement.

§ 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. The costs in any cost-plus subcontracts must conform to the requirements of this Article 7.

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

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction, subject to Paragraph 9.3.2 of the General Conditions.

§ 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 (not to exceed fair market rental costs in the greater Tillamook County area) for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. 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 approval.

§ 7.6 Miscellaneous Costs

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

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

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

§ 7.6.2 Sales, use, or similar taxes (but not income or receipt taxes), 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.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of the General

Conditions. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

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

§ 7.6.7 Costs of document reproductions and delivery charges.

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

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

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

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

§ 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of 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. The Work described in this Section 7.7.3 does not include Work performed during or after the one-year period for correction of Work.

§ 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 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

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

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

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include any costs not allowed by the General Conditions except as expressly modified in this Agreement or by written modification (e.g., change order) to this Agreement signed by the Owner and Construction Manager) and the following:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 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 for services incurred during the Preconstruction Phase;
- .10 Except as provided in Section 7.7, any cost not specifically and expressly described in Section 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6;
- .11 Costs which would cause the Guaranteed Maximum Price to be exceeded; and
- .12 Premiums for insurance and bonding other than those that are directly and solely attributable to the construction of the project.

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 notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

§ 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. Subcontracts be solicited as provided in Section 9.3. 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.

(Paragraphs deleted)

§ 9.3 Subcontractor Selection. Pursuant to ORS 279C.337(3), the Construction Manager's subcontractor selection process must meet the following parameters:

- .1 Absent a written justification prepared by the Construction Manager and approved by the Owner as more particularly provided for in this section, the Construction Manager's Subcontractor selection process must be "competitive," meaning that the 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 the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the Contract requirements;
- .2 When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
 - (a) The Construction Manager must prepare and submit a written justification to the Owner, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the Construction Manager's need to utilize a key Subcontractor member of the Construction Manager's project team consistent with the Construction Manager's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;
 - (b) For a "sole source" selection of a subcontractor to proceed, the Owner must evaluate the written justification provided by the Construction Manager and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
 - (c) The Construction Manager must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Owner;
 - (d) The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
 - (e) The Owner must approve the Construction Manager's use of the non-competitive Subcontractor selection process prior to the Construction Manager's pursuit of the non-competitive process.
- .3 A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process;
- .4 If the Construction Manager or an Affiliate or subsidiary of the Construction Manager 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. The Contract must also identify the conditions, processes and procedures the Construction Manager will utilize

in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party.

§ 9.3.5 Subcontractor Approvals and Protests. The Construction Manager shall include in its solicitation documents a process by which a adversely affected bidder or proposer may protest the selection of subcontractors and suppliers. The Construction will resolve in protests in writing. The Construction shall notify the owner of the filing and disposition of any protest. The Owner retains 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 with applicable statutes, administrative rules and other legal requirements. The Construction Manager shall any documents relating to the subcontracting process to the Owner upon the Owner's requests. Any documents that are shared with the Owner become public records subject to disclosure.

§ 9.3.6 Construction Manager Self-Performance or Performance by Construction Manager Affiliates or Subsidiaries Without Competition. The Construction Manager must obtain approval of the Owner before the Construction Manager or an Affiliate or subsidiary of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate or subsidiary of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager's RFP proposal to perform Construction Manager Services for the project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate or subsidiary of the Construction Manager. If required by the Owner, the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

§ 9.3.7 Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule for a particular solicitation, the Construction Manager will:

- .1 Allow a subcontractor 60 days from the Construction Manager's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the Construction Manager under this section; and
- .2 Set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

§ 9.3.8 Award of Subcontracts. All subcontract awards require the Owner's approval. Such approval shall not be unreasonably withheld or delayed.

§ 9.3.9 Subcontract Amendments. Subcontracts may be increased on the basis of unit pricing to any amount, if competitively bid on the basis of unit pricing. Subcontracts may also be increased to any amount by additive bid alternates not selected at the time of bid award. For increase in scope of work that is neither based on unit pricing or additive alternates, subcontracts may be modified by up to 30% of the original bid/proposal amount, or if quoted up to \$100,000, the modification may be up to 100%. Upon a written finding approved by the Owner that it is in the best interest of the Owner, subcontracts may be increased beyond the 30%/100% total, without limit. All changes are subject to the change order provisions of this Contract and the General Conditions.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and in the General Conditions. The application shall be in a form acceptable to the Owner and shall include an accounting by natural expense categories.

§ 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 Pursuant to ORS 279C.570, the Owner shall make payment to the Construction Manager not later than thirty (30) days after receipt of the Construction Manager's Application for Payment or 15 days following issuance of the Certificate for Payment, whichever is the earlier date. Late payments shall accrue interest at the rate set forth in ORS 279C.570(2). *(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 may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

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

§ 11.1.7 In accordance with 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 As a condition of approval, but without limitation of any other conditions, each Application for Payment must contain written certification by Construction Manager:

- .1 That the Application for Payment represents an accurate estimate of the percentage of Work completed for each portion of the Work for which partial payment is sought;
- .2 That to Construction Manager's best knowledge, no claims of lien and no bond claims have been asserted or perfected as of the date of the Application for Payment;
- .3 That all amounts claimed for payment in the Application for Payment that are due and payable have been paid in full or will be paid from funds received pursuant to the Application for Payment;
- .4 That all subcontractors and suppliers paid or to be paid pursuant to the Application for Payment have executed valid and binding conditional waivers of lien and bond rights and claims for payment through the date of the Application for Payment, which waivers are included with the Application for Payment;

(Paragraph deleted)

- .5 That Construction Manager has included its conditional signed waiver of any and all its lien and bond rights and other claims for payment through the date of the Application for Payment; and
- .6 That there is no other known claim for payment against Owner, except as stated in the Application for Payment.

§ 11.1.7.2 Each progress payment will be calculated based on the Costs of the Work incurred as claimed in the Application for Payment, together with the proportional amount of the Contractor's Fee, subject to the following:

- .1 Retainage will be withheld from the total progress payment amount at five percent (5.0%) of the total amount due to the Contractor;
- .2 The amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable;
- .3

(Paragraphs deleted)

The amount of the progress payment may be adjusted by the Owner or the Architect if the total amount of progress payments would exceed an amount commensurate with the percentage of completion of the Project as determined by the Owner or the Architect with reference to the actual completion of the Work and the Contractor's schedule of values; and

- .4 Retainage withheld shall be deposited in an interest bearing account in accordance with ORS 279C.550-580. Owner will pay net retainage balance as part of the final application for payment from Contractor, upon inspection approval completion and release of liens affidavit. Interest due to Contractor is paid direct from banking institution to Contractor

§ 11.1.7.3 Whereas Owner, in acceptance of the above depository option for retainage by Contractor; Owner may recover additional costs incurred from Contractor, during the Contract, by reduction of payment upon the Contractor's final application for payment.

§ 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.)

See Section 11.1.7.2.1.

§ 11.1.8.1.1 The following items are not subject to retainage:

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

None.

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

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

None.

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

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

Notwithstanding the foregoing, payment of any or all retainage may be withheld for 60 days following final completion of the Work of Construction Manager or its subcontractors or suppliers for which retainage is held. Owner may, at its sole option and without creating precedent or waiver, approve the earlier release of retainage for Work that has been completed and accepted upon receipt of a binding waiver or release of all bond and lien rights and claims associated with that portion of the Work or upon Owner's receipt of a valid bond that is sufficient to pay any claims that may be asserted for the portion of the Work, including attorney fees.

§ 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, 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;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment with affidavits confirming the release of all lien claims; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the Owner's acceptance of the Architect's final Certificate for Payment and after the following additional conditions have been satisfied:

- .4 Construction Manager has submitted for itself and for all its subcontractors and suppliers conditional final, executed, and binding certificates, releases, and waivers of all lien and bond rights and claims and all unresolved claims for payment in a form acceptable to Owner;
- .5 Construction Manager has submitted to Owner all record or as-built plans, manuals, operation instructions, directions, safety manuals or guides, and any other deliverables required by the Contract Documents;
- .6 All rights, warranties, title, and claims to materials, equipment, or systems supplied under this Agreement have been validly transferred to Owner or Owner's assignee; and
- .7 All necessary inspections, approvals, licenses, and permits have been successfully obtained or properly excused and the Project may be occupied and used without restriction.

§ 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 invoke the dispute resolution procedure of Paragraphs 15.3 and 15.4 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 undisputed amount certified in the Architect's final Certificate for Payment.

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

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

§ 11.3

(Paragraphs deleted)

[Deleted, See Section 5.2.2]

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 [Deleted]

§ 12.1.1 [Deleted.]

§ 12.1.2

(Paragraphs deleted)

[Deleted.]

§ 12.2 Binding Dispute Resolution

The method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

☐ Arbitration pursuant to Article 15 of the General Conditions

☒ Litigation conducted in Tillamook County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

Init.

[] Other: (Specify)
(Paragraphs deleted)

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.0 If the Owner chooses not to authorize Phase 2 services, the Owner may terminate this Agreement upon not less than seven days' written notice to Construction Manager.

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.0 or 13.1.1, the Construction Manager shall be compensated for authorized 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.

§ 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.

§ 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 a termination fee as follows:

(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)

§ 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 14.2.2 of this Agreement, and 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.

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

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the insurance in accordance with the requirements of the Contract Documents, including but not limited to Exhibit B to this Agreement, for the duration of this Agreement unless otherwise required by the Contract Documents.

§ 14.3.1.1 [Deleted.]

§ 14.3.1.2 [Deleted.]

§ 14.3.1.3 [Deleted.]

§ 14.3.1.4 [Deleted.]

§ 14.3.1.5 [Deleted.]

§ 14.3.1.6 Other Insurance

(Paragraphs deleted)

[Deleted.]

(Table deleted)

§ 14.3.1.7 Additional Insured Obligations. [Deleted.]

§ 14.3.1.8 [Deleted.]

§ 14.3.2 Construction Phase

(Paragraph deleted)

[Deleted.]

§ 14.3.2.1 The Construction Manager shall provide bonds as required under Section 3.1.14 of the General Conditions.

§ 14.4

(Paragraphs deleted)

[Deleted.]

§ 14.5 Other provisions:

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .5

(Paragraphs deleted)

[Deleted]

- .6 Other Exhibits:

(Check all boxes that apply.)

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

Init.

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User Notes:

(1633957455)

[] Supplementary and other Conditions of the Contract:

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

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

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

CITY OF MANZANITA

[TBD]

OWNER (Signature)

CONSTRUCTION MANAGER (Signature)

(Printed name and title)

(Printed name and title)

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

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

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PAGE 1

AGREEMENT made as of the day of in the year 2022

...

City of Manzanita
167 S. 5th Street
Manzanita, OR 97130

...

TBD

...

City of Manzanita's New City Hall Building
Construction of a City Hall and additional public facilities at 635-655 Manzanita Avenue, Manzanita OR 97130

...

TBD

PAGE 2

§ 1.1.0 The Project will be divided into two phases. Phase 1 will include all Preconstruction Phase services of the CM/GC performed up to the Architect's completion of 30% complete Schematic Design Documents. Owner will use the 30% complete Schematic Design Documents determine, in Owner's sole discretion, whether to authorize Phase 2 of the Project. Phase 2 of the Project will consist of CM/GC's completion of the Preconstruction Phase services, the Construction Phase services, and all other Work required under the Contract. CM/GC will not commence any Phase 2 services or Work unless authorized by Owner in writing. Owner is under no obligation to authorize Phase 2 services or Work. In the event that Owner chooses not to authorize Phase 2 services or Work, Owner may terminate this Agreement as set forth in Section 13.1.0 below. A delay between completion of Phase 1 and Owner's authorization (or, non-authorization) of Phase 2 services and Work will not constitute a stoppage, suspension, delay, or interruption of the Work under Section 14.1 of 14.3.2 of the General Conditions.

...

TBD

PAGE 3

TBD

...

The estimated construction cost budget for the Project is \$[TBD].

...

[TBD]

...

August 2023

...

July 2024

...

[TBD]

...

[TBD]

...

[TBD]

...

[TBD]

...

[TBD]

PAGE 4

[TBD]

...

.1 Geotechnical Engineer: [TBD]

...

.2 Civil Engineer: [TBD]

...

.3 Other, if any: [TBD]

...

[TBD]

...

[TBD]

See Section 9.3.

...
[TBD].

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

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

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

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in ~~A201–2017~~, the General Conditions which document is incorporated herein by reference. The term "Contractor" as used in ~~A201–2017~~ the General Conditions shall mean the Construction Manager.

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

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

...

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations for schedule recovery to the Owner and Architect.

...

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues. The Construction Manager's recommended phased construction shall consistent with any proposed phase construction set forth in the Owner's Request for Proposals.

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§ 3.1.11.2 ~~The Construction Manager shall develop bidders' interest in the Project.~~ The Construction Manager shall seek to develop subcontractor interest in the Project, and identify availability of subcontractors and vendors necessary to perform the project. In addition, the Construction Manager shall identify any potential subcontracts for which prequalification or qualification at time of bid, or selection by competitive proposal as opposed to bid, shall be necessary or advantageous to the Owner.

...

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items ~~on terms and conditions acceptable to the Construction Manager.~~ Upon and, upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them. The Construction Manager shall expedite the delivery of long-lead-time items.

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See Exhibit X for additional detail to the scope set forth in this Section 3.1 and for additional Preconstruction Phase services.

...

- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;~~and~~
- .5 A date by which the Owner must accept the Guaranteed Maximum Price;
- .6 A construction schedule identifying commencement and completion dates for Project milestones; and
- .7 A detailed and summary of the competitive bids received from prospective subcontractors for each portion of the Work, with the Construction Manager's recommendations for retention of subcontractors and the assumptions and effects of subcontractor selection on the proposed Guaranteed Maximum Price.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The contingency will not exceed 5% of the Guaranteed Maximum Price. Use of this contingency requires the Owner's prior approval in writing. Such approval shall not be withheld if it would unreasonably impact the ability of the Construction Manager to meet its contractual obligations related to budget, schedule, and quality. The Construction Manager will keep a log with line items of each contingency expenditure. Owner will initial approvals of expenditures per lined item.

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§ 3.2.10 Bid Alternates. The Owner will not pay any amount that exceeds the Guaranteed Maximum Price specified under this Contract unless the amount results from material changes to the scope of the work set forth in this Contract and parties agree in writing to the material changes as provided herein.

§ 3.2.10.1 The Construction Manager, Owner, and Architect shall agree on appropriate bid alternates for every bid package such that if the Cost of the Work in connection with the Guaranteed Maximum Price is less than (or more than) the Guaranteed Maximum Price, the Owner shall have the opportunity to authorize additive (or deductive) alternates, as appropriate. It is understood that the Owner and Construction Manager may choose to defer the award of alternates in order to ensure the successful outcome of later bid packages.

§ 3.2.10.2 Bid alternates for subcontractor packages, authorized by the Owner under the above provisions, shall be performed by the Construction Manager with no increase to the Guaranteed Maximum Price, with no time extension, and with no increase in Construction Manager's fee, unless both the Owner and the Construction Manager agree in writing at the time of the designation of alternates that awarding of the alternates will result in an increase in fee, and/or time extension.

§ 3.2.10.3 If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price is not exceeded, then the Construction Manager shall not be eligible for an increase in fee. However, the Construction Manager may be eligible for a time extension, if such extension is determined to be warranted.

§ 3.2.10.4 If the Construction Manager and Owner agree to the execution of alternates outside of the parameters described in this document, such that the Guaranteed Maximum Price will be exceeded, then the Construction Manager shall be entitled to an increase in fee, for the increase in the Cost of the Work above the Guaranteed Maximum Price, and as described in this document.

§ 3.2.11 All cost savings resulting from completion of the Work below the Guaranteed Maximum Price shall accrue to the Owner.

...

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

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§ 3.3.1.3 "Early Work" means construction services, construction materials and other Work authorized by the parties to be performed under the Contract in advance of the establishment of the Guaranteed Maximum Price. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for which performance prior to entering into the Guaranteed Maximum Price Amendment will materially and positively affect the development or completion of the project.

...

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of ~~A201-2017~~ the General Conditions.

...

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

...

§ 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.

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The Owner shall ~~identify~~ designate in writing a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish ~~information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager.~~ timely requested information expeditiously. The Owner's representative shall not have the authority to waive any provisions of the Contract Documents or to approve or authorize any change in the Guaranteed Maximum Price or the Contract Time except in writing. Except as otherwise provided in Section 4.2.1 of ~~A201-2017~~ the General Conditions, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

...

[TBD]
PAGE 12

[TBD]

...

§ 5.1.3 ~~If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.~~ [Deleted.]

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid (—) ~~days after the invoice date~~ after the date on which payment is due 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. Interest on payments due and unpaid under the Contract Documents shall bear interest as specified in ORS 279C.570.

...

[TBD].

...

The Construction Manager's Fee shall remain equal to the rate set in Section 6.1.2 of the total Cost of the Work, inclusive of all additive or deductive changes.

...

- .1 For Work performed by the Contractor's own forces or a related party as defined in Section 6.10, the Contractor may claim no more than ten percent (10.0%) of the actual Cost of the Work. There shall be no separate, additional markup by a related party.
- .2 For Work performed by a Subcontractor of any tier, the Contractor may claim no more than five percent (5.0%) of the actual amount due to the Subcontractor for the Cost of the Work.
- .3 For Work performed by a Subcontractor or Sub-subcontractor, the Subcontractor and Sub-subcontractors, collectively, may claim no more than ten percent (10.0%) of its actual Cost of the additional Work.
- .4 The Costs of the Work to which overhead and profit are to be applied at any tier are determined by Article 7 of this Agreement.
- .5 All general conditions or general requirements costs of the Contractor, related parties, and all Subcontractors of any tier are to be included in the overhead and profit allowance stated in this section and may not be separately stated or recovered as Costs of the Work.
- .6 Subcontractor's overhead and profit includes all costs regarding office, home office and site overhead (including project manager, project engineer, other engineers, project foreman, estimator, superintendent and their vehicles and clerical assistants); taxes (except for sales tax); employee per diem, subsistence and travel; warranties; printing and copying; quality control/assurance; purchasing; small or hand tools that cost \$500 or less and are normally furnished by the performing contractor and expendable charges; preparation of as-built drawings; impacts on unchanged Work; Claim or Change Order preparation; and delay and impact costs of any kind.

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

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

§ 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 ~~AIA Document A201–2017,~~ the General Conditions, General Conditions of the Contract for Construction.

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

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in ~~Article 7 of AIA Document A201-2017~~ 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. The Guaranteed Maximum Price established in the Guaranteed Maximum Price Amendment will include all elements necessary to complete the Work in accordance with the Contract Documents and, consequently, Change Orders adjusting the Guaranteed Maximum Price will not be necessary except in limited circumstances as set forth below:~~

- .1 Scope Changes.** Owner revisions on scope Project items previously approved by the Owner and incorporated in the pricing of the Guaranteed Maximum Price.
- .2 Concealed or Unknown Condition.** Concealed or Unknown Conditions as described in Section 3.7.4 of the General Conditions.
- .3 Regulatory Agency Changes.** Cost incurred as a result of changes in regulatory requirements but only where such requirements change after preparation of the Guaranteed Maximum Price Amendment.
- .4 Material Design Errors or Omissions.** Material errors or omissions in the Drawings or Specifications that could not have been reasonably anticipated or discovered by the Construction Manager before the Guaranteed Maximum Price was established, including but not limited to Work required or directed by the Owner that differs from any assumptions or clarifications included in the Guaranteed Maximum Price Amendment. Design errors and omissions do not include: (a) failure to coordinate between trades; or (b) design changes made at the request of the Construction Manager in order to facilitate the constructability of the Project.
- .5 Escalation.** Escalation in materials or equipment caused by tariffs, taxes, assessments, fees and other regulatory costs enacted after the effective date of this Agreement.

§ 6.3.6 Events for which the Guaranteed Maximum Price shall not be adjusted and no Change Order will be issued include the following:

- .1 Subcontractor Gaps.** Gaps in scope coverage between Subcontractors, including self-performed Work, that occur after the Guaranteed Maximum Price Amendment is signed.
- .2 Scope Gaps.** An item indicated in the Drawings or Specifications that was not picked up in the Guaranteed Maximum Price and not specifically excluded from the Guaranteed Maximum Price.
- .3 Document Ambiguities.** Ambiguities in the Construction Documents that the Construction Manager knew of or that a reasonable contractor would have identified and raised with the Owner prior to establishing the Guaranteed Maximum Price.
- .4 Subcontractor Failure.** A Subcontractor goes bankrupt or otherwise fails to perform.
- .5 Price Escalations.** Subject to Section 6.3.5.5, escalation of materials, equipment, or labor prices.
- .6 Estimating Errors.** The Construction Manager's estimating errors.
- .7 Expediting Costs.** Expediting costs for critical materials.

- .8 Coordination Claims. Costs related to Subcontractor Claims or charges that result from mistakes or omissions in Subcontractor buyout, or coordination issues between Subcontractors, or interference between Subcontractor and the Construction Manager or among Subcontractors.

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§ 7.1.1 The term Cost of the Work shall mean costs reasonably and 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,~~ in Sections 7.1 through 7.7. These costs may include:

- .1 Job costs due to delays beyond Construction Manager's control, as defined in Section 8.3 of the General Conditions.
- .2 All costs and fees associated with altering of public utilities, protection and repairs of adjoining property, and rental property for storage of materials to be incorporated into the Work.
- .3 Except for the instances where payments, expenses, fees, or Work are required as a result of the Construction Manager's failure to perform its obligations under this Agreement (in which case such payments, expenses, and Work shall be the Construction Manager's sole responsibility), whenever the Agreement or a governmental agency having jurisdiction over the Project requires that the Construction Manager make a payment, incur any expense or fee, or perform any Work, it will be understood to mean, in the absence of any language to the contrary, that such payment, the expense or Work, or both, shall be included in the Cost of the Work.

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§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval. Construction Manager will bill costs described in this Section 7.2.2 at the hourly rates established in Construction Manager's Proposal Fee Schedule for on-site management staff, which is attached as Exhibit X to this Agreement.

§ 7.2.2.1 Wages or salaries of the Construction Manager's ~~supervisory and administrative~~ supervisory, administrative, or home office estimating personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the ~~Work.~~ Work and only with Owner's prior written approval. Construction Manager will bill costs described in this Section 7.2.2.1 at the hourly rates established in Construction Manager's Proposal Fee Schedule for off-site management staff, which is attached as Exhibit X to this Agreement, and limited to the personnel and activities listed below:

...

§ 7.2.3 Wages and salaries of the Construction Manager's ~~supervisory or administrative~~ supervisory, administrative, or home-office estimating 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.~~ Work and only with Owner's prior written approval. Construction Manager will bill costs described in this Section 7.2.3 at the hourly rates established in Construction Manager's Proposal Fee Schedule for off-site management staff, which is attached as Exhibit X to this Agreement.

§ 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.~~ through 7.2.3.

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement. The costs in any cost-plus subcontracts must conform to the requirements of this Article 7.

...

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed ~~construction~~construction, subject to Paragraph 9.3.2 of the General Conditions.

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

...

§ 7.6.2 Sales, use, or similar ~~taxes, taxes~~ (but not income or receipt taxes), imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

...

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

...

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

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§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of ~~AIA Document A201-2017~~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. The Work described in this Section 7.7.3 does not include Work performed during or after the one-year period for correction of Work.

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of ~~AIA Document A201-2017~~the General Conditions or other Conditions of the Contract 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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§ 7.9.1 The Cost of the Work shall not include ~~the items listed below~~any costs not allowed by the General Conditions except as expressly modified in this Agreement or by written modification (e.g., change order) to this Agreement signed by the Owner and Construction Manager) and the following:

...

- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;~~and~~
- .9 Costs for services incurred during the Preconstruction ~~Phase~~Phase;
- .10 Except as provided in Section 7.7, any cost not specifically and expressly described in Section 7.1, 7.2, 7.3, 7.4, 7.5 and 7.6;
- .11 Costs which would cause the Guaranteed Maximum Price to be exceeded; and
- .12 Premiums for insurance and bonding other than those that are directly and solely attributable to the construction of the project.

...

§ 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 notify the Owner in a timely manner of the availability of such cash discounts, rebates, or refunds.

...

§ 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. Subcontracts be solicited as provided in Section 9.3.~~ 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~~ (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.

ARTICLE 10 — ACCOUNTING RECORDS

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

to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 11 — PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 9.3 Subcontractor Selection. Pursuant to ORS 279C.337(3), the Construction Manager's subcontractor selection process must meet the following parameters:

- .1 Absent a written justification prepared by the Construction Manager and approved by the Owner as more particularly provided for in this section, the Construction Manager's Subcontractor selection process must be "competitive," meaning that the 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 the Owner, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the Contract requirements;
- .2 When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:
 - (a) The Construction Manager must prepare and submit a written justification to the Owner, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the Construction Manager's need to utilize a key Subcontractor member of the Construction Manager's project team consistent with the Construction Manager's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;
 - (b) For a "sole source" selection of a subcontractor to proceed, the Owner must evaluate the written justification provided by the Construction Manager and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;
 - (c) The Construction Manager must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Owner;
 - (d) The Construction Manager must fully respond to any questions or comments submitted to the Construction Manager by the Owner; and
 - (e) The Owner must approve the Construction Manager's use of the non-competitive Subcontractor selection process prior to the Construction Manager's pursuit of the non-competitive process.
- .3 A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the Construction Manager will select the subcontractor to perform the construction Work described in the selection process;
- .4 If the Construction Manager or an Affiliate or subsidiary of the Construction Manager 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. The Contract must also identify the conditions, processes and procedures the Construction Manager will utilize in that competitive process in order to make the process impartial, competitive and fair,

including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Owner or another independent third party.

§ 9.3.5 Subcontractor Approvals and Protests. The Construction Manager shall include in its solicitation documents a process by which a adversely affected bidder or proposer may protest the selection of subcontractors and suppliers. The Construction will resolve in protests in writing. The Construction shall notify the owner of the filing and disposition of any protest. The Owner retains 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 with applicable statutes, administrative rules and other legal requirements. The Construction Manager shall any documents relating to the subcontracting process to the Owner upon the Owner's requests. Any documents that are shared with the Owner become public records subject to disclosure.

§ 9.3.6 Construction Manager Self-Performance or Performance by Construction Manager Affiliates or Subsidiaries Without Competition. The Construction Manager must obtain approval of the Owner before the Construction Manager or an Affiliate or subsidiary of the Construction Manager may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the Construction Manager or an Affiliate or subsidiary of the Construction Manager to perform elements of the construction Work without competition from subcontractors, the Construction Manager must provide, or must have included in the Construction Manager's RFP proposal to perform Construction Manager Services for the project, a detailed proposal for performance of the Work by the Construction Manager or an Affiliate or subsidiary of the Construction Manager. If required by the Owner, the Construction Manager's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

§ 9.3.7 Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the Construction Manager to perform a particular element of the construction Work to obtain specific information from the Construction Manager, and meet with the Construction Manager to discuss the subcontractor qualification and selection process involved and the Construction Manager's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the Construction Manager. Nevertheless, the Construction Manager is not obligated to provide this briefing opportunity unless the Construction Manager receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Owner and the Construction Manager agree on a different schedule for a particular solicitation, the Construction Manager will:

- .1 Allow a subcontractor 60 days from the Construction Manager's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the Construction Manager under this section; and
- .2 Set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

§ 9.3.8 Award of Subcontracts. All subcontract awards require the Owner's approval. Such approval shall not be unreasonably withheld or delayed.

§ 9.3.9 Subcontract Amendments. Subcontracts may be increased on the basis of unit pricing to any amount, if competitively bid on the basis of unit pricing. Subcontracts may also be increased to any amount by additive bid alternates not selected at the time of bid award. For increase in scope of work that is neither based on unit pricing or additive alternates, subcontracts may be modified by up to 30% of the original bid/proposal amount, or if quoted up to \$100,000, the modification may be up to 100%. Upon a written finding approved by the Owner that it is in the best interest of the Owner, subcontracts may be increased beyond the 30%/100% total, without limit. All changes are subject to the change order provisions of this Contract and the General Conditions.

ARTICLE 10 ACCOUNTING RECORDS

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

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and ~~elsewhere in the Contract Documents in the General Conditions.~~ The application shall be in a form acceptable to the Owner and shall include an accounting by natural expense categories.

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§ 11.1.3 ~~Provided that an Application for Payment is received by the Architect not later than the day of a month, the Owner shall make payment of the amount certified Pursuant to ORS 279C.570, the Owner shall make payment to the Construction Manager not later than the day of the month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than () days after the Architect receives the Application for Payment.~~ thirty (30) days after receipt of the Construction Manager's Application for Payment or 15 days following issuance of the Certificate for Payment, whichever is the earlier date. Late payments shall accrue interest at the rate set forth in ORS 279C.570(2).

...

§ 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~~ (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing ~~(a) the (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 (b) the~~ share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with ~~AIA Document A201-2017~~ 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:~~ As a condition of approval, but without limitation of any other conditions, each Application for Payment must contain written certification by Construction Manager:

- ~~.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;~~ the Application for Payment represents an accurate estimate of the percentage of Work completed for each portion of the Work for which partial payment is sought;
- ~~.2 That to Construction Manager's best knowledge, no claims of lien and no bond claims have been asserted or perfected as of the date of the Application for Payment;~~
- ~~.3 That all amounts claimed for payment in the Application for Payment that are due and payable have been paid in full or will be paid from funds received pursuant to the Application for Payment;~~
- ~~.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;~~
- ~~.4 That all subcontractors and suppliers paid or to be paid pursuant to the Application for Payment have executed valid and binding conditional waivers of lien and bond rights and claims for~~

payment through the date of the Application for Payment, which waivers are included with the Application for Payment;

- .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..5 That Construction Manager has included its conditional signed waiver of any and all its lien and bond rights and other claims for payment through the date of the Application for Payment; and
- .6 That there is no other known claim for payment against Owner, except as stated in the Application for Payment.

§ 11.1.7.2 The amount of each progress payment shall then be reduced by: Each progress payment will be calculated based on the Costs of the Work incurred as claimed in the Application for Payment, together with the proportional amount of the Contractor's Fee, subject to the following:

- .1 The aggregate of any amounts previously paid by the Owner; Retainage will be withheld from the total progress payment amount at five percent (5.0%) of the total amount due to the Contractor;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017; amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- .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; The amount of the progress payment may be adjusted by the Owner or the Architect if the total amount of progress payments would exceed an amount commensurate with the percentage of completion of the Project as determined by the Owner or the Architect with reference to the actual completion of the Work and the Contractor's schedule of values; and
- .6 Retainage withheld pursuant to Section 11.1.8..4 Retainage withheld shall be deposited in an interest bearing account in accordance with ORS 279C.550-580. Owner will pay net retainage balance as part of the final application for payment from Contractor, upon inspection approval completion and release of liens affidavit. Interest due to Contractor is paid direct from banking institution to Contractor

§ 11.1.7.3 Whereas Owner, in acceptance of the above depository option for retainage by Contractor; Owner may recover additional costs incurred from Contractor, during the Contract, by reduction of payment upon the Contractor's final application for payment.

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See Section 11.1.7.2.1.

...

None.
PAGE 23

None.

...

Notwithstanding the foregoing, payment of any or all retainage may be withheld for 60 days following final completion of the Work of Construction Manager or its subcontractors or suppliers for which retainage is held. Owner may, at its sole option and without creating precedent or waiver, approve the earlier release of retainage for Work that has been completed and accepted upon receipt of a binding waiver or release of all bond and lien rights and claims associated with that portion of the Work or upon Owner's receipt of a valid bond that is sufficient to pay any claims that may be asserted for the portion of the Work, including attorney fees.

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

...

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of ~~AIA Document A201-2017~~ the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for ~~Payment~~ Payment with affidavits confirming the release of all lien claims; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the Owner's acceptance of the Architect's final Certificate for Payment and after the following additional conditions have been satisfied:

- .4 Construction Manager has submitted for itself and for all its subcontractors and suppliers conditional final, executed, and binding certificates, releases, and waivers of all lien and bond rights and claims and all unresolved claims for payment in a form acceptable to Owner;
- .5 Construction Manager has submitted to Owner all record or as-built plans, manuals, operation instructions, directions, safety manuals or guides, and any other deliverables required by the Contract Documents;
- .6 All rights, warranties, title, and claims to materials, equipment, or systems supplied under this Agreement have been validly transferred to Owner or Owner's assignee; and
- .7 All necessary inspections, approvals, licenses, and permits have been successfully obtained or properly excused and the Project may be occupied and used without restriction.

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§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in ~~Article 9 of AIA Document A201-2017~~ Article 9 of the General Conditions. The time periods stated in this Section 11.2.2 supersede those stated in ~~Article 9 of AIA Document A201-2017~~ 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 without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017~~ invoke the dispute resolution procedure of Paragraphs 15.3 and 15.4 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 undisputed amount certified in the Architect's final Certificate for Payment.

...

§ 11.3 Interest

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

—% ~~[Deleted, See Section 5.2.2]~~

ARTICLE 12 — DISPUTE RESOLUTION

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker~~[Deleted]~~

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

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager’s Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

~~[Deleted.]~~

...

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

...

[] Arbitration pursuant to Article 15 of ~~AIA Document A201–2017~~ the General Conditions

[] ~~Litigation in a court of competent jurisdiction~~ **X** [] Litigation conducted in Tillamook County Circuit Court. If the claim must be brought in a federal forum, then it shall be brought and conducted in the United States District Court for the State of Oregon.

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

...

ARTICLE 13 — TERMINATION OR SUSPENSION

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1.0 If the Owner chooses not to authorize Phase 2 services, the Owner may terminate this Agreement upon not less than seven days’ written notice to Construction Manager.

§ 13.1.2 In the event of termination of this Agreement pursuant to Section 13.1.0 or 13.1.1, the Construction Manager shall be compensated for authorized 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 ~~A201-2017~~ the General Conditions.

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

...

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

...

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

...

If the Owner terminates the Contract for convenience in accordance with Article 14 of ~~AIA Document A201-2017~~ the General Conditions, then the Owner shall pay the Construction Manager a termination fee as follows:

...

The Work may be suspended by the Owner as provided in Article 14 of ~~AIA Document A201-2017~~ the General Conditions; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of ~~AIA Document A201-2017~~ 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~~ Sections 6.1 and 6.3.5 of this Agreement.

~~ARTICLE 14 — MISCELLANEOUS PROVISIONS~~

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

...

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of ~~A201-2017~~ 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.

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

cost insurance in accordance with the requirements of the Contract Documents, including but not limited to Exhibit B to this Agreement, for the duration of this Agreement unless otherwise required by the Contract Documents.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than —(\$ —) for each occurrence and —(\$ —) in the aggregate for bodily injury and property damage. [Deleted.]

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

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

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than —(\$ —) each accident, —(\$ —) each employee, and —(\$ —) policy limit. [Deleted.]

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

§ 14.3.1.6 Other Insurance

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

Coverage

Limits

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

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

...

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

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™-2019 Exhibit B, and elsewhere in the Contract Documents required under Section 3.1.14 of the General Conditions.

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

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

[Deleted.]

...

ARTICLE 15 — SCOPE OF THE AGREEMENT

ARTICLE 15 SCOPE OF THE AGREEMENT

...

- .5 ~~AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)~~

[Deleted]

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

CITY OF MANZANITA

[TBD]

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:19:47 ET on 07/08/2022 under Order No. 3104236508 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of 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 published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A133[™] – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the day of in the year , is incorporated into the accompanying 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 dated the day of in the year (the "Agreement")

(In words, indicate day, month, and year.)

for the following **PROJECT:**

(Name and address or location)

City of Manzanita's New City Hall Building
Construction of a City Hall and additional public facilities at 635-655 Manzanita Avenue,
Manzanita OR 97130

THE OWNER:

(Name, legal status, and address)

City of Manzanita
167 S. 5th Street
Manzanita, OR 97130

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

TBD

TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE**
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 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 the Agreement.

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

ADDITIONS AND DELETIONS:

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

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

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

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
------	-------

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- ☐ The date of execution of this Amendment.
- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

☐ Not later than () calendar days from the date of commencement of the Work.

☐ By the following date:

Init.

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

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

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

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

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

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

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
------	-------

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:

(Identify each assumption and clarification.)

§ A.3.1.7 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 Amendment.)

ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

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

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

OWNER *(Signature)*

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

(Printed name and title)

Additions and Deletions Report for

AIA[®] Document A133[™] – 2019 Exhibit A

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:41:00 ET on 03/31/2022.

PAGE 1

City of Manzanita's New City Hall Building

Construction of a City Hall and additional public facilities at 635-655 Manzanita Avenue, Manzanita OR 97130

...

City of Manzanita

167 S. 5th Street

Manzanita, OR 97130

...

TBD

PAGE 2

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in ~~Section~~
6.1.3-Section 6.1.3 of the Agreement.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:41:00 ET on 03/31/2022 under Order No. 3104236508 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)



AIA[®] Document A133[™] – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the day of in the year 2022
(In words, indicate day, month and year.)

for the following **PROJECT**:
(Name and location or address)

City of Manzanita New City Hall Building
Construction of a future City Hall and additional public facilities at 635-655 Manzanita Avenue, Manzanita OR 97130

THE OWNER:
(Name, legal status, and address)

City of Manzanita
167 S. 5th Street/PO Box 129
Manzanita, OR 97130

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

[TBD]

TABLE OF ARTICLES

- B.1 GENERAL
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ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201[™]-2017, General Conditions of the Contract for Construction, as amended.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual general liability insurance.

ADDITIONS AND DELETIONS:

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

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

This document is intended to be used in conjunction with AIA Document A201[™]-2017, General Conditions of the Contract for Construction. Article 11 of A201[™]-2017 contains additional insurance provisions.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, 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. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds.

§ B.2.3.1.1 **Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss

Sub-Limit

§ B.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage

Sub-Limit

§ B.2.3.1.3 [Deleted].

§ B.2.3.1.4 **Deductibles and Self-Insured Retentions.** The property insurance requires deductibles. For each claim, the deductible or deductibles applicable shall be satisfied as follows:

- .1 To the extent the underlying loss that occurred was not caused by the act or omission of the Construction Manager, its Subcontractor, or any person or entity for whom either or both of them are responsible, the Owner shall satisfy the deductible(s).
- .2 To the extent that the underlying loss was caused by the act or omission of the Construction Manager, its Subcontractor, or any person or entity for whom either or both of them are responsible, the Construction Manager shall satisfy the deductible(s).
- .3 The parties will satisfy the applicable deductible(s) according to this section promptly and without delay to adjustment of the claim. If the cause of the underlying loss is disputed between the Owner and the Construction Manager, the parties shall nevertheless cooperate with adjustment of the insurance claim and continue the Work and the Project (including without limitation repairs, as applicable) pending resolution of the dispute. The dispute shall be subject to the procedures for resolution of claims in Article 15 of the General Conditions, but either party may without prejudice to its position, claim, or defense pay the required deductible(s) and claim recovery of it or them from the appropriate party.

§ B.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of

coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 [Deleted]

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- ☐ **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- ☐ **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- ☐ **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- ☐ **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- ☐ **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- ☐ **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- ☐ **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

☐ **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.
(Indicate applicable limits of coverage or other conditions in the fill point below.)

☐ **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work, including but not limited to Preconstruction Phase services; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. The Owner may, but is not obligated to, prohibit the Construction Manager from entering the Project Site until the certificates of insurance and all required attachments have been received and approved by the Owner. The Construction Manager may not enter the Project Site or commence the Work until the Construction Manager places for the Work all coverages required under Section B.3. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. Satisfaction of all self-insured retentions or deductibles is the sole responsibility of the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, and its consultants, officers, employees, agents, and contractors as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner and its consultants, officers, employees, agents, and contractors as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. All of the Construction Manager's insurance carriers shall be rated A- or better by Best's Insurance Rating. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

The Construction Manager must maintain insurance for at least six years after Substantial Completion.

Init.

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 The Construction Manager shall purchase and maintain Commercial General Liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 00 01 (12 04 or later) or an equivalent form approved in advance by the Owner. The policy limits for CGL coverage must be no less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$ 2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.2.3 The CGL insurance must also include the following: (1) separation of insureds and (2) per-project aggregate.

§ B.3.2.3 The Construction Manager shall purchase and maintain Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. Construction Manager must provide coverage using ISO Form CA 00 01 or an equivalent form approved in advance by the Owner.

§ B.3.2.4 The Construction Manager shall purchase or maintain commercial umbrella or excess liability insurance with policy limits of not less than Three Million Dollars (\$3,000,000) for each occurrence and in the aggregate. Commercial umbrella/excess liability coverage must include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The third-party liability insurance shall be scheduled to the umbrella/excess coverage. The umbrella or excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation coverage in compliance with ORS 656.017.

§ B.3.2.6 Employers' Liability with policy limits not less than Three Million Dollars (\$ 3,000,000) each accident, Three Million Dollars (\$ 3,000,000) each employee, and Three Million Dollars (\$ 3,000,000) policy limit. Contractor may achieve coverage under this Section B.3.2.6 through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverage required under this Section B.3.2.6, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and One Million Dollars (\$ [1,000,000]) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and One Million Dollars (\$ 1,000,000) in the aggregate.

§ B.3.2.10 [Deleted.]

§ B.3.2.11 [Deleted].

§ B.3.2.12 [Deleted].

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

- [] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
- (Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

- [] **§ B.3.3.2.2 Railroad Protective Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.
- [] **§ B.3.3.2.3 Asbestos Abatement Liability Insurance**, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.
- [] **§ B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.**
- [] **§ B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.**
- [] **§ B.3.3.2.6 Other Insurance**
(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located in accordance with ORS 279C.380.

(Specify type and penal sum of bonds.)

(Table deleted)

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

§ A.4.1 COPIES OF POLICIES. Construction Manager will promptly provide copies of all insurance policies purchased and maintained for this Project in accordance with Section B.3.2, if requested by Owner.

§ A.4.2 PRIMARY AND SEVERABILITY-OF-INTEREST COVERAGE

The Construction Manager's insurance identified in Section B.3.2 shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the Owner, including any property damage coverage carried by the Owner. The Construction Manager's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Construction Manager's insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party.

§ A.4.3 CONSTRUCTION MANAGER'S FAILURE TO MAINTAIN INSURANCE

If the Construction Manager for any reason fails to maintain the required insurance coverage, the failure shall be deemed a material breach of the Agreement, and the Owner, in its sole discretion, may suspend or terminate the Agreement under Article 14 of the General Conditions. The Owner may, but has no obligation to, purchase the required insurance and, without further notice under the Agreement, may deduct from the Contract Sum any premium costs advanced by the Owner for the insurance. Failure to maintain the insurance coverage required by Section B.3.2 does not waive the Construction Manager's obligations to the Owner.

§ A.4.4 LIMITATIONS ON COVERAGE

- .1 No insurance provided by the Construction Manager under Section B.3.2 must indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to

property caused in whole or in part by their own negligence, but the insurance must require indemnity to the extent of the fault of the Construction Manager or its Subcontractors, agents, and representatives.

- .2 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Construction Manager. Insurance in effect or procured by the Construction Manager will not reduce or limit the Construction Manager's contractual obligations to indemnify and defend the Owner and its employees or agents for and against claims or suits that result from or are connected with performance under the Agreement.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:43:19 ET on 03/31/2022.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the day of in the year 2022

...

City of Manzanita New City Hall Building
Construction of a future City Hall and additional public facilities at 635-655 Manzanita Avenue, Manzanita OR
97130

...

City of Manzanita
167 S. 5th Street/PO Box 129
Manzanita, OR 97130

...

(Name, legal status, and address)

[TBD]

...

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for ~~Construction~~Construction, as amended.

...

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this ~~Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.~~Article B.2.

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§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, 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. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise

provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. ~~This insurance shall include the interests of mortgagees as loss payees.~~

...

§ B.2.3.1.3 ~~Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.~~[Deleted].

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. ~~If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.~~The property insurance requires deductibles. For each claim, the deductible or deductibles applicable shall be satisfied as follows:

- .1 To the extent the underlying loss that occurred was not caused by the act or omission of the Construction Manager, its Subcontractor, or any person or entity for whom either or both of them are responsible, the Owner shall satisfy the deductible(s).
- .2 To the extent that the underlying loss was caused by the act or omission of the Construction Manager, its Subcontractor, or any person or entity for whom either or both of them are responsible, the Construction Manager shall satisfy the deductible(s).
- .3 The parties will satisfy the applicable deductible(s) according to this section promptly and without delay to adjustment of the claim. If the cause of the underlying loss is disputed between the Owner and the Construction Manager, the parties shall nevertheless cooperate with adjustment of the insurance claim and continue the Work and the Project (including without limitation repairs, as applicable) pending resolution of the dispute. The dispute shall be subject to the procedures for resolution of claims in Article 15 of the General Conditions, but either party may without prejudice to its position, claim, or defense pay the required deductible(s) and claim recovery of it or them from the appropriate party.

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§ B.2.3.3 Insurance for Existing Structures~~[Deleted]~~

~~If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.~~

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§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the ~~Work~~; Work, including but not limited to Preconstruction Phase services; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. ~~The Owner may, but is not obligated to, prohibit the Construction Manager from entering the Project Site until the certificates of insurance and all required attachments have been received and approved by the Owner. The Construction Manager may not enter the Project Site or commence the Work until the Construction Manager places for the Work all coverages required under Section B.3.~~ An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 Deductibles and Self-Insured Retentions. ~~The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by~~ Satisfaction of all self-insured retentions or deductibles is the sole responsibility of the Construction Manager.

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, ~~the Architect, and the Architect's consultants and its consultants, officers, employees, agents, and contractors~~ as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner and its consultants, officers, employees, agents, and contractors as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

...

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. All of the Construction Manager's insurance carriers shall be rated A- or better by Best's Insurance Rating. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

...

The Construction Manager must maintain insurance for at least six years after Substantial Completion.

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§ B.3.2.2.1 ~~Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than (\$) each occurrence, (\$) general aggregate, and (\$)~~ The Construction Manager shall purchase and maintain Commercial General Liability ("CGL") insurance on an occurrence basis, written on ISO Form CG 00 01 (12 04 or later) or an equivalent form approved in advance by the Owner. The policy limits for CGL coverage must be no less than One Million Dollars (\$ 1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$ 2,000,000) aggregate for products-completed operations hazard, providing coverage for claims including

...

§ B.3.2.2.3 The CGL insurance must also include the following: (1) separation of insureds and (2) per-project aggregate.

§ B.3.2.3 The Construction Manager shall purchase and maintain Automobile Liability insurance covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than One Million Dollars (\$ 1,000,000) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage. Construction Manager must provide coverage using ISO Form CA 00 01 or an equivalent form approved in advance by the Owner.

§ B.3.2.4 ~~The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The shall purchase or maintain commercial umbrella or excess liability insurance with policy limits of not less than Three Million Dollars (\$3,000,000) for each occurrence and in the aggregate. Commercial umbrella/excess liability coverage must include: (1) "Pay on behalf of" wording; (2) concurrency of effective dates with primary coverage; (3) punitive damages coverage (if not prohibited by law); (4) application of aggregate (when applicable) in primary coverage; and (5) drop-down feature. The third-party liability insurance shall be scheduled to the umbrella/excess coverage. The umbrella or excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

§ B.3.2.5 Workers' Compensation ~~at statutory limits coverage in compliance with ORS 656.017.~~

§ B.3.2.6 Employers' Liability with policy limits not less than Three Million Dollars (\$ 3,000,000) each accident, Three Million Dollars (\$ 3,000,000) each employee, and Three Million Dollars (\$ 3,000,000) policy limit. Contractor may achieve coverage under this Section B.3.2.6 through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverage required under this Section B.3.2.6, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy.

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§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and One Million Dollars (\$ [1,000,000]) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than One Million Dollars (\$ 1,000,000) per claim and One Million Dollars (\$ 1,000,000) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$) per claim and (\$) in the aggregate.~~[Deleted.]~~

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~[Deleted.]~~

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.~~[Deleted.]~~

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The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is ~~located, as follows:~~ located in accordance with ORS 279C.380.

...

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

...

§ A.4.1 COPIES OF POLICIES. Construction Manager will promptly provide copies of all insurance policies purchased and maintained for this Project in accordance with Section B.3.2, if requested by Owner.

§ A.4.2 PRIMARY AND SEVERABILITY-OF-INTEREST COVERAGE

The Construction Manager's insurance identified in Section B.3.2 shall be primary insurance coverage and may not seek contribution from any insurance or self-insurance carried by the Owner, including any property damage coverage carried by the Owner. The Construction Manager's insurance shall apply separately to each insured against whom a claim is made or suit is brought. The Construction Manager's insurance shall not include any cross-suit exclusion or preclude an additional insured party from asserting a claim as a third party.

§ A.4.3 CONSTRUCTION MANAGER'S FAILURE TO MAINTAIN INSURANCE

If the Construction Manager for any reason fails to maintain the required insurance coverage, the failure shall be deemed a material breach of the Agreement, and the Owner, in its sole discretion, may suspend or terminate the

Agreement under Article 14 of the General Conditions. The Owner may, but has no obligation to, purchase the required insurance and, without further notice under the Agreement, may deduct from the Contract Sum any premium costs advanced by the Owner for the insurance. Failure to maintain the insurance coverage required by Section B.3.2 does not waive the Construction Manager's obligations to the Owner.

§ A.4.4 LIMITATIONS ON COVERAGE

- .1 No insurance provided by the Construction Manager under Section B.3.2 must indemnify the Owner or its employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by their own negligence, but the insurance must require indemnity to the extent of the fault of the Construction Manager or its Subcontractors, agents, and representatives.
- .2 By requiring insurance, the Owner does not represent that coverage and limits will necessarily be adequate to protect the Construction Manager. Insurance in effect or procured by the Construction Manager will not reduce or limit the Construction Manager's contractual obligations to indemnify and defend the Owner and its employees or agents for and against claims or suits that result from or are connected with performance under the Agreement.



AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Manzanita's New City Hall Building
635-655 Manzanita Avenue
Manzanita, OR 97130

THE OWNER:

(Name, legal status and address)

The City of Manzanita
167 S. 5th Street
Manzanita, OR 97130

THE ARCHITECT:

(Name, legal status and address)

TBD]

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13	MISCELLANEOUS PROVISIONS

ADDITIONS AND DELETIONS:

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

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor, which is based on AIA Document A102-2017, as amended, (hereinafter the "Agreement"), and consist of the Agreement, these General Conditions of the Contract for Construction (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 Contract. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

Instruments of Service are physical representations, Drawings, Specifications, and other documents (including those in electronic form) of the tangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

(Paragraphs deleted)

§ 1.1.8 [Deleted]

§ 1.1.9 Modification

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.

§ 1.1.10 Project Site

The Project Site includes (1) the real property where the Project will be constructed, (2) spaces where the Work is to be performed, and (3) staging areas.

§ 1.1.11 Affiliated Entity

The term "Affiliated Entity" shall mean the Contractor (if self-performing a portion of the Work), a parent, subsidiary, affiliate, or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor, or the Contractor itself, owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity that has the right to control the business or affairs of the Contractor. The term "Affiliated Entity" includes any member of the immediate family of any person identified above.

§ 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.

§ 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. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

§ 1.2.4 The terms of any document that forms the Contract are subject to the following order of precedence:

- .1 Modifications, with the more recent modification taking precedence over an earlier modification;
- .2 The Agreement;
- .3 These General Conditions and supplementary conditions;
- .4 Other Exhibit to the Agreement;
- .5 Drawings, Specifications, and Addenda issued before execution of the Contract, subject to Section 1.2.5;
- .6 Other documents incorporated by the terms of the Contract Documents.

§ 1.2.5 If there is an inconsistency within or between (1) any Drawings, Specifications, or Addenda issued before execution of the Contract, or (2) any Drawings, Specifications, or Addenda and applicable standards, codes, and ordinances, then the Contractor shall provide the better quality or greater quantity of Work without requiring a change to the Contract Sum. The terms and conditions of this Section 1.2.4, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2.

§ 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 or substitutes for those documents that may be used on the Project.

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

§ 1.6 Notice

§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The Owner shall establish protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form, unless otherwise already provided in the Agreement or the Contract Documents.

(Paragraphs deleted)

§ 1.8

[Deleted].

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The Contractor and its Subcontractors cannot rely on statements, requests, or purported authorizations made by persons or entities other than the Owner's designated representatives for any purpose relating to the Work, the Contract Documents, changes, or payment.

§ 2.1.2 [Deleted].

§ 2.1.3 Notwithstanding anything to the contrary in any Contract Document, no officer, director, trustee, manager, partner, parent, affiliate, Owner representative, faculty member, employee, volunteer, student, agent, or other representative of the Owner shall have any personal liability to the Contractor or any other person or entity other than the Owner for any acts or omissions arising out of or relating to these General Conditions or any Contract, whether based on tort, contract, statute, administrative laws, or otherwise.

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

§ 2.2.2 After the Owner furnishes to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract, the Contractor may submit additional requests for evidence only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. Any request made after the commencement of the Work shall not serve as a basis for the Contractor to stop the Work.

§ 2.2.3 [Deleted].

§ 2.2.4 Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary building permits, approvals, easements, land use orders, assessments, system development charges, impact fees, plan review intake fees, and utility fees 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 to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Except to the extent required for execution of the Work and requested by the Contractor in writing, the Owner shall not furnish surveys, studies, or reports regarding the physical characteristics, legal limitations or utility locations for the Project Site but shall provide a survey and legal description of the Project Site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner or the Architect shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Additional copies may be purchased by the Contractor at the cost of reproduction and handling.

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies commence and continue

to carry out the Work, including without limitation the correction of any deficiencies. The Owner may, pursuant to Section 9.5.1, withhold payment in whole or in part, to cover the reasonable cost of correcting such deficiencies, including Owner's expenses, attorney fees, and compensation for the Architect's additional services made necessary by the default, neglect, or failure. If current and future payments are not sufficient to cover these amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner, or the amounts claimed as costs by the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 If the Contractor's default or neglect results in a hazard to the safety of persons or property, the Owner may commence and continue to carry out any Work necessary to mitigate the hazard immediately, regardless of the notice period.

§ 2.5.3 The Owner's right to commence and carry out the Work in this Section 2.5 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 EXCLUSION AND REPLACEMENT OF PERSONNEL

If any of the Contractor's representatives, employees, agents, or Subcontractors (collectively, "Personnel") cause or threaten physical harm to any persons or property related to the Project, then the Owner may require the Contractor to remove those Personnel immediately. The Contractor must provide to the Owner identification of replacement Personnel no later than 48 hours after removing Personnel from the Project. Each replacement must have qualifications and experience comparable to or better than the individual or entity being replaced and be reasonably acceptable to the Owner.

§ 2.7 RIGHTS and REMEDIES

Consistent with Section 13.3, the rights described in Sections 2.3 through 2.6 shall be in addition to, and not in restriction of, the Owner's other rights or remedies.

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. These General Conditions apply to Affiliated Entities and contractors that are owned or controlled by, and act as, the Contractor for purposes of any Contract.

- .1** The Contractor shall be lawfully licensed with the Oregon Construction Contractor's Board at the time of solicitation of any Work and throughout the entire course of the Work.. The Contractor shall maintain all required bonding and insurance required by the State of Oregon throughout the entire course of the Work.
- .2** The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall supervise, coordinate, and perform the Work in accordance with the Contract Documents in a professional, safe, and workmanlike manner and in accordance with all laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and professional standards applicable to the industries and trades involved, including without limitation strict compliance with all applicable federal, state, and local laws and building codes, certification requirements applicable to the Work, and other policies or standards incorporated in 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 Owner or the Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the Project 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. In addition:

- .1 The Contractor and each Subcontractor, as a condition precedent to commencement of the Work, shall:
- (a) become familiar with the location, condition, layout, and nature of the Project Site and surrounding areas and generally prevailing climate conditions;
 - (b) review all analyses, studies, and test data available to the Contractor concerning the conditions of the Project Site;
 - (c) inspect the location of the Project Site and satisfy themselves as to its condition, including all observable structural, surface, and subsurface conditions;
 - (d) evaluate the availability and cost of labor and trade Subcontractors and the availability and cost of materials, tools, and equipment; and
 - (e) determine (i) that the Contract Sum is just and reasonable compensation for all the Work, including all foreseen and foreseeable construction risks, hazards, and difficulties for which the Contractor is responsible under the Contract Documents, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the means and methods of performing the Work will not result in any lateral or vertical movement of any adjacent structure.
- The Contractor or Subcontractor must notify the Owner in writing before commencing the Work if it determines that it cannot satisfy one or more of these conditions.
- .2 The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 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, and shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the Project Site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 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 3.2.1 through 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations and could not have recognized the applicable error, inconsistency, omission, or difference in the exercise of normal diligence, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, recognized in the exercise of normal diligence.

§ 3.2.5 Unless otherwise specified in the Contract Documents, the Contractor shall confirm the location of each utility and shall excavate and dispose of each on-site utility. The Owner shall make available to the Contractor, and the Contractor shall study, the results of any test borings and information that the Owner has concerning subsurface conditions and site geology. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

§ 3.2.6 At the Owner's request, the Contractor will make available to the Owner the results of any other site investigation, analyses, studies, or other tests conducted by or in possession of the Contractor and any of its agents.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise, coordinate, and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.3.4 The Contractor and its Subcontractors may not use the Owner's tools, equipment, or materials unless authorized in advance by an Owner's Representative.

§ 3.3.5 The Contractor must notify the Owner at least seven (7) working days before the interruption of any utility or operating system, regardless of the area it services, so that the Owner may notify the departments and personnel to be affected. The specific schedule for all interruptions in services must be coordinated through an Owner's Representative and the Owner's on-site plant operations personnel.

§ 3.3.6 If the Contractor reasonably believes that suspension of the Work is warranted by reason of unforeseen circumstances that could adversely affect the quality of the Work if the Work were continued, the Contractor will immediately notify the Owner and the Architect and describe with particularity the reasons for its belief. Except as stated elsewhere in the Contract Documents or in an emergency, the Contractor shall not suspend the Work until it receives approval from the Owner.

§ 3.3.7 Unless otherwise noted or directed, the Contractor shall perform all Work in accordance with product manufacturers' recommendations or directions. No preparatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of the Architect or an Owner's Representative. Conflicts between manufacturers' directions shall be resolved by the Architect or, if no Architect is appointed for a Project, the Owner.

§ 3.3.8 It is understood and agreed that the relationship of the Contractor to Owner shall that of an independent contractor as defined in ORS 670.600. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to (a) make Contractor the agent, servant, or employee of the Owner; or (b) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect to the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

§ 3.4 Labor and Materials

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

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

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

- .1 Hire all personnel for the proper and diligent performance of the Work; and
- .2 Use its best efforts to maintain labor peace for the duration of the Project.

§ 3.4.4 The Contractor and all its Subcontractors shall not discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, sexual orientation, or national origin.

§ 3.4.5 The unauthorized use, possession, sale, purchase, distribution, dispensation, or manufacture of unauthorized or illegal drugs or alcohol by the Architect or its consultants, the Contractor or its Subcontractors, or the employees or agents of any of them while on the Owner's property is strictly prohibited. The Architect and its consultants, the Contractor and its Subcontractors, and the employees and agents of any of them that are employed on any Project Site may not work under the influence of or be impaired or affected by any unauthorized or illegal drugs or alcohol.

§ 3.4.6 The possession of firearms or other weapons by any person (including without limitation the Architect or its consultants, the Contractor or its Subcontractors, or the employees or agents of any of them) while on property owned or operated by the Owner is strictly prohibited. Weapons do not include tools needed by the person to perform the Work and that the person is authorized to use.

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

§ 3.5.2 All material, equipment, Subcontractor, or other special guarantees or 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. The obligations under this Section 3.5.2 shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

§ 3.5.3 CORRECTION OF WORK

If, after ten (10) days' notice, the Contractor fails to proceed to cure any breach of warranty, the Owner may have the defects corrected and the Contractor and its surety shall be liable for all reasonable expenses incurred. In case of an emergency in which, in the opinion of the Owner or the Architect, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to the Contractor, and the Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this Section 3.5.3 are not exclusive, but are cumulative of any other Owner remedies.

§ 3.5.4 THIRD-PARTY WARRANTIES

- .1 The Contractor shall obtain from Subcontractors, manufacturers, and suppliers written guarantees and warranties consistent with any requirements of the Contract Documents and in all events with the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties.
- .2 All guarantees or warranties of third parties furnished to the Contractor or Subcontractor, including without limitation from any manufacturer or supplier, shall be deemed to run for the benefit of the Owner.
- .3 All documents, warranties, record drawings, and other deliverables shall be furnished as required by Sections 3.11.1 and 3.11.4 and the Contract Documents
- .4 The Contractor shall deliver to the Owner via the Architect three (3) bound volumes of all as-built documents and guarantees and warranties on materials, systems, and equipment furnished by all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. These warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign and deliver to the Owner all manufacturers' warranties not later than the date of Substantial Completion.
- .5 Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

§ 3.5.5 ASSIGNMENT OF WARRANTIES

The Contractor hereby assigns to the Owner all warranties and guarantees of all Subcontractors and Sub-subcontractors, but the assignment shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

§ 3.5.6 REMEDIES

Consistent with Section 13.3, the remedies stated in this Section 3.5 are not exclusive, but are cumulative of any other Owner remedies.

§ 3.6 Taxes

The Contractor shall pay all necessary local, county, and state taxes, income tax, compensation tax, social security, and withholding payments as required by law. Contractor hereby RELEASES, INDEMNIFIES, AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the Project Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide

notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines, after considering Section 3.2, that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the Project Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. For purposes of these General Conditions, the term "wetland" includes wetlands and water bodies subject to the federal Clean Water Act and parallel state and local rules, statutes, and regulations. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ 3.8.4 Allowances shall be separately accounted for to the Owner in each Application for Payment and at Final Payment.

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.9.4 New or replacement superintendents must be qualified and must have adequate experience with similar projects. The Contractor shall deliver to the Owner résumés of proposed new or replacement superintendents.

§ 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 and Architect's approval a Contractor's construction schedule to achieve Substantial Completion of the Work within the Contract Time (the "Project Schedule"). The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to Substantial Completion and shall not exceed the Contract Time or other milestones established in the Contract Documents until and unless the construction schedule is amended by a Change Order.

§ 3.10.2 While the Work is being performed, Contractor will submit to the Owner monthly progress schedules for the Work (each a "Progress Schedule"), correlated with the Project Schedule, in digital and hard-copy formats as requested or appropriate. The Project Schedule and any Progress Schedule, and any amendments to either, must incorporate and correspond with agreed-upon milestones and provide for the expeditious and practicable execution of the Work within the Contract Time. A Progress Schedule may not exceed the Contract Time or other milestones established in the Contract Documents until and unless the Project Schedule is amended by a Change Order.

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

§ 3.10.4 The construction schedule must: (1) utilize the calculated "critical path method" logic of construction activities and sequence of operations; (2) identify all distinct parts of the scheduled Work; and (3) clearly indicate the calculated critical path for completion of the Work.

- .1 The total float or contingency time within the schedule is for the exclusive use and benefit of the Project. The Owner and the Contractor may apply total float or contingency time in the schedule to meet milestones or adjust for delays. The total float or contingency time can be applied only upon prior notice to all parties and agreement to its application.
- .2 Float or contingency time within a Progress Schedule that does not affect the critical path or Contract Time is for the use of the Contractor. The Contractor may apply standard float or contingency time in the Project Schedule without prior notice to the Owner.
- .3 Changes in the Project Schedule during construction of the Project will not be approved unless the proposed revised schedule incorporates critical path logic and methodology and is in a form satisfactory to the Owner.
- .4 The Contractor will promptly update proposed Project Schedules in hard-copy and digital formats: (a) upon request by Owner; and (b) whenever a change occurs in the scope of the Work that impacts the Project Schedule, consumes total float or contingency time, or would extend Work beyond the date scheduled for Substantial Completion.

§ 3.10.5 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 Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall make available, at the Project Site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and

similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall maintain all approved permit Drawings in a manner that will make them accessible at the Project site to governmental inspectors and other authorized agencies. All approved Drawings shall be marked and delivered to the Owner within sixty (60) days of Substantial Completion.

§ 3.11.3 The Contractor must continuously maintain and make readily available at the Project site all material safety data sheets, safety records, daily logs, and other Contract documentation necessary to immediately ascertain the safety of the Work, Hazardous Materials requirements, and the Contract Documents.

§ 3.11.4 The Contractor, with its Subcontractors, will prepare draft Record Construction Documents, showing all as-built conditions as required under Section 3.11.1, and submit them to the Architect for review. Based on the Architect's review and comments, if any, the Contractor will prepare and deliver to the Owner within sixty (60) days of Substantial Completion final, accurate, and complete Record Construction Documents, including without limitation record Drawings and Specifications, showing the exact "as-built" conditions of the Work.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, to the extent that the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

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

§ 3.13.2 Before the Work commences, the Contractor shall review the real property where the Project will be constructed with the Owner in detail and identify the contents and boundaries of the Project Site. The Contractor shall ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the Project Site. The Contractor, with advance consent of the Owner, will erect such barriers and devices as are necessary to restrict access to the Project Site to the approved areas and to prevent unauthorized access to non-Work areas.

§ 3.13.3 The Contractor and its Subcontractors shall receive prior approval from the Owner before delivering or storing any materials or tools on the Owner's premises. Upon approval, materials and tools will be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.

§ 3.13.4 Contractor and its Subcontractors shall not erect on the Project site any signage intended to advertise or promote their business without the prior written consent of the Owner.

§ 3.13.5 If the Contractor removes the Owner's property, fixtures, materials, or other equipment to perform the Work, the Contractor shall be responsible for the safekeeping of all such property, fixtures, materials, or other equipment, including without limitation ensuring that such items are not lost, damaged, or destroyed, and are returned to their original location, reinstalled, replaced, or repaired, as necessary.

§ 3.13.6 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

§ 3.16.1 **Project Access.** The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.16.2 **Keys.** The Contractor will be responsible for all keys issued to it or its Subcontractors for mechanical or other locked rooms. Keys will be obtained from the Owner and may not be copied, transferred, or used for any purpose other than prosecution of the Work. All keys will be returned to the Owner at the conclusion of the Work and as a condition precedent to final payment of the Contractor. If all keys are not returned and the Owner determines, in its reasonable discretion, to rekey affected locks, the Contractor will pay the cost of rekeying all affected locks. This remedy is not exclusive of any other remedy of the Owner. The term "key" includes any device used to secure a room or areas in the Owner's premises, whether by mechanical, electronic, or other means.

§ 3.16.3 **Identification.** The Architect and its Consultants, the Contractor and its Subcontractors, and the employees and agents of any of them shall comply with the Owner's policies and requirements, if any, to obtain, display, and return identification badges at any time while they are present on the Owner's property.

§ 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 intellectual property rights and shall defend and hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner and Architect.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner and its consultants, agents, and employees for, from and against claims, damages, losses, and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the Work by the Contractor, a Subcontractor, or anyone for whose acts they may be liable:

- .1 For death, personal injury (including without limitation sickness, disease, or bodily injury), or property damage to the extent caused by (a) the material breach of these General Conditions or the Contract

Documents; (b) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (c) any negligent or tortious acts or omissions of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable; and

- .2 For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 Notwithstanding anything to the contrary in this Section 3.18, the Contractor is not required to indemnify the Owner or its consultants, agents, or employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of the Owner or its consultants, agents, or employees, but the Contractor is required to indemnify the Owner and its consultants, agents, and employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Contractor, or the fault of the Contractor's agents, representatives, or Subcontractors.

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 shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until expiration of the correction period described in Section 12.2.2 of these General Conditions. 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 Project Site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become familiar with the progress and quality of the portion of the Work completed, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine whether 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.

§ 4.2.3 On the basis of the Project 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) deviations from the Contract Documents, (2) deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies 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

Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The foregoing is intended to establish an orderly process for communication on the Project to facilitate the Work; the Owner, however, may communicate openly and directly with Subcontractors, consultants, or suppliers but not direct their Work. All communications involving a change in the scope must be given to the Owner and the Architect.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and approve the amounts due the Contractor within seven (7) working days after the Architect's receipt of the Application for Payment.

§ 4.2.6 The Architect has authority to reject Work and documentation that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect shall inform the Owner contemporaneously with any rejection of Work or documentation.

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

§ 4.2.8 The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10 and 3.5.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the Project Site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

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

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise in a manner not to cause delay in the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner and Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Failure of the Owner to object to a Subcontractor does not imply approval of specific products or materials.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor (a) to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, (b) to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect, and (c) to make the same representations to the Contractor, including a representation that the Subcontractor is appropriately licensed to perform its portion of the Work, that the Contractor makes to the Owner, to the extent applicable to the Subcontractor's scope of the Work. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. When appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the

Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after (a) termination of the Contract by the Owner for cause pursuant to Section 14.2 or (b) stoppage of the Work by the Owner under Section 2.3; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

§ 5.5 DESIGN-BUILD SUBCONTRACTORS

The Contractor may retain various Subcontractors to perform design-build portions of the Project ("Design-Build Subcontractors"), which the Contractor shall identify in advance to the Owner before design-build work commences. The Contractor assumes the obligation, as a contractual duty to the Owner, to deliver a completed and functioning Project in accordance with the Contract Documents, including without limitation all designs provided by the Design-Build Subcontractors. The Contractor is not itself a designer and does not independently approve the details of the designs of Design-Build Subcontractors. The Contractor shall place in its subcontracts with each of its Design-Build Subcontractors the following terms and conditions:

- .1 The Owner is an intended third-party beneficiary of the design-build subcontract and the Design-Build Subcontractor's services and Work. The Design-Build Subcontractor is not a third-party beneficiary of the Contract or any other agreement between the Contractor and the Owner, or between the Owner and the Architect or the Architect's consultants.
- .2 The Design-Build Subcontractor shall maintain through the Project, and for six (6) years after Substantial Completion of the Project, standard professional liability/errors-and-omissions insurance that is (a) in a form and with an insurance company satisfactory to the Contractor and the Owner, and (b) in compliance with the minimum insurance coverage requirements in these General Conditions.
- .3 The Design-Build Subcontractor's professional errors and omissions insurance will have the terms and limits as required in these General Conditions or as agreed in advance by the Owner and the Contractor.
- .4 The Design-Build Subcontractor shall notify the Contractor and the Owner no less than thirty (30) days before any cancellation, nonrenewal, or material modification of the professional errors and omissions insurance.
- .5 The Design-Build Subcontractor shall submit to the Owner and the Contractor proof of all such insurance before commencing Work on the Project.

The Contractor shall also ensure that the design-build subcontracts contain no limitation-of-liability clauses. The design-build subcontracts may, however, include liquidated damages provisions or limitations on consequential damages, so long as those provisions and limitations do not cause the Contractor's liability under this Contract to exceed the design-build subcontractor's liability.

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 Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. 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.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract.

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction. All construction costs resulting from Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents will be borne by the Contractor, subject to the terms and conditions of the Contract Documents and the Guaranteed Maximum Price Amendment.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5. If a Separate Contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall indemnify the Owner and defend it for, from, and against any claim, judgment, or award, including costs, attorney fees, and expert fees. This Section 6.2.4 does not require the Contractor to indemnify the Owner against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the liability was caused by the negligence or intentional misconduct of the Owner.

§ 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 cleaning up and maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.2.2 Before approval of a Change Order and upon request of the Owner, the Contractor will produce copies of all bids or other proposals, including those from Subcontractors of any tier and suppliers related to the Work proposed to be performed under the Change Order. No Change Order shall become effective until the Contractor satisfies all document requests from the Owner.

§ 7.2.3 Agreement on any Change Order constitutes a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including without limitation all direct and indirect costs and all adjustments to the Contract Sum according to the terms and any conditions stated in the Change Order. This Section 7.2.3 does not affect the Owner's audit rights.

§ 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of

those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, reasonable expenditures for the purposes of this Section 7.3.4 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 Permit fees, taxes, and costs of bonds and insurance necessitated by the changed Work; 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 and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly approval of payment for those costs and pay the amount that the Owner determines to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

The Architect may order minor changes in the Work, if approved by the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

Overhead and profit adjustments for net increases to the Contract Sum are governed by the limitations established under Section 6.1.4 of the Agreement:

ARTICLE 8 TIME

§ 8.1 Definitions

§ 8.1.1 The Contract Time is the period of time from the date of commencement to Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

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

§ 8.2 Progress and Completion

§ 8.2.1 Time is of the essence of these General Conditions, the Contract Documents, and each Contract. 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 date of commencement cannot occur before placement of insurance. The Contractor will not commence Work or enter the Project Site before placement of insurance.

§ 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 The Contractor may obtain an extension of the Contract Time if the Contractor is delayed at any time in the commencement or progress of the Work (1) by an act or neglect of the Owner, Owner's employees, or of a Separate Contractor or Architect; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the control and without the fault or negligence of the Contractor or its Subcontractors and that by the exercise of reasonable diligence the Contractor is unable to prevent or provide against; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Owner determines, justify delay, then the Contract Time may be extended for such reasonable time as the Architect may determine.

§ 8.3.2 The adjustment to Contract Time must be recorded in a Change Order. All extensions of Contract Time must be net of (a) any delays caused by the fault or negligence of the Contractor and (b) any contingency or "float" time allowance included in the Project Schedule. No extension of Contract Time may exceed the actual amount of delay directly caused by the unforeseen occurrence identified in this Section 8.3.1.

§ 8.3.3 The Contractor must comply with Sections 15.1.3 and 15.1.4 of these General Conditions to receive any extension in Contract Time, regardless of whether the requirements of Section 8.3.1 are satisfied.

§ 8.3.4 The Contract Time is set with reference to and knowledge of weather conditions usual to the area of the Project. If adverse weather conditions are the basis for a Claim for an extension of the Contract Time, then the Contractor shall document its Claim using data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled Work.

§ 8.3.5 Except as expressly provided under Section 8.3.1, the Contractor may not recover delay damages, wage escalation, material escalation, extended overhead, or additional compensation of any kind resulting from the Contractor's delay in completion of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 [Deleted].

Init.

§ 9.2 Schedule of Values

The Contractor shall submit an approved schedule of values to the Owner and Architect before commencement of the Work, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner and Architect. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and Architect and supported by such data to substantiate its accuracy as the Owner and Architect may require, and unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least 30 days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage of five percent.

§ 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 or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 The Contractor shall submit its monthly Application for Payment to the Owner and the Architect (if required by the Owner), on AIA Document G702, supported by AIA Document G703, or an equivalent form approved by the Owner, no later than the fifth day of each month. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 The Project name, site of the Work (e.g., address and suite).
- .2 Description of the Work.
- .3 Detailed cost report and updated schedule of values.
- .4 Separate documentation and accounting for Work performed pursuant to Change Orders, Construction Change Directives, or minor changes in the Work; allowances; application of contingency; and payment for materials stored other than at the Project Site.
- .5 The Contractor's executed lien, bond, and claim releases ("Lien Releases") on forms acceptable to the Owner. Lien Releases shall provide a conditional release of liens, bonds, and claims for the Work that is subject to the current Application for Payment and an unconditional release for all Work performed through the date of all prior payment periods.
- .6 All other information and materials required to comply with the requirements of the Contract Documents.

The Owner may, at its option, request documentation from the Contractor evidencing that Subcontractors, Sub-subcontractors, and suppliers of every tier have provided the requisite conditional and unconditional releases and waivers of lien and bond rights to the Contractor for each Application of Payment.

§ 9.3.2 Unless otherwise expressly provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Project Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the Project Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the Project

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 Project Site, for such materials and equipment stored off the Project Site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which payment has been previously received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 If a Subcontractor of any tier or supplier of any tier perfects a lien against all or any portion of the Project for which the Contractor received payment from the Owner, the Contractor will indemnify Owner and its consultants, agents, and employees, and defend them against the lien and will reimburse the Owner and its consultants, agents, and employees for all costs, expenses, and attorney fees incurred by them in connection with or arising from the lien. At the Owner's option, the Contractor will furnish, at the Contractor's sole expense, a bond to release the lien from the Project.

§ 9.3.3.2 The Contractor's duties to indemnify and defend the Owner and its consultants, agents, and employees and hold them harmless from any lien created and perfected against the Project shall be enforceable regardless of whether the Owner has delivered copies of pre-lien notices to the Contractor.

§ 9.3.3.3 If a lien is asserted against the Project, the Owner reserves the right to pay the Subcontractor or supplier jointly with the Contractor for Work performed by the Subcontractor or supplier, unless the Contractor promptly notifies the Owner of its reasonable objection. The Owner will be entitled to a credit against the Contract Sum for any such payments, up to the amount actually owed to the Subcontractor or supplier.

§ 9.3.4 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.

§ 9.4 Payment Approval

§ 9.4.1 Within 7 days after the Contractor submits its Application for Payment in accordance with Section 9.3.1, the Owner or the Architect (if designated by the Owner) will meet to review the Contractor's Application for Payment (a "Pencil Draw") for Work performed during the preceding month. The Contractor shall revise the Pencil Draw in accordance with any recommendation submitted by either the Owner or the Architect that is consistent with the requirements of the Contract Documents. After incorporating all recommendations from the Pencil Draw, the Contractor will submit a formal Application for Payment to the Owner and the Architect (if designated by the Owner) for approval and signature.

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

§ 9.5 Decisions to Withhold Approval

§ 9.5.1 The Architect or Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to approve 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, Owner, and Architect cannot agree on a revised amount, the Architect will promptly approve payment for the amount for which the Architect is able to make such representations to the Owner. The Owner or Architect may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or a part of an approval of payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor or a Subcontractor to make payments properly to Subcontractors, Sub-subcontractors, or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 unsatisfactory Work progress;
- .9 disputed Work, materials, or products, not to exceed one hundred fifty percent (150%) of the amount in dispute;
- .10 failure to comply with other material provisions of the Contract Documents; or
- .11 failure to maintain current as-built and safety documents as required by Section 3.11.

§ 9.5.2 If the Contractor disputes the Owner's or Architect's decision to withhold payment under Section 9.5.1, in whole or in part, the Contractor may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Architect or the Owner withholds payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect. The Owner will notify the Contractor of a joint payment, and the Owner will receive credit against the Contract Sum for the joint payment.

§ 9.5.5 If the Contractor disputes any determination by the Architect or the Owner with regard to any approval of payment, the Contractor nevertheless shall expeditiously continue the Work.

§ 9.6 Progress Payments

§ 9.6.1 The Owner will make progress payments to the Contractor no more than once each month based on a verified Application for Payment submitted by the Contractor and signed by the Owner. As provided in ORS 279C.570, Payments are due and payable not more than thirty (30) days from receipt of Contractor's complete Application for Payment or fifteen (15) days after the payment is approved by the Owner, whichever is earlier. Each progress payment will be calculated based on: (1) the percentage completion of the Work and (2) that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, subject to the following:

- .1 Retainage will be withheld from the total progress payment amount at five percent (5.0%) of the total amount due to the Contractor pursuant to ORS 279C.550 to .565 and ORS 701.410 to 701.420, unless otherwise expressly agreed in a Contract.
- .2 The amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable.
- .3 The amount of the progress payment will be reduced by amounts not approved by the Owner or by the Architect.

.4 The amount of the progress payment will be reduced by amounts previously paid by Owner.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Payments by the Contractor to Subcontractors shall be subject to retainage of five percent (5.0%) on the total progress payment.

§ 9.6.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 Neither approval of an Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 [Deleted, addressed in 9.3.3.1].

§ 9.7 Failure of Payment

§ 9.7.1 If the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount approved by the Owner and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 Failure of payment does not exist under Section 9.7.1 if the Owner exercises authority granted by the Contract Documents to withhold payment, notwithstanding approval by the Architect.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's or Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list prepared under this Section 9.8. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the 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.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.9.4 The Contractor shall deliver to the Owner certificates of inspection, use, and occupancy upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment, and delivery shall be included within the Contract Sum.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection. When the Owner and Architect find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly approve the final Application for Payment, which constitutes a representation that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and payable. The Architect's approval of the final Application for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor has fully performed the Contract, except for the Contractor's other duties, as provided in the Contract Documents, that extend beyond the date of final payment. Full performance of the Contract includes delivering Record Documents to the Owner, submitting a final Application for Payment to the Owner, providing two sets of all operation, maintenance, and warranty manuals and information of manufacturers whose equipment or materials are installed in the Work, taking all

action necessary on the Contractor's part for issuance of a temporary or final Certificate of Occupancy, or its substantial equivalent, by the permitting agency, and submitting to the Owner and Architect:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner;
- .3 a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents,
- .4 consent of surety, if any, to final payment,
- .5 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and
- .6 valid unconditional waivers of all construction lien claims, bond claims, and other claims by the Contractor in a form acceptable to the Owner, together with certification that the Contractor has obtained valid unconditional waivers of all construction lien claims, bond claims, and other claims from each Subcontractor and Sub-subcontractor; and
- .7 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or Sub-subcontractor refuses to furnish an unconditional release or waiver required by these General Conditions, the Contractor shall indemnify the Owner and defend it against any claim or lien filed by the Subcontractor, Sub-subcontractor, or supplier and will reimburse the Owner for discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents and damages arising from nonconforming Work;
- .3 terms of special warranties or guaranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 the correction remedy allowed by Section 12.2.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.6 If final completion is not accomplished within sixty (60) days after the date of Substantial Completion because of any fault of the Contractor, the Owner may withhold from any subsequent progress payments and from the Final Payment one hundred fifty percent (150%) of the reasonable cost of the unfinished Work necessary to attain final

completion. If the Contractor fails to complete the Work necessary to attain final completion, the Owner may, without waiving any other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld. The Owner shall not withhold any amount under this Section 9.10.3 relating to Work arising from Change Orders or Construction Change Directives issued following the date of Substantial Completion.

§ 9.10.7 Requests for payment will not be considered if submitted (1) more than thirty (30) days following completion of the Work performed or (2) on or after the date of acceptance of Final Payment, whichever is earlier.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall review with all Subcontractors the methods, means, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor shall be responsible to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site.

§ 10.1.2 The Contractor shall review with all Subcontractors the methods, means, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor shall be responsible to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site and, to the extent affected by the Work, at the Owner's adjoining facilities.

§ 10.1.3 The Contractor will develop a fire response plan acceptable to the Owner, which will be strictly enforced by the Contractor's project superintendent or safety officer. The Contractor will supply fire extinguishers in sufficient size and quantity, distributed throughout the Project Site, to maintain a safe working environment.

§ 10.1.4 The Contractor will ensure that all equipment furnished or installed as part of the Work is appropriately rated by Underwriters Laboratories or by another method approved by applicable laws, the applicable authority having jurisdiction, or the Owner, as appropriate.

§ 10.1.5 This Contract incorporates by this reference any Owner's safety policies current as of the date of commencement of the Work, which have been or will be made available to the Contractor. The Contractor, as a condition precedent to commencement of the Work, will instruct all personnel of the Contractor and its Subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply. Notwithstanding any other provision of the Contract Documents, the Contractor's (or any Subcontractor's) failure to perform adequate safety training is grounds for the Owner's immediate suspension of the Work at the Contractor's sole expense and may result in cancellation of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Contractor shall take all necessary and reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- .1 employees on the Work, the Owner's staff, faculty, visitors, students, and vendors, and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the Project Site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .3 other property at the Project 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; and
- .4 adjoining operations of the Owner.

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

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of

the safeguards. The Contractor shall also be responsible, subject to the terms of the Contract, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 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. The Contractor must obtain advance approval before proceeding with the storage or use of explosives, Hazardous Materials, or unusual equipment for prosecution of the Work.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 through 10.2.1.4 to the extent caused 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 through 10.2.1.4. 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. 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 Project Site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

§ 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 Without limiting any other requirement of this Section 10.2, the Contractor shall protect adjacent property and shall provide barricades, temporary fences, and covered walkways to protect the safety of passersby, as required by prudent construction practices, laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, or the Contract Documents. The Contractor shall be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon.

§ 10.2.10 Without limiting any other requirement of this Section 10.2, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to utilities, sidewalks, curbs, adjoining property, and the property of third parties (including utility companies and governments) resulting from the performance of the Work, whether caused by the Contractor or by its Subcontractors of any tier. The Contractor shall maintain streets in good repair and traversable condition.

§ 10.2.11 The Contractor will ensure that storage practices on the Project Site will keep combustible load levels to a minimum and in approved containers that are clearly labeled. The Contractor will provide safety data sheets to the Owner for all chemicals used on the Project Site.

§ 10.2.12 Without limiting any other requirement of this Section 10.2, the Contractor shall maintain Work, materials, and apparatus free from damage from rain, wind, storms, frost, and heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease Work and notify the Owner and the Architect of the cessation.

§ 10.2.13 The Contractor must ensure that all existing or operating systems, utilities, and access avenues are on and in operating condition before leaving the Project site each day. If any system, utility, or access avenue will not be operable, the Contractor must notify the Owner's Representative before the Contractor may leave the Project site that day.

§ 10.2.14 The Contractor shall not permit open fires on the Project Site.

§ 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 as that term is defined in Section 10.3.6. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project Site, maintain available for inspection at the Project Site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. This program will be subject to approval of and modification by the Owner. The program must provide for notification of all personnel of potential hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the Owner a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors of any tier onto the Owner's property, including the purpose for their use on the Project.

§ 10.3.2 In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project Site, the Contractor shall immediately (1) stop the Work or the portion of the Work affected, (2) notify the Owner and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by Contract for the existence, use, release, or discovery of Hazardous Materials.

§ 10.3.3 With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was not introduced to the Project Site by the Contractor or its Subcontractors of any tier, the Owner shall obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, if the material or substance is found to be present, to verify it to be or render it harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and the Contractor. By Change Order, the Contract Time may be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3.1 With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was introduced to the Project Site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (1) proposing to the Owner and the Architect an acceptable environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3) verifying that the material is rendered harmless, as otherwise set forth in Section 10.3.3. The Contractor will not be entitled to an increase in the Contract Sum as stated in the last sentence of Section 10.3.3 if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Owner. Generally, the Owner may at its option contract directly with environmental consultants, regardless of whether the remediation work will be performed at the Contractor's expense.

§ 10.3.4 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors of any tier, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project Site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death as described in Section 10.3.1, and has not been rendered harmless. No indemnification provided by the Owner under this Section 10.3.4 is required to indemnify the Contractor, Subcontractors of any tier, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but indemnity is required to the extent of the fault of the Owner, its agents, or their respective employees and representatives.

§ 10.3.5 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, the Owner's Representatives, and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project Site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by

the Contractor under this Section 10.3.5 is required to indemnify the Owner or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Owner's own negligence, but indemnity is required to the extent of the fault of the Contractor, its agents, or their respective employees and representatives.

§ 10.3.6 "Hazardous Materials" are any substance regulated, classified, or otherwise characterized as radioactive, infectious, hazardous, dangerous, or toxic, or by words of similar meaning or effect, by any federal, state, or local statute, regulation, or ordinance currently in effect or subsequently enacted. For purposes of Sections 10.3.3 through 10.3.5, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project Site regardless of whether the Hazardous Materials were specified, required, or otherwise addressed in the Contract Documents.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable discretion, to prevent threatened damage, injury, or loss and immediately notify the Owner. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, and its consultants, agents, and employees shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. The additional-insured endorsement for CGL insurance must be written on ISO Form CG 20 10 (10 01) and CG 20 37 (10 01), or their equivalent, but shall not use either of the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit B to the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 [Deleted].

§ 11.2.3 [Deleted].

§ 11.3 [Deleted]

§ 11.3.1 [Deleted].

§ 11.3.2 [Deleted].

(Paragraphs deleted)

§ 11.4 [Deleted].

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate written agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 The Owner shall have power to settle a loss with insurers. The Contractor may, however, object for cause to the settlement within 7 days from occurrence receiving notice of the settlement. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds received from the property insurance identified in Exhibit B to the Agreement in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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 examination by the Owner, the Architect, or any governmental authority and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner, Architect, or any governmental authority 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 Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Owner, Architect, or any governmental authority or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly, for no additional compensation, after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during

that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor, at its expense, shall remove from the Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law and Public Contracting Code Provisions

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.1 ORS 279A.110 (Non-discrimination certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055 or a business that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

§ 13.1.2 ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting any Construction Phase services under this Contract, and in any event not later than mutual execution of the Guaranteed Maximum Price Agreement, Contractor shall execute and deliver to Owner a good and sufficient performance bond, in a form acceptable to Owner, in a sum equal to 100% of the Contract Sum, and Contractor shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, in a sum equal to 100% of the Contract Sum, solely for the protection of claimants under ORS 279C.600. If an Early Work Amendment is executed, Contractor shall provide such bonds in the amount of the Early Work Price under the Early Work Amendment. Contractor shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or Guaranteed Maximum Price Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the Early Work Price or the Contract Sum, as the base may be. Consistent with ORS 279C.380(1)(a), once Contractor commences design or related services covered by this Agreement, the Contractor must provide a performance bond and payment bond in an amount equal to the full Contract Sum.

§ 13.1.3 ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the Work provided for in this Contract; pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug testing program is in place. If Contractor neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Agreement as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Contractor. Owner's payment of such a claim shall not relieve Contractor or Contractor's surety from its obligation to any unpaid claims.

§ 13.1.4 ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

§ 13.1.5 ORS 279C.515 (Failure to Pay Promptly): If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if Contractor or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.

§ 13.1.6 ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Contractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

- .1 For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- .2 For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- .3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or in ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

Contractor shall, and shall require its Contractors, to give notice in writing to their employees who perform Work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 13.1.7 ORS 279C.520(1)(b) and 279C.520(1)(c) (Compliance with Pay Equity Provisions; Employee Pay Discussion):

- .1 Discrimination Prohibition.** The Contractor shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause.
- .2 Salary Discussion.** The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

§ 13.1.8 ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- .1 Federal Agencies:** Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
- .2 State Agencies:** Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
- .3 Local Agencies:** City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.
- .4 Tribal Governments.**

§ 13.1.9 ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Contractor shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

All employers, including the Contractor, that employ subject workers who work under this 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.

§ 13.1.10 ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for

payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, provided the Contractor or Subcontractor has:

- .1 Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which 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.

§ 13.1.11 ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Contractor shall include in each subcontract for property or services with a first-tier subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Contractors to include a similar clause in each contract with a Sub-subcontractor or supplier.

§ 13.1.12 ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

§ 13.1.13 ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):

- .1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker that Contractor, any subcontractor, or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled "Definitions of Covered Occupations for Public Works Contracts in Oregon." The applicable prevailing wages will be those in effect at the start of the Construction Phase or, if applicable, the Early Work Amendment.
- .2 The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml and are hereby incorporated as part of the Contract Documents.
- .3 This Contract may also be subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding subsection j(i) of this section, if this Contract is subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in subsection j(i) of this section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Multnomah County, Building Construction Type) and are hereby incorporated by reference as part of the Contract Documents. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.
- .4 Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.

- .5 The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- .6 If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

§ 13.1.14 ORS 279C.836 (Public Works Bond Required): The Contractor shall:

- .1 file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).
- .2 Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

§ 13.1.15 ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- .1 Contractor and every Subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or Subcontractor's surety that Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Contractor or Contractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
- .2 The certified statement shall be delivered or mailed by Contractor or Subcontractor to Owner. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner shall retain 25% of any amount earned by the Contractor until the Contractor has filed the certified statements with the Owner as required by this Section. The Owner will pay the retainage required under this Section within 14 days after the Contractor files the certified statements required by this Section.
- .3 Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

§ 13.1.16 ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Subcontractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.026. Contractor shall further certify that all Contractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above noted statutes before they commence Work under this Contract. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify Owner immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

§ 13.1.17 When Work Is Performed on Owner's property Contractor Shall Comply With the Following:

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

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 Rights and Remedies

§ 13.3.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities.

- .1** 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 or by independent testing laboratories, that may be required by the permitting jurisdiction. The Owner shall retain and pay for any private inspectors or testing laboratories that are required. The cost of the private inspections and tests shall not be included in the Contract Sum.
- .2** 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.
- .3** The Contractor shall forward to the Owner and the Architect copies of all inspection results, test results, orders, permits, and other directives or correspondence received by the Contractor from any inspector, testing laboratory, or agency with jurisdiction over the Work.

- .4 The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.
- .5 No inspection performed or failed to be performed by the Owner waives any of the Contractor's obligations or may be construed as an approval or acceptance of any part of the Work.

§ 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 will instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner and Architect of when and where tests and inspections are to be made so that the Owner or Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's or Architect's services and expenses, shall be at the Contractor's expense, including without limitation the cost of retesting for verification of compliance, if necessary, until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents.

§ 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 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

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

§ 13.5 Interest

Late payments will accrue interest as provided in ORS 279C.570(2).

§ 13.6 PROMOTIONAL MATERIALS

The Contractor may, subject to the Owner's prior review and approval, include photographic or artistic representations of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not, however, include the Owner's confidential or proprietary information.

§ 13.7 If any provision of these General Conditions is unenforceable for any reason, then the provision shall continue in effect only to the extent that it remains valid and enforceable. The unaffected remaining provisions of these General Conditions and any Contract shall remain in full force and effect.

§ 13.8 Historical lack of enforcement of any laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work shall not constitute a waiver of the Contractor's responsibility for compliance with the law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;

- .3 Because the Architect has not approved an Application for Payment and has not notified the Contractor of the reason for withholding approval as provided in Section 9.4.1, or because the Owner has not made payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days not related to phasing of the Work through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise substantially breaches a provision of the Contract Documents.
- .5 fails to observe the training, safety, and other precautions required in Article 10, including Contractor's own safety policies for the Project.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate the Contract and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the Project Site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation shall survive termination of the Contract.

§ 14.2.5 If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and a reasonable overhead and profit on the Work performed. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

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.

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Architect. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner or the Contractor must identify known bases for each Claim and the nature and amount of relief sought.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§ 15.1.4.2 [Deleted].

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide timely notice in accordance with Section 15.1.3 constitutes waiver of the Claim.

§ 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, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 Claims for additional time are governed by Section 8.3. Failure to provide timely notice in accordance with Section 15.1.2 constitutes waiver of the Claim.

(Paragraphs deleted)

§ 15.1.7 [Deleted]

§ 15.2 Initial Decision

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

- .1 All reasonable efforts will be made by the Owner's Representative and the Contractor's project manager to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Contractor's senior executive responsible for the Project.
- .2 The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in the Agreement.
- .3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation under Section 15.3.

§ 15.2.2 [Deleted].

§ 15.2.3 [Deleted].

§ 15.2.4 [Deleted].

§ 15.2.5 [Deleted].

§ 15.2.6 [Deleted].

§ 15.2.6.1 [Deleted].

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a construction or mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the perfection, foreclosure, or lien notice or filing deadlines. The parties agree to stay any foreclosure action pending resolution of Claims.

§ 15.3 Mediation

§ 15.3.1 [Deleted].

§ 15.3.2 The parties may mutually agree to engage in mediation.

§ 15.3.3 [Deleted].

§ 15.3.4 [Deleted].

[Deleted].[Deleted].
(Paragraphs deleted)

Additions and Deletions Report for AIA® Document A201® – 2017

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

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City of Manzanita's New City Hall Building
635-655 Manzanita Avenue
Manzanita, OR 97130

...

The City of Manzanita
167 S. 5th Street
Manzanita, OR 97130

...

TBD]
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2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1
Arbitration
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Litigation and Applicable Law
15.3

...

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, ~~15.3~~, 15.4.1, 15.4.1.1
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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Contractor, which is based on AIA Document A102-2017, as amended, (hereinafter the "Agreement"), and consist of the Agreement, these General Conditions of the Contract for Construction (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 Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in

~~the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.~~

...

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

~~§ 1.1.8 Initial Decision Maker~~

~~The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.~~

§ 1.1.8 [Deleted]

§ 1.1.9 Modification

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.

§ 1.1.10 Project Site

The Project Site includes (1) the real property where the Project will be constructed, (2) spaces where the Work is to be performed, and (3) staging areas.

§ 1.1.11 Affiliated Entity

The term "Affiliated Entity" shall mean the Contractor (if self-performing a portion of the Work), a parent, subsidiary, affiliate, or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor, or the Contractor itself, owns any interest in excess of ten percent (10%) in the aggregate; or any person or entity that has the right to control the business or affairs of the Contractor. The term "Affiliated Entity" includes any member of the immediate family of any person identified above.

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§ 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. Dimensions not expressly provided in the Contract Documents are to be computed, rather than determined by scale or rule.

§ 1.2.4 The terms of any document that forms the Contract are subject to the following order of precedence:

- .1 Modifications, with the more recent modification taking precedence over an earlier modification;
- .2 The Agreement;
- .3 These General Conditions and supplementary conditions;
- .4 Other Exhibit to the Agreement;
- .5 Drawings, Specifications, and Addenda issued before execution of the Contract, subject to Section 1.2.5;
- .6 Other documents incorporated by the terms of the Contract Documents.

§ 1.2.5 If there is an inconsistency within or between (1) any Drawings, Specifications, or Addenda issued before execution of the Contract, or (2) any Drawings, Specifications, or Addenda and applicable standards, codes, and ordinances, then the Contractor shall provide the better quality or greater quantity of Work without requiring a change to the Contract Sum. The terms and conditions of this Section 1.2.4, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2.

...

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~~. Architects or substitutes for those documents that may be used on the Project.

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

...

The parties shall agree upon Owner shall establish protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data form, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.8 **[Deleted].**

...

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. Contractor and its Subcontractors cannot rely on statements, requests, or purported authorizations made by persons or entities other than the Owner's designated representatives for any purpose relating to the Work, the Contract Documents, changes, or payment.

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

§ 2.1.3 Notwithstanding anything to the contrary in any Contract Document, no officer, director, trustee, manager, partner, parent, affiliate, Owner representative, faculty member, employee, volunteer, student, agent, or other representative of the Owner shall have any personal liability to the Contractor or any other person or entity other than the Owner for any acts or omissions arising out of or relating to these General Conditions or any Contract, whether based on tort, contract, statute, administrative laws, or otherwise.

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§ 2.2.1 Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish After the Owner furnishes to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract, the Contractor may submit additional requests for evidence only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents. Any request made after the commencement of the Work shall not serve as a basis for the Contractor to stop the Work.

§ 2.2.3 After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. [Deleted].

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§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges building permits, approvals, easements, land use orders, assessments, system development charges, impact fees, plan review intake fees, and utility fees required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Except to the extent required for execution of the Work and requested by the Contractor in writing, the Owner shall not furnish surveys, studies, or reports regarding the physical characteristics, legal limitations or utility locations for the Project Site but shall provide a survey and legal description of the Project Site if requested by the Contractor. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner or the Architect shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Additional copies may be purchased by the Contractor at the cost of reproduction and handling.

...

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

...

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies ~~the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect~~ commence and continue to carry out the Work, including without limitation the correction of any deficiencies. The Owner may, pursuant to Section 9.5.1, withhold ~~or nullify a Certificate for Payment~~ payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the cover the reasonable cost of correcting such deficiencies, including Owner's ~~expenses~~ expenses, attorney fees, and compensation for the Architect's additional services made necessary by ~~such the~~ default, neglect, or failure. If current and future payments are not sufficient to cover ~~such these~~ amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the ~~Owner-Owner~~, or the Architect, or the amounts claimed as costs ~~to by~~ the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.2 If the Contractor's default or neglect results in a hazard to the safety of persons or property, the Owner may commence and continue to carry out any Work necessary to mitigate the hazard immediately, regardless of the notice period.

§ 2.5.3 The Owner's right to commence and carry out the Work in this Section 2.5 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 EXCLUSION AND REPLACEMENT OF PERSONNEL

If any of the Contractor's representatives, employees, agents, or Subcontractors (collectively, "Personnel") cause or threaten physical harm to any persons or property related to the Project, then the Owner may require the Contractor to remove those Personnel immediately. The Contractor must provide to the Owner identification of replacement Personnel no later than 48 hours after removing Personnel from the Project. Each replacement must have qualifications and experience comparable to or better than the individual or entity being replaced and be reasonably acceptable to the Owner.

§ 2.7 RIGHTS and REMEDIES

Consistent with Section 13.3, the rights described in Sections 2.3 through 2.6 shall be in addition to, and not in restriction of, the Owner's other rights or remedies.

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§ 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. These General Conditions apply to Affiliated Entities and contractors that are owned or controlled by, and act as, the Contractor for purposes of any Contract.~~

- .1 The Contractor shall be lawfully licensed with the Oregon Construction Contractor's Board at the time of solicitation of any Work and throughout the entire course of the Work.. The Contractor shall maintain all required bonding and insurance required by the State of Oregon throughout the entire course of the Work.

- .2 The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall supervise, coordinate, and perform the Work in accordance with the Contract Documents in a professional, safe, and workmanlike manner and in accordance with all laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and professional standards applicable to the industries and trades involved, including without limitation strict compliance with all applicable federal, state, and local laws and building codes, certification requirements applicable to the Work, and other policies or standards incorporated in 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 ~~Owner or the Architect in the Architect's~~ their 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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§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the ~~site, Project 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. In addition:

- .1 The Contractor and each Subcontractor, as a condition precedent to commencement of the Work, shall:
- (a) become familiar with the location, condition, layout, and nature of the Project Site and surrounding areas and generally prevailing climate conditions;
 - (b) review all analyses, studies, and test data available to the Contractor concerning the conditions of the Project Site;
 - (c) inspect the location of the Project Site and satisfy themselves as to its condition, including all observable structural, surface, and subsurface conditions;
 - (d) evaluate the availability and cost of labor and trade Subcontractors and the availability and cost of materials, tools, and equipment; and
 - (e) determine (i) that the Contract Sum is just and reasonable compensation for all the Work, including all foreseen and foreseeable construction risks, hazards, and difficulties for which the Contractor is responsible under the Contract Documents, (ii) that the Contract Time is adequate for the performance of the Work, and (iii) that the means and methods of performing the Work will not result in any lateral or vertical movement of any adjacent structure.

The Contractor or Subcontractor must notify the Owner in writing before commencing the Work if it determines that it cannot satisfy one or more of these conditions.

- .2 The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 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, Owner, and~~ shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the ~~site~~ Project Site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is

recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 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~~ Sections 3.2.1 through 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those ~~obligations, obligations and could not have recognized the applicable error, inconsistency, omission, or difference in the exercise of normal diligence,~~ the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities.~~ authorities, recognized in the exercise of normal diligence.

§ 3.2.5 Unless otherwise specified in the Contract Documents, the Contractor shall confirm the location of each utility and shall excavate and dispose of each on-site utility. The Owner shall make available to the Contractor, and the Contractor shall study, the results of any test borings and information that the Owner has concerning subsurface conditions and site geology. The Contractor shall exercise special care in executing subsurface work in proximity of known subsurface utilities, improvements, and easements.

§ 3.2.6 At the Owner's request, the Contractor will make available to the Owner the results of any other site investigation, analyses, studies, or other tests conducted by or in possession of the Contractor and any of its agents.

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§ 3.3.1 The Contractor shall ~~supervise~~ supervise, coordinate, and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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§ 3.3.4 The Contractor and its Subcontractors may not use the Owner's tools, equipment, or materials unless authorized in advance by an Owner's Representative.

§ 3.3.5 The Contractor must notify the Owner at least seven (7) working days before the interruption of any utility or operating system, regardless of the area it services, so that the Owner may notify the departments and personnel to be affected. The specific schedule for all interruptions in services must be coordinated through an Owner's Representative and the Owner's on-site plant operations personnel.

§ 3.3.6 If the Contractor reasonably believes that suspension of the Work is warranted by reason of unforeseen circumstances that could adversely affect the quality of the Work if the Work were continued, the Contractor will immediately notify the Owner and the Architect and describe with particularity the reasons for its belief. Except as

stated elsewhere in the Contract Documents or in an emergency, the Contractor shall not suspend the Work until it receives approval from the Owner.

§ 3.3.7 Unless otherwise noted or directed, the Contractor shall perform all Work in accordance with product manufacturers' recommendations or directions. No preparatory step or installation procedure may be omitted unless specifically authorized by the Contract Documents or at the direction of the Architect or an Owner's Representative. Conflicts between manufacturers' directions shall be resolved by the Architect or, if no Architect is appointed for a Project, the Owner.

§ 3.3.8 It is understood and agreed that the relationship of the Contractor to Owner shall that of an independent contractor as defined in ORS 670.600. Nothing contained in this Agreement or inferable from this Agreement shall be deemed or construed to (a) make Contractor the agent, servant, or employee of the Owner; or (b) create any partnership, joint venture, or other association between Owner and Contractor. Any direction or instruction by Owner or any of its authorized representatives in respect to the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor's independent contractor status.

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

- .1 Hire all personnel for the proper and diligent performance of the Work; and
- .2 Use its best efforts to maintain labor peace for the duration of the Project.

§ 3.4.4 The Contractor and all its Subcontractors shall not discriminate against any employee or applicant for employment on the basis of age, race, color, religion, sex, sexual orientation, or national origin.

§ 3.4.5 The unauthorized use, possession, sale, purchase, distribution, dispensation, or manufacture of unauthorized or illegal drugs or alcohol by the Architect or its consultants, the Contractor or its Subcontractors, or the employees or agents of any of them while on the Owner's property is strictly prohibited. The Architect and its consultants, the Contractor and its Subcontractors, and the employees and agents of any of them that are employed on any Project Site may not work under the influence of or be impaired or affected by any unauthorized or illegal drugs or alcohol.

§ 3.4.6 The possession of firearms or other weapons by any person (including without limitation the Architect or its consultants, the Contractor or its Subcontractors, or the employees or agents of any of them) while on property owned or operated by the Owner is strictly prohibited. Weapons do not include tools needed by the person to perform the Work and that the person is authorized to use.

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

§ 3.5.2 All material, equipment, Subcontractor, or other special guarantees or 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. The obligations under this Section 3.5.2 shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

§ 3.5.3 CORRECTION OF WORK

If, after ten (10) days' notice, the Contractor fails to proceed to cure any breach of warranty, the Owner may have the defects corrected and the Contractor and its surety shall be liable for all reasonable expenses incurred. In case of an emergency in which, in the opinion of the Owner or the Architect, delay would cause serious loss or damage, corrective work may be undertaken without advance notice to the Contractor, and the Contractor and its surety shall remain liable for all expenses incurred. The remedies stated in this Section 3.5.3 are not exclusive, but are cumulative of any other Owner remedies.

§ 3.5.4 THIRD-PARTY WARRANTIES

- .1 The Contractor shall obtain from Subcontractors, manufacturers, and suppliers written guarantees and warranties consistent with any requirements of the Contract Documents and in all events with the optimum terms and longest periods reasonably obtainable. The documentation must also include all maintenance and operational documentation required to sustain the warranties.
- .2 All guarantees or warranties of third parties furnished to the Contractor or Subcontractor, including without limitation from any manufacturer or supplier, shall be deemed to run for the benefit of the Owner.
- .3 All documents, warranties, record drawings, and other deliverables shall be furnished as required by Sections 3.11.1 and 3.11.4 and the Contract Documents
- .4 The Contractor shall deliver to the Owner via the Architect three (3) bound volumes of all as-built documents and guarantees and warranties on materials, systems, and equipment furnished by all manufacturers and suppliers to the Contractor and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. These warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall assign and deliver to the Owner all manufacturers' warranties not later than the date of Substantial Completion.
- .5 Until Substantial Completion, the Contractor shall perform and document all required maintenance of equipment and systems and maintain in force all warranties.

§ 3.5.5 ASSIGNMENT OF WARRANTIES

The Contractor hereby assigns to the Owner all warranties and guarantees of all Subcontractors and Sub-subcontractors, but the assignment shall not relieve the Contractor of its warranty obligations to the Owner under these General Conditions and other Contract Documents.

§ 3.5.6 REMEDIES

Consistent with Section 13.3, the remedies stated in this Section 3.5 are not exclusive, but are cumulative of any other Owner remedies.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect all necessary local, county, and state taxes, income tax, compensation tax, social security, and withholding payments as required by law. Contractor hereby RELEASES, INDEMNIFIES, AND HOLDS HARMLESS Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.

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If the Contractor encounters conditions at the ~~site~~ Project Site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect ~~determines~~ determines, after considering Section 3.2, that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at

the ~~site~~ Project Site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. ~~Upon~~ For purposes of these General Conditions, the term "wetland" includes wetlands and water bodies subject to the federal Clean Water Act and parallel state and local rules, statutes, and regulations. ~~Upon~~ receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner ~~with reasonable promptness in~~ sufficient time to avoid delay in the Work.

§ 3.8.4 Allowances shall be separately accounted for to the Owner in each Application for Payment and at Final Payment.

...

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the ~~Architect~~ Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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§ 3.9.4 New or replacement superintendents must be qualified and must have adequate experience with similar projects. The Contractor shall deliver to the Owner résumés of proposed new or replacement superintendents.

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work, approval a Contractor's construction schedule to achieve Substantial Completion of the Work within the Contract Time (the "Project Schedule"). The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. ~~The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.~~ Substantial

Completion and shall not exceed the Contract Time or other milestones established in the Contract Documents until and unless the construction schedule is amended by a Change Order.

§ 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 Contract Sum or extension of Contract Time based on the time required for review of submittals. While the Work is being performed, Contractor will submit to the Owner monthly progress schedules for the Work (each a "Progress Schedule"), correlated with the Project Schedule, in digital and hard-copy formats as requested or appropriate. The Project Schedule and any Progress Schedule, and any amendments to either, must incorporate and correspond with agreed-upon milestones and provide for the expeditious and practicable execution of the Work within the Contract Time. A Progress Schedule may not exceed the Contract Time or other milestones established in the Contract Documents until and unless the Project Schedule is amended by a Change Order.

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

§ 3.10.4 The construction schedule must: (1) utilize the calculated "critical path method" logic of construction activities and sequence of operations; (2) identify all distinct parts of the scheduled Work; and (3) clearly indicate the calculated critical path for completion of the Work.

- .1 The total float or contingency time within the schedule is for the exclusive use and benefit of the Project. The Owner and the Contractor may apply total float or contingency time in the schedule to meet milestones or adjust for delays. The total float or contingency time can be applied only upon prior notice to all parties and agreement to its application.
- .2 Float or contingency time within a Progress Schedule that does not affect the critical path or Contract Time is for the use of the Contractor. The Contractor may apply standard float or contingency time in the Project Schedule without prior notice to the Owner.
- .3 Changes in the Project Schedule during construction of the Project will not be approved unless the proposed revised schedule incorporates critical path logic and methodology and is in a form satisfactory to the Owner.
- .4 The Contractor will promptly update proposed Project Schedules in hard-copy and digital formats: (a) upon request by Owner; and (b) whenever a change occurs in the scope of the Work that impacts the Project Schedule, consumes total float or contingency time, or would extend Work beyond the date scheduled for Substantial Completion.

§ 3.10.5 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 Contract Sum or extension of Contract Time based on the time required for review of submittals.

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The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as

~~constructed.~~ § 3.11.1 The Contractor shall make available, at the Project Site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall maintain all approved permit Drawings in a manner that will make them accessible at the Project site to governmental inspectors and other authorized agencies. All approved Drawings shall be marked and delivered to the Owner within sixty (60) days of Substantial Completion.

§ 3.11.3 The Contractor must continuously maintain and make readily available at the Project site all material safety data sheets, safety records, daily logs, and other Contract documentation necessary to immediately ascertain the safety of the Work, Hazardous Materials requirements, and the Contract Documents.

§ 3.11.4 The Contractor, with its Subcontractors, will prepare draft Record Construction Documents, showing all as-built conditions as required under Section 3.11.1, and submit them to the Architect for review. Based on the Architect's review and comments, if any, the Contractor will prepare and deliver to the Owner within sixty (60) days of Substantial Completion final, accurate, and complete Record Construction Documents, including without limitation record Drawings and Specifications, showing the exact "as-built" conditions of the Work.

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§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, ~~provided to the extent that the~~ Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

...

~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Before the Work commences, the Contractor shall review the real property where the Project will be constructed with the Owner in detail and identify the contents and boundaries of the Project Site. The Contractor shall ensure that all forces on the Project Site are instructed about the acceptable working and staging areas and restrictions on use of the Project Site. The Contractor, with advance consent of the Owner, will erect such barriers and devices as are necessary to restrict access to the Project Site to the approved areas and to prevent unauthorized access to non-Work areas.

§ 3.13.3 The Contractor and its Subcontractors shall receive prior approval from the Owner before delivering or storing any materials or tools on the Owner's premises. Upon approval, materials and tools will be stored so that they do not hamper the operation of equipment or persons and do not present a fire or safety hazard.

§ 3.13.4 Contractor and its Subcontractors shall not erect on the Project site any signage intended to advertise or promote their business without the prior written consent of the Owner.

§ 3.13.5 If the Contractor removes the Owner's property, fixtures, materials, or other equipment to perform the Work, the Contractor shall be responsible for the safekeeping of all such property, fixtures, materials, or other equipment, including without limitation ensuring that such items are not lost, damaged, or destroyed, and are returned to their original location, reinstalled, replaced, or repaired, as necessary.

§ 3.13.6 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from damage by any cause.

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

...

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located. **§ 3.16.1 Project Access.** The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

§ 3.16.2 Keys. The Contractor will be responsible for all keys issued to it or its Subcontractors for mechanical or other locked rooms. Keys will be obtained from the Owner and may not be copied, transferred, or used for any purpose other than prosecution of the Work. All keys will be returned to the Owner at the conclusion of the Work and as a condition precedent to final payment of the Contractor. If all keys are not returned and the Owner determines, in its reasonable discretion, to rekey affected locks, the Contractor will pay the cost of rekeying all affected locks. This remedy is not exclusive of any other remedy of the Owner. The term "key" includes any device used to secure a room or areas in the Owner's premises, whether by mechanical, electronic, or other means.

§ 3.16.3 Identification. The Architect and its Consultants, the Contractor and its Subcontractors, and the employees and agents of any of them shall comply with the Owner's policies and requirements, if any, to obtain, display, and return identification badges at any time while they are present on the Owner's property.

...

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

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them indemnify, defend, and hold harmless the Owner and its consultants, agents, and employees for, from and against claims, damages, losses, and expenses, including but not limited to attorneys' and experts' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts the Work by the Contractor, a Subcontractor, or anyone for whose acts they may be liable:

- .1 For death, personal injury (including without limitation sickness, disease, or bodily injury), or property damage to the extent caused by (a) the material breach of these General Conditions or the Contract

Documents; (b) violation of laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities; or (c) any negligent or tortious acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or Subcontractor (of any tier), or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. liable; and

- .2 For claims for any violation of federal, state, or local laws or regulations relating to labor or employment, including without limitation wage-and-hour or benefit claims, asserted by or on behalf of an employee or employees of the Contractor, a Subcontractor (of any tier), or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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§ 3.18.3 Notwithstanding anything to the contrary in this Section 3.18, the Contractor is not required to indemnify the Owner or its consultants, agents, or employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence or willful misconduct of the Owner or its consultants, agents, or employees, but the Contractor is required to indemnify the Owner and its consultants, agents, and employees for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Contractor, or the fault of the Contractor's agents, representatives, or Subcontractors.

...

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. expiration of the correction period described in Section 12.2.2 of these General Conditions. 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-Project Site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if whether 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.

§ 4.2.3 On the basis of the site-Project 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.

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The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with Separate Contractors with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols; foregoing is intended to establish an orderly process for communication on the Project to facilitate the Work; the Owner, however, may communicate openly and directly with Subcontractors, consultants, or

suppliers but not direct their Work. All communications involving a change in the scope must be given to the Owner and the Architect.

§ 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~~ approve the amounts due the Contractor within seven (7) working days after the Architect's receipt of the Application for Payment.

§ 4.2.6 The Architect has authority to reject Work and documentation that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Architect shall inform the Owner contemporaneously with any rejection of Work or documentation.

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

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to ~~Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.~~ Section 9.10 and 3.5.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the ~~site.~~ Project Site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

...

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise ~~with reasonable promptness~~ in a manner not to cause delay in the Work. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the ~~site.~~ Project Site. The term "Subcontractor" is referred to throughout the Contract Documents as if

singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

...

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner or Architect may notify the Contractor whether the Owner or the Architect ~~(1) has~~ (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner and Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. Failure of the Owner to object to a Subcontractor does not imply approval of specific products or materials.

...

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

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- .1 assignment is effective only after (a) 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; or (b) stoppage of the Work by the Owner under Section 2.3; and

...

§ 5.5 DESIGN-BUILD SUBCONTRACTORS

The Contractor may retain various Subcontractors to perform design-build portions of the Project ("Design-Build Subcontractors"), which the Contractor shall identify in advance to the Owner before design-build work commences. The Contractor assumes the obligation, as a contractual duty to the Owner, to deliver a completed and functioning Project in accordance with the Contract Documents, including without limitation all designs provided by the Design-Build Subcontractors. The Contractor is not itself a designer and does not independently approve the details of the designs of Design-Build Subcontractors. The Contractor shall place in its subcontracts with each of its Design-Build Subcontractors the following terms and conditions:

- .1 The Owner is an intended third-party beneficiary of the design-build subcontract and the Design-Build Subcontractor's services and Work. The Design-Build Subcontractor is not a third-party beneficiary of

the Contract or any other agreement between the Contractor and the Owner, or between the Owner and the Architect or the Architect's consultants.

- .2 The Design-Build Subcontractor shall maintain through the Project, and for six (6) years after Substantial Completion of the Project, standard professional liability/errors-and-omissions insurance that is (a) in a form and with an insurance company satisfactory to the Contractor and the Owner, and (b) in compliance with the minimum insurance coverage requirements in these General Conditions.
- .3 The Design-Build Subcontractor's professional errors and omissions insurance will have the terms and limits as required in these General Conditions or as agreed in advance by the Owner and the Contractor.
- .4 The Design-Build Subcontractor shall notify the Contractor and the Owner no less than thirty (30) days before any cancellation, nonrenewal, or material modification of the professional errors and omissions insurance.
- .5 The Design-Build Subcontractor shall submit to the Owner and the Contractor proof of all such insurance before commencing Work on the Project.

The Contractor shall also ensure that the design-build subcontracts contain no limitation-of-liability clauses. The design-build subcontracts may, however, include liquidated damages provisions or limitations on consequential damages, so long as those provisions and limitations do not cause the Contractor's liability under this Contract to exceed the design-build subcontractor's liability.

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§ 6.1.1 The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

§ 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.

...

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

...

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction. All construction costs resulting from Contractor's negligence, lack of oversight, inattention to detail, failure to investigate or failure to follow the Construction Documents or Contract Documents will be borne by the Contractor, subject to the terms and conditions of the Contract Documents and the Guaranteed Maximum Price Amendment.

§ 6.2.4 The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5. If a Separate Contractor initiates legal or any other proceedings against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor, who shall indemnify the Owner and defend it for, from, and against any claim, judgment, or award, including costs, attorney fees, and expert fees. This Section 6.2.4

does not require the Contractor to indemnify the Owner against liability for damage arising out of death or bodily injury to persons or damage to property to the extent that the liability was caused by the negligence or intentional misconduct of the Owner.

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

...

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

...

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

...

- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Before approval of a Change Order and upon request of the Owner, the Contractor will produce copies of all bids or other proposals, including those from Subcontractors of any tier and suppliers related to the Work proposed to be performed under the Change Order. No Change Order shall become effective until the Contractor satisfies all document requests from the Owner.

§ 7.2.3 Agreement on any Change Order constitutes a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including without limitation all direct and indirect costs and all adjustments to the Contract Sum according to the terms and any conditions stated in the Change Order. This Section 7.2.3 does not affect the Owner's audit rights.

...

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

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

...

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner and the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner or Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, ~~costs~~ reasonable expenditures for the purposes of this Section 7.3.4 shall be limited to the following:

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- .4 ~~Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; Permit fees, taxes, and costs of bonds and insurance necessitated by the changed Work; and~~

...

§ 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 and Owner of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

...

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The ~~Architect-Owner~~ will make an interim determination for purposes of monthly ~~certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's approval of payment for those costs and pay the amount that the Owner determines to be reasonably justified.~~ The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

...

The Architect may order minor changes in the ~~Work-Work~~, if approved by the Owner, that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.5 AGREED OVERHEAD AND PROFIT RATES

Overhead and profit adjustments for net increases to the Contract Sum are governed by the limitations established under Section 6.1.4 of the Agreement:

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§ 8.1.1 ~~Unless otherwise provided, The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for time from the date of commencement to Substantial Completion of the Work.~~

...

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

§ 8.2.2 ~~The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.~~ date of commencement cannot occur before placement of insurance. The Contractor will not commence Work or enter the Project Site before placement of insurance.

...

§ 8.3.1 ~~If~~ The Contractor may obtain an extension of the Contract Time if the Contractor is delayed at any time in the commencement or progress of the Work (1) by (1)-an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; Owner, Owner's employees, or of a Separate Contractor or Architect; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; the control and without the fault or negligence of the Contractor or its Subcontractors and that by the exercise of reasonable diligence the Contractor is unable to prevent or provide against; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect Owner determines, justify delay, then the Contract Time shall may be extended for such reasonable time as the Architect may determine.

§ 8.3.2 ~~Claims relating to time shall be made in accordance with applicable provisions of Article 15.~~
The adjustment to Contract Time must be recorded in a Change Order. All extensions of Contract Time must be net of (a) any delays caused by the fault or negligence of the Contractor and (b) any contingency or "float" time allowance included in the Project Schedule. No extension of Contract Time may exceed the actual amount of delay directly caused by the unforeseen occurrence identified in this Section 8.3.1.

§ 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.~~The Contractor must comply with Sections 15.1.3 and 15.1.4 of these General Conditions to receive any extension in Contract Time, regardless of whether the requirements of Section 8.3.1 are satisfied.

§ 8.3.4 The Contract Time is set with reference to and knowledge of weather conditions usual to the area of the Project. If adverse weather conditions are the basis for a Claim for an extension of the Contract Time, then the Contractor shall document its Claim using data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had a material adverse effect on the scheduled Work.

§ 8.3.5 Except as expressly provided under Section 8.3.1, the Contractor may not recover delay damages, wage escalation, material escalation, extended overhead, or additional compensation of any kind resulting from the Contractor's delay in completion of the Work.

...

§ 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. [Deleted].~~

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~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment. The Contractor shall submit an approved schedule of values to the Owner and Architect before commencement of the Work, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner and Architect. This schedule, unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and Architect and supported by such data to substantiate its accuracy as the Owner and Architect may require, and unless objected to by the Owner or Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.~~

...

§ 9.3.1 ~~At least ten 30~~ At least 30 days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage ~~if provided for in the Contract Documents of five percent.~~

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, Owner, but not yet included in Change Orders.

...

§ 9.3.1.3 The Contractor shall submit its monthly Application for Payment to the Owner and the Architect (if required by the Owner), on AIA Document G702, supported by AIA Document G703, or an equivalent form approved by the Owner, no later than the fifth day of each month. Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner:

- .1 The Project name, site of the Work (e.g., address and suite).
- .2 Description of the Work.
- .3 Detailed cost report and updated schedule of values.
- .4 Separate documentation and accounting for Work performed pursuant to Change Orders, Construction Change Directives, or minor changes in the Work; allowances; application of contingency; and payment for materials stored other than at the Project Site.
- .5 The Contractor's executed lien, bond, and claim releases ("Lien Releases") on forms acceptable to the Owner. Lien Releases shall provide a conditional release of liens, bonds, and claims for the Work that is subject to the current Application for Payment and an unconditional release for all Work performed through the date of all prior payment periods.
- .6 All other information and materials required to comply with the requirements of the Contract Documents.

The Owner may, at its option, request documentation from the Contractor evidencing that Subcontractors, Sub-subcontractors, and suppliers of every tier have provided the requisite conditional and unconditional releases and waivers of lien and bond rights to the Contractor for each Application of Payment.

§ 9.3.2 Unless otherwise expressly provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the ~~site~~ Project Site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the ~~site~~ Project Site at a location agreed upon in writing. Payment for materials and equipment stored on or off the ~~site~~ Project 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~~ Project Site, for such materials and equipment stored off the ~~site~~ Project Site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, payment has been previously received from the Owner shall be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 If a Subcontractor of any tier or supplier of any tier perfects a lien against all or any portion of the Project for which the Contractor received payment from the Owner, the Contractor will indemnify Owner and its consultants, agents, and employees, and defend them against the lien and will reimburse the Owner and its consultants, agents, and employees for all costs, expenses, and attorney fees incurred by them in connection with or arising from the lien. At the Owner's option, the Contractor will furnish, at the Contractor's sole expense, a bond to release the lien from the Project.

§ 9.3.3.2 The Contractor's duties to indemnify and defend the Owner and its consultants, agents, and employees and hold them harmless from any lien created and perfected against the Project shall be enforceable regardless of whether the Owner has delivered copies of pre-lien notices to the Contractor.

§ 9.3.3.3 If a lien is asserted against the Project, the Owner reserves the right to pay the Subcontractor or supplier jointly with the Contractor for Work performed by the Subcontractor or supplier, unless the Contractor promptly notifies the Owner of its reasonable objection. The Owner will be entitled to a credit against the Contract Sum for any such payments, up to the amount actually owed to the Subcontractor or supplier.

§ 9.3.4 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.

§ 9.4 Certificates for Payment Approval

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. Within 7 days after the Contractor submits its Application for Payment in accordance with Section 9.3.1, the Owner or the Architect (if designated by the Owner) will meet to review the Contractor's Application for Payment (a "Pencil Draw") for Work performed during the preceding month. The Contractor shall revise the Pencil Draw in accordance with any recommendation submitted by either the Owner or the Architect that is consistent with the requirements of the Contract Documents. After incorporating all recommendations from the Pencil Draw, the Contractor will submit a formal Application for Payment to the Owner and the Architect (if designated by the Owner) for approval and signature.

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

§ 9.5 Decisions to Withhold Certification Approval

§ 9.5.1 The Architect or Owner may withhold a Certificate for Payment payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify approve 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 Contractor, Owner, and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment approve payment for the amount for which the Architect is able to make such representations to the Owner. The Owner or Architect may also withhold a Certificate for Payment payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment of an approval of payment previously issued, to such extent as may be necessary in the Owner's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of of:

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- .3 failure of the Contractor or a Subcontractor to make payments properly to Subcontractors Subcontractors, Sub-subcontractors, or suppliers for labor, materials or equipment;

...

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; Documents;
- .8 unsatisfactory Work progress;
- .9 disputed Work, materials, or products, not to exceed one hundred fifty percent (150%) of the amount in dispute;
- .10 failure to comply with other material provisions of the Contract Documents; or
- .11 failure to maintain current as-built and safety documents as required by Section 3.11.

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

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

§ 9.5.4 ~~If the Architect withholds certification for or the Owner withholds payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.~~ Architect. The Owner will notify the Contractor of a joint payment, and the Owner will receive credit against the Contract Sum for the joint payment.

§ 9.5.5 If the Contractor disputes any determination by the Architect or the Owner with regard to any approval of payment, the Contractor nevertheless shall expeditiously continue the Work.

...

§ 9.6.1 ~~After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner will make progress payments to the Contractor no more than once each month based on a verified Application for Payment submitted by the Contractor and signed by the Owner. As provided in ORS 279C.570, Payments are due and payable not more than thirty (30) days from receipt of Contractor's complete Application for Payment or fifteen (15) days after the payment is approved by the Owner, whichever is earlier. Each progress payment will be calculated based on: (1) the percentage completion of the Work and (2) that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing, subject to the following:~~

- .1 Retainage will be withheld from the total progress payment amount at five percent (5.0%) of the total amount due to the Contractor pursuant to ORS 279C.550 to .565 and ORS 701.410 to 701.420, unless otherwise expressly agreed in a Contract.
- .2 The amount of the progress payment will be adjusted by corrections made to prior Applications for Payment, when applicable.
- .3 The amount of the progress payment will be reduced by amounts not approved by the Owner or by the Architect.
- .4 The amount of the progress payment will be reduced by amounts previously paid by Owner.

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

Payments by the Contractor to Subcontractors shall be subject to retainage of five percent (5.0%) on the total progress payment.

§ 9.6.3 The Architect-Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

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§ 9.6.6 ~~A Certificate~~ Neither approval of an Application for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall ~~not~~ constitute acceptance of Work not in accordance with the Contract Documents.

...

§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.~~ [Deleted, addressed in 9.3.3.1].

...

~~If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~ **§ 9.7.1** If the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount approved by the Owner and Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 Failure of payment does not exist under Section 9.7.1 if the Owner exercises authority granted by the Contract Documents to withhold payment, notwithstanding approval by the Architect.

...

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's or Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time

within which the Contractor shall finish all items on the list ~~accompanying the Certificate prepared under this Section 9.8.~~ Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. ~~Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.~~

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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 consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the 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.~~ Contractor.

...

§ 9.9.4 The Contractor shall deliver to the Owner certificates of inspection, use, and occupancy upon completion of the Work in sufficient time for occupation of the Project in accordance with the approved schedule for the Work. The costs of such procurement, payment, and delivery shall be included within the Contract Sum.

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection. When the ~~Architect finds~~ 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 approve the final Application for Payment, which constitutes a representation that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate and payable. The Architect's approval of the final Application for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor ~~submits to the Architect (1) has fully performed the Contract, except for the Contractor's other duties, as provided in the Contract Documents, that extend beyond the date of final payment. Full performance of the Contract includes delivering~~ Record Documents to the Owner, submitting a final Application for Payment to the Owner, providing two sets of all operation, maintenance, and warranty manuals and information of manufacturers whose equipment or materials are installed in the Work, taking all action necessary on the Contractor's part for issuance of a temporary or final Certificate of Occupancy, or its substantial equivalent, by the permitting agency, and submitting to the Owner and Architect:

- .1 an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2)-satisfied;
- .2 a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3)-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 reason that the insurance will not be renewable to cover the period required by the Contract Documents, ~~(4)~~
- .4 consent of surety, if any, to final payment, ~~(5)~~
- .5 documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, ~~and (6) and~~
- .6 valid unconditional waivers of all construction lien claims, bond claims, and other claims by the Contractor in a form acceptable to the Owner, together with certification that the Contractor has obtained valid unconditional waivers of all construction lien claims, bond claims, and other claims from each Subcontractor and Sub-subcontractor; and
- .7 if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in or Sub-subcontractor refuses to furnish an unconditional release or waiver required by these General Conditions, the Contractor shall indemnify the Owner and defend it against any claim or lien filed by the Subcontractor, Sub-subcontractor, or supplier and will reimburse the Owner for discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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- .2 failure of the Work to comply with the requirements of the Contract Documents; ~~Documents and~~ damages arising from nonconforming Work;
- .3 terms of special warranties or guaranties required by the Contract Documents; ~~or~~
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final ~~payment~~ payment; ~~or~~
- .5 the correction remedy allowed by Section 12.2.

...

§ 9.10.6 If final completion is not accomplished within sixty (60) days after the date of Substantial Completion because of any fault of the Contractor, the Owner may withhold from any subsequent progress payments and from the Final Payment one hundred fifty percent (150%) of the reasonable cost of the unfinished Work necessary to attain final completion. If the Contractor fails to complete the Work necessary to attain final completion, the Owner may, without waiving any other remedies it may have, complete the Work and deduct the actual cost thereof from the funds withheld. The Owner shall not withhold any amount under this Section 9.10.3 relating to Work arising from Change Orders or Construction Change Directives issued following the date of Substantial Completion.

§ 9.10.7 Requests for payment will not be considered if submitted (1) more than thirty (30) days following completion of the Work performed or (2) on or after the date of acceptance of Final Payment, whichever is earlier.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall review with all Subcontractors the methods, means, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor shall be responsible to ensure safe, hazard-free conditions for all persons visiting or working on the entire Project Site.

§ 10.1.2 The Contractor shall review with all Subcontractors the methods, means, materials, tools, and equipment to be used to verify their compliance with all safety standards and laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. The Contractor shall be responsible to ensure safe, hazard-free conditions for

all persons visiting or working on the entire Project Site and, to the extent affected by the Work, at the Owner's adjoining facilities.

§ 10.1.3 The Contractor will develop a fire response plan acceptable to the Owner, which will be strictly enforced by the Contractor's project superintendent or safety officer. The Contractor will supply fire extinguishers in sufficient size and quantity, distributed throughout the Project Site, to maintain a safe working environment.

§ 10.1.4 The Contractor will ensure that all equipment furnished or installed as part of the Work is appropriately rated by Underwriters Laboratories or by another method approved by applicable laws, the applicable authority having jurisdiction, or the Owner, as appropriate.

§ 10.1.5 This Contract incorporates by this reference any Owner's safety policies current as of the date of commencement of the Work, which have been or will be made available to the Contractor. The Contractor, as a condition precedent to commencement of the Work, will instruct all personnel of the Contractor and its Subcontractors, prior to their performing any of the Work, of the elements of these policies with which the personnel will be required to comply. Notwithstanding any other provision of the Contract Documents, the Contractor's (or any Subcontractor's) failure to perform adequate safety training is grounds for the Owner's immediate suspension of the Work at the Contractor's sole expense and may result in cancellation of the Contract.

...

§ 10.2.1 The Contractor shall take all necessary and reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

- .1 employees on the Work, the Owner's staff, faculty, visitors, students, and vendors, and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, Project Site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site-Project 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; and
- .4 adjoining operations of the Owner.

...

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible, subject to the terms of the Contract, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor. Contractor shall provide reasonable fall protection safeguards and provide approved fall protection safety equipment for use by all exposed Contractor employees.

§ 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. The Contractor must obtain advance approval before proceeding with the storage or use of explosives, Hazardous Materials, or unusual equipment for prosecution of the Work.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part through 10.2.1.4 to the extent caused 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, through 10.2.1.4. 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, liable. 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~~ Project 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.

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§ 10.2.9 Without limiting any other requirement of this Section 10.2, the Contractor shall protect adjacent property and shall provide barricades, temporary fences, and covered walkways to protect the safety of passersby, as required by prudent construction practices, laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, or the Contract Documents. The Contractor shall be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon.

§ 10.2.10 Without limiting any other requirement of this Section 10.2, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to utilities, sidewalks, curbs, adjoining property, and the property of third parties (including utility companies and governments) resulting from the performance of the Work, whether caused by the Contractor or by its Subcontractors of any tier. The Contractor shall maintain streets in good repair and traversable condition.

§ 10.2.11 The Contractor will ensure that storage practices on the Project Site will keep combustible load levels to a minimum and in approved containers that are clearly labeled. The Contractor will provide safety data sheets to the Owner for all chemicals used on the Project Site.

§ 10.2.12 Without limiting any other requirement of this Section 10.2, the Contractor shall maintain Work, materials, and apparatus free from damage from rain, wind, storms, frost, and heat. If adverse weather makes it impossible to continue operations safely in spite of weather precautions, the Contractor shall cease Work and notify the Owner and the Architect of the cessation.

§ 10.2.13 The Contractor must ensure that all existing or operating systems, utilities, and access avenues are on and in operating condition before leaving the Project site each day. If any system, utility, or access avenue will not be operable, the Contractor must notify the Owner's Representative before the Contractor may leave the Project site that day.

§ 10.2.14 The Contractor shall not permit open fires on the Project Site.

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. Hazardous Materials as that term is defined in Section 10.3.6. With respect to Hazardous Materials to be used during the course of the Work, the Contractor will implement and enforce a program to inventory and properly store and secure all Hazardous Materials that may be used or present on the Project Site, maintain available for inspection at the Project Site all material safety data sheets, and comply with all regulations required by law for the storage, use, and disposal of Hazardous Materials. This program will be subject to approval of and modification by the Owner. The program must provide for notification of all personnel of potential hazards. Review of these hazards must be included in the Contractor's safety training program. The Contractor shall submit to the Owner a list of all Hazardous Materials to be brought by the Contractor or its Subcontractors of any tier onto the Owner's property, including the purpose for their use on the Project.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up. In the event of a release or discovery of a preexisting release of Hazardous Materials, or if it is foreseeable that injury or death to persons may occur because of any material or substance (including without limitation Hazardous Materials) encountered on the Project Site, the Contractor shall immediately (1) stop the Work or the portion of the Work affected, (2) notify the Owner and the Architect orally and in writing, and (3) protect against exposure of persons to the Hazardous Materials. The Contractor shall provide all written warnings, notices, reports, or postings required at law or by Contract for the existence, use, release, or discovery of Hazardous Materials.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity. With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was not introduced to the Project Site by the Contractor or its Subcontractors of any tier, the Owner shall obtain the services of a qualified environmental consultant to verify the presence or absence of the material or substance reported by the Contractor and, if the material or substance is found to be present, to verify it to be or render it harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and the Contractor. By Change Order, the Contract Time may be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3.1 With respect to any Hazardous Materials or other material or substance reported to the Owner under Section 10.3.2 that was introduced to the Project Site by the Contractor or its Subcontractors of any tier, the Contractor shall be responsible to carry out the duties of (1) proposing to the Owner and the Architect an acceptable environmental consultant, (2) obtaining and paying for the services of the environmental consultant, and (3) verifying that the material is rendered harmless, as otherwise set forth in Section 10.3.3. The Contractor will not be entitled to an increase in the Contract Sum as stated in the last sentence of Section 10.3.3 if the Contractor or its Subcontractors of any tier are responsible for the condition requiring the testing of the material and the stoppage of the Work. Remediation work must be conducted by properly qualified contractors approved in advance by the Owner. Generally, the Owner may at its option contract directly with environmental consultants, regardless of whether the remediation work will be performed at the Contractor's expense.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors of any tier, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was not introduced to the Project Site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death as described in Section 10.3.1, and has not been rendered harmless. No indemnification provided by the Owner under this Section 10.3.4 is required to indemnify the Contractor, Subcontractors of any tier, or their employees or agents to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Contractor's own negligence, but indemnity is required to the extent of the fault of the Owner, its agents, or their respective employees and representatives.

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. To the fullest extent permitted by law, the Contractor shall indemnify and hold

harmless the Owner, the Owner's Representatives, and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance was introduced to the Project Site by the Contractor or its Subcontractors of any tier, presents the risk of bodily injury or death, and has not been rendered harmless. No indemnification provided by the Contractor under this Section 10.3.5 is required to indemnify the Owner or its agents or representatives to the extent of liability for death or bodily injury to persons or damage to property caused in whole or in part by the Owner's own negligence, but indemnity is required to the extent of the fault of the Contractor, its agents, or their respective employees and representatives.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred. "Hazardous Materials" are any substance regulated, classified, or otherwise characterized as radioactive, infectious, hazardous, dangerous, or toxic, or by words of similar meaning or effect, by any federal, state, or local statute, regulation, or ordinance currently in effect or subsequently enacted. For purposes of Sections 10.3.3 through 10.3.5, the term "introduce" means the physical placement or transportation of Hazardous Materials in or on the Project Site regardless of whether the Hazardous Materials were specified, required, or otherwise addressed in the Contract Documents.

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In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable discretion, to prevent threatened damage, injury, or ~~loss~~ and immediately notify the Owner. 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.

...

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, ~~Architect, and Architect's consultants~~ and its consultants, agents, and employees shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents. The additional-insured endorsement for CGL insurance must be written on ISO Form CG 20 10 (10 01) and CG 20 37 (10 01), or their equivalent, but shall not use either of the following forms: CG 20 10 (10 93) or CG 20 10 (03 94).

...

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit B to the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

§ 11.2.2 Failure to Purchase Required Property Insurance. ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~[Deleted].

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance. ~~[Deleted]~~.

§ 11.3 Waivers of Subrogation ~~[Deleted]~~

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property. ~~[Deleted]~~.

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance. ~~[Deleted]~~.

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.4 ~~[Deleted]~~

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate written agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. The Owner shall have power to settle a loss with insurers. The Contractor may, however, object for cause to the settlement within 7 days from occurrence receiving notice of the settlement. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds received from the property insurance identified in Exhibit B to the Agreement in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience,

the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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§ 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 ~~Architect~~, be uncovered for the Architect's examination ~~Owner or Architect, be uncovered for examination by the Owner, the Architect, or any governmental authority~~ and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the ~~Architect~~ Owner, Architect, or any governmental authority 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 Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

...

The Contractor shall promptly correct Work rejected by the ~~Architect~~ Owner, Architect, or any governmental authority or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it ~~promptly~~ promptly, for no additional compensation, after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the ~~Contractor and to make a claim for breach of warranty~~. Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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§ 12.2.2.3 The one-year period for correction of Work shall ~~not~~ be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The ~~Contractor~~ Contractor, at its expense, shall remove from the ~~site~~ Project Site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

...

§ 13.1 Governing Law and Public Contracting Code Provisions

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.1.1 ORS 279A.110 (Non-discrimination certification): Contractor shall certify that Contractor has not discriminated and will not discriminate against a Subcontractor in the awarding of a subcontract because the Subcontractor is a minority, woman, or emerging small business enterprise certified under ORS 200.055 or a business that is owned or controlled by or that employs a disabled veteran, as defined in ORS 408.225.

§ 13.1.2 ORS 279C.380 (Performance and Payment Bonds): Unless exempted by the Owner in writing pursuant to the Owner's local public contracting rules, prior to starting any Construction Phase services under this Contract, and in any event not later than mutual execution of the Guaranteed Maximum Price Agreement, Contractor shall execute and deliver to Owner a good and sufficient performance bond, in a form acceptable to Owner, in a sum equal to 100% of the Contract Sum, and Contractor shall execute and deliver to Owner a good and sufficient payment bond, in a form acceptable to Owner, in a sum equal to 100% of the Contract Sum, solely for the protection of claimants under ORS 279C.600. If an Early Work Amendment is executed, Contractor shall provide such bonds in the amount of the Early Work Price under the Early Work Amendment. Contractor shall provide to Owner additional or replacement bonds at the time of execution of any subsequent Early Work Amendment or Guaranteed Maximum Price Amendment, in each case prior to execution of the Amendment and the supplying of any labor or materials for the prosecution of the Work covered by the Amendment, and in each case in a sufficient amount so that the total bonded sum equals or exceeds the Early Work Price or the Contract Sum, as the base may be. Consistent with ORS 279C.380(1)(a), once Contractor commences design or related services covered by this Agreement, the Contractor must provide a performance bond and payment bond in an amount equal to the full Contract Sum.

§ 13.1.3 ORS 279C.505 (Prompt Pay Requirement, Liens, Taxes, and Drug Testing): Contractor shall make payment promptly, as due, to all persons supplying to such Contractor labor or material for the performance of the Work provided for in this Contract; pay all contributions or amounts due the Industrial Accident Fund from such Contractor or Subcontractor incurred in the performance of the Contract; not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished; and pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167. Contractor shall further demonstrate that an employee drug testing program is in place. If Contractor neglects or refuses to make prompt payment of any claim for labor or services furnished to it by any party in connection with this Agreement as such claim becomes due, Owner may pay such claim to the party furnishing the goods or services and subtract the payment amount from funds due or to become due the Contractor. Owner's payment of such a claim shall not relieve Contractor or Contractor's surety from its obligation to any unpaid claims.

§ 13.1.4 ORS 279C.510 (Recycling/Composting): If this Contract includes demolition work, the Contractor shall salvage or recycle construction and demolition debris, if feasible and cost-effective. If this Contract includes lawn or landscape maintenance, the Contractor shall compost or mulch yard waste material at an approved site, if feasible and cost-effective.

§ 13.1.5 ORS 279C.515 (Failure to Pay Promptly): If Contractor fails, neglects, or refuses to make prompt payment of any claim for labor or services furnished to the Contractor or a Subcontractor by any person in connection with this Contract as such claim becomes due, the Owner may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due the Contractor by reason of this Contract. The payment of a claim in the manner authorized in this section shall not relieve the Contractor or the Contractor's surety from any obligation with respect to any unpaid claims.

Unless the payment is subject to a good faith dispute as defined in ORS 279C.580, if Contractor or any first-tier Subcontractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the 10-day period that payment is due under ORS 279C.580(4). A person with any such unpaid claim may file a complaint with the Construction Contractor's Board unless the complaint is subject to a good faith dispute as defined in ORS 279C.580.

§ 13.1.6 ORS 279C.520 and 279C.540 (Hours of Labor, Holidays, and Overtime): Except as otherwise provided in an applicable collective bargaining agreement with a labor organization, Contractor shall not employ and shall require that its Contractors not employ any person to perform construction work for more than ten hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases, except in cases of Contracts for personal services as defined in ORS 279C.100, the laborer shall be paid at least time and a half pay:

- .1 For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; and
- .2 For all overtime in excess of ten hours a day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
- .3 For work performed on Saturday and on any legal holiday specified in any applicable collective bargaining agreement or in ORS 279C.540(1)(b).

The requirement to pay at least time and a half for all overtime worked in excess of 40 hours in any one week shall not apply to individuals who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. Section 201 to 209 from receiving overtime.

Contractor shall, and shall require its Contractors, to give notice in writing to their employees who perform Work under this Contract, either at the time of hire or before commencement of Work on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.

§ 13.1.7 ORS 279C.520(1)(b) and 279C.520(1)(c) (Compliance with Pay Equity Provisions: Employee Pay Discussion):

- .1 **Discrimination Prohibition.** The Contractor shall comply with the prohibition on discriminatory wage rates based on sex, which is set forth in ORS 652.220. Compliance with ORS 652.220 is a material element of the Contract and failure to comply is a breach that entitles the Owner to terminate the Contract for cause.
- .2 **Salary Discussion.** The Contractor may not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits or other compensation with another employee or another person.

§ 13.1.8 ORS 279C.525 (Notice of Environmental Regulations): State law requires that solicitation documents for a public improvement contract make specific reference to federal, state, and local agencies that have enacted ordinances, rules, or regulations dealing with the prevention of environmental pollution or the preservation of natural resources that may affect the performance of this Contract. These agencies include, but are not limited to:

- .1 **Federal Agencies:** Department of Agriculture, Forest Service, Soil and Water Conservation Service, Coast Guard, Department of Defense, Army Corps of Engineers, Department of Emergency, Federal Energy Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Housing and Urban Development, Solar Energy and Energy Conservation Bank, Department of Interior, Bureau of Land Management, Bureau of Indian Affairs, Bureau of Mines, Bureau of Reclamation, Geological Survey, Minerals Management Service, U.S. Fish and Wildlife Service, Department of Labor, Mine Safety and Health Administration, Occupation Safety and Health Administration, Department of Transportation, Federal Highway Administration, Water Resources Council.
- .2 **State Agencies:** Department of Administrative Services, Department of Agriculture, Soil and Water Conservation Commission, Columbia River Gorge Commission, Department of Energy, Department of Environmental Quality, Department of Fish and Wildlife, Department of Forestry, Department of Geology and Mineral Industries, Department of Human Resources, Department of Consumer and Business Services, Land Conservation and Development Commission, Department of Parks and Recreation, Division of State Lands, Department of Water Resources.
- .3 **Local Agencies:** City councils, county courts, county boards of commissioners, metropolitan service district councils, design commissions, historic preservation commissions, planning commissions, development review commissions, special district boards of directors, and other

special districts and special governmental agencies such as Tri-Met, urban renewal agencies, and Port Districts.

.4 Tribal Governments.

§ 13.1.9 ORS 279C.530 (Payment for Medical Care and Workers' Compensation): Contractor shall promptly, as due, make payments to any person, co-partnership, association, or corporation furnishing medical, surgical, and hospital care or other needed care and attention, incident to sickness or injury, to the employees of such Contractor, of all sums which the Contractor agrees to pay for such services and all moneys and sums which the Contractor collected or deducted from the wages of employees pursuant to any law, contract, or agreement for the purpose of providing or paying for such service.

All employers, including the Contractor, that employ subject workers who work under this 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.

§ 13.1.10 ORS 279C.545 (Time Limitations on Claims for Overtime): Construction workers employed by the Contractor or its Subcontractor shall be foreclosed from the right to collect for any overtime under this Contract unless a claim for payment is filed with the Contractor or Subcontractor within 90 days from the completion of the Contract, provided the Contractor or Subcontractor has:

- .1 Caused a circular clearly printed in boldfaced 12-point type and containing a copy of this section to be posted in a prominent place alongside the door of the timekeeper's office or in a similar place which 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.

§ 13.1.11 ORS 279C.580(3) (Prompt Payment of First-Tier Subcontractors): Contractor shall include in each subcontract for property or services with a first-tier subcontractor a clause that obligates the Contractor to pay the first-tier Subcontractor for satisfactory performance under its subcontract within ten days out of such amounts as are paid to the Contractor by the Owner. Contractor shall also include in each subcontract a clause that states that if the Contractor fails to pay any claim for materials or labor furnished under this Contract within 30 days after being paid by Owner, interest shall be due on such claim as specified in ORS 279C.515(2) at the end of the ten-day period that payment is due under ORS 279C.580(3). Contractor shall require each first-tier Subcontractor to include a payment clause and interest clause conforming to the requirements of ORS 279C.580 in each of its subcontracts, and to require each of its Contractors to include a similar clause in each contract with a Sub-subcontractor or supplier.

§ 13.1.12 ORS 279C.605 (Notice of Claim on Bond): Any person claiming a right of action under ORS 279C.600 must file a notice of claim as provided in ORS 279C.605.

§ 13.1.13 ORS 279C.800 to 279C.870 (Payment of Prevailing Wage Required):

- .1 This Contract is subject to payment of prevailing wages under ORS 279C.800 to 279C.870. Each worker that Contractor, any subcontractor, or other person who is party to the contract uses in performing all or part of the Contract must be paid not less than the applicable prevailing rate of wage for each trade or occupation as defined by the Director of the State of Oregon Bureau of Labor and Industries ("BOLI") in the applicable publication entitled "Definitions of Covered Occupations for Public Works Contracts in Oregon." The applicable prevailing wages will be those in effect at the start of the Construction Phase or, if applicable, the Early Work Amendment.
- .2 The latest prevailing wage rates for public works contracts in Oregon are contained in the following publications: The Prevailing Wage Rates for Public Works Projects in Oregon, the PWR Apprenticeship Rates, and any amendments to the PWR rates or Apprenticeship rates. Such publications can be reviewed electronically at

http://www.boli.state.or.us/BOLI/WHD/PWR/pwr_state.shtml and are hereby incorporated as part of the Contract Documents.

- .3 This Contract may also be subject to payment of prevailing wages under the federal Davis-Bacon Act (40 U.S.C. 3141 et seq.). Notwithstanding subsection j(i) of this section, if this Contract is subject to payment of prevailing wages under the Davis-Bacon Act, Contractor and any subcontractors must pay the higher of the federal prevailing wage rate or the state prevailing wage. The latest state prevailing wages can be reviewed as set forth in subsection j(i) of this section. The latest federal prevailing wage rates can be reviewed electronically at <http://www.wdol.gov/Index.aspx> (Search for Oregon, Multnomah County, Building Construction Type) and are hereby incorporated by reference as part of the Contract Documents. Contractors shall follow all prevailing wage rules including posting the Davis Bacon Poster at the worksite and submitting certified payroll records. The poster is available at <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>. The payroll form is at <http://www.dol.gov/whd/forms/wh347instr.htm>.
- .4 Contractor and all Subcontractors shall keep the prevailing wage rates for this Project posted in a conspicuous and accessible place in or about the Project.
- .5 The Owner shall pay a fee to the Commissioner of the Oregon Bureau of Labor and Industries as provided in ORS 279C.825. The fee shall be paid to the Commissioner under the administrative rule of the Commissioner.
- .6 If Contractor or any Subcontractor also provides for or contributes to a health and welfare plan or a pension plan, or both, for its employees on the Project, it shall post notice describing such plans in a conspicuous and accessible place in or about the Project. The notice shall contain information on how and where to make claims and where to obtain future information.

§ 13.1.14 ORS 279C.836 (Public Works Bond Required): The Contractor shall:

- .1 file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).
- .2 Include in every subcontract a provision requiring the Subcontractor to file a public works bond with the Construction Contractors Board pursuant to ORS 279C.836 before starting work on the Project, unless exempt under ORS 279C.836(4), (7), (8) or (9).

§ 13.1.15 ORS 279C.845 (Prevailing Wage Certification; Additional Retainage):

- .1 Contractor and every Subcontractor shall file certified statements with Owner in writing in the form prescribed by the Commissioner of the Bureau of Labor and Industries, certifying the hourly rate of wage paid each worker whom Contractor or Subcontractor has employed upon such public work, and further certifying that no worker employed upon such public work has been paid less than the prevailing rate of wage or less than the minimum hourly rate of wage specified in the Contract, which certificate and statement shall be verified by the oath of Contractor or Contractor's surety or Subcontractor or Subcontractor's surety that Contractor and any Subcontractor has read such statement and certificate and knows the contents thereof, and that the same is true to Contractor or Contractor's knowledge. The certified statements shall set out accurately and completely the payroll records for the prior week including the name and address of each worker, the worker's correct classification, rate of pay, daily and weekly number of hours worked, deductions made, and actual wages paid.
- .2 The certified statement shall be delivered or mailed by Contractor or Subcontractor to Owner. Certified statements for each week during which the Contractor or Subcontractor employs a worker upon the public work shall be submitted once a month, by the fifth business day of the following month. Information submitted on certified statements may be used only to ensure compliance with the provisions of ORS 279C.800 to 279C.870. Notwithstanding any other provision of this Contract and in addition to any other retainage required under this Contract, the Owner shall retain 25% of any amount earned by the Contractor until the Contractor has filed the certified statements with the Owner as

required by this Section. The Owner will pay the retainage required under this Section within 14 days after the Contractor files the certified statements required by this Section.

- .3 Contractor and each Subcontractor shall preserve the certified statements for a period of three years from the date of completion of the Contract.

§ 13.1.16 ORS 671.560, 701.026 (Landscape/Construction Contractors License Required): If Contractor is performing work as a landscape contractor as defined in ORS 671.520(2), Contractor must have a current, valid landscape contractor's license issued under ORS 671.560. If Contractor is performing work as a Subcontractor as defined in ORS 701.005(2), Contractor must have a current, valid construction contractor's license issued under ORS 701.026. Contractor shall further certify that all Contractors performing Work described in ORS 701.005(2) are registered with the Construction Contractors Board or licensed by the State Landscaping Contractor's Board as required by the above noted statutes before they commence Work under this Contract. Contractor shall maintain in effect all licenses, permits, and certifications required for the performance of the Work. Contractor shall notify Owner immediately if any license, permit, or certification required for performance of this Contract shall cease to be in effect for any reason.

§ 13.1.17 When Work Is Performed on Owner's property Contractor Shall Comply With the Following:

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

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§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, or elsewhere in the Contract Documents, neither party to the Contract shall assign the Contract as a whole or in part without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

...

§ 13.4.1 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.

- .1 Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the authority or by independent testing laboratories, that may be required by the permitting jurisdiction. The Owner shall retain and pay for any private inspectors or testing laboratories that are required. The cost of the private inspections and tests shall not be included in the Contract Sum.
- .2 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.

- .3 The Contractor shall forward to the Owner and the Architect copies of all inspection results, test results, orders, permits, and other directives or correspondence received by the Contractor from any inspector, testing laboratory, or agency with jurisdiction over the Work.
- .4 The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.
- .5 No inspection performed or failed to be performed by the Owner waives any of the Contractor's obligations or may be construed as an approval or acceptance of any part of the Work.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Owner's or Architect's services and expenses, shall be at the Contractor's ~~expense~~. expense, including without limitation the cost of retesting for verification of compliance, if necessary, until the Architect certifies that the Work in question does comply with the requirements of the Contract Documents.

§ 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.

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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. Late payments will accrue interest as provided in ORS 279C.570(2).

§ 13.6 PROMOTIONAL MATERIALS

The Contractor may, subject to the Owner's prior review and approval, include photographic or artistic representations of the Project among the Contractor's promotional and professional materials. The Contractor's materials shall not, however, include the Owner's confidential or proprietary information.

§ 13.7 If any provision of these General Conditions is unenforceable for any reason, then the provision shall continue in effect only to the extent that it remains valid and enforceable. The unaffected remaining provisions of these General Conditions and any Contract shall remain in full force and effect.

§ 13.8 Historical lack of enforcement of any laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work shall not constitute a waiver of the Contractor's responsibility for compliance with the law in a manner consistent with the Contract Documents unless and until the Contractor has received written consent for the waiver of such compliance from the Owner and the agency responsible for the local law enforcement.

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- .3 Because the Architect has not ~~issued a Certificate~~ approved an Application for Payment and has not notified the Contractor of the reason for withholding ~~certification approval~~ as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

...

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days not related to phasing of the Work through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

- .4 otherwise ~~is guilty of substantial breach of~~ substantially breaches a provision of the Contract Documents.
- .5 fails to observe the training, safety, and other precautions required in Article 10, including Contractor's own safety policies for the Project.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action, the~~ Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate ~~employment of the Contractor~~ the Contract and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site Project Site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's and Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. ~~The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment~~ This obligation shall survive termination of the Contract.

§ 14.2.5 If termination for cause is determined later to have been wrongful or without justification, then the termination will be considered to have been termination for convenience.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and ~~the termination fee, if any, set forth in the Agreement~~ a reasonable overhead and profit on the Work performed. The Contractor hereby waives and forfeits all other claims for payment and damages, including without limitation anticipated profits.

...

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.~~

...

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the ~~Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker~~ Architect. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. The Owner or the Contractor must identify known bases for each Claim and the nature and amount of relief sought.

§ 15.1.3.2 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. ~~In such event, no decision by the Initial Decision Maker is required.~~

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§ 15.1.4.2 ~~The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.~~ **[Deleted]**

...

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. Failure to provide timely notice in accordance with Section 15.1.3 constitutes waiver of the Claim.

...

§ 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. Claims for additional time are governed by Section 8.3. Failure to provide timely notice in accordance with Section 15.1.2 constitutes waiver of the Claim.~~

§ 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1** — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2** — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.1.7 [Deleted]

§ 15.2.1 ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~ To facilitate the resolution of Claims between the Contractor and the Owner, the parties shall attempt in good faith first to resolve Claims that are made before Final Payment by the following dispute-resolution process. The parties agree not to proceed to litigation until the following process has been attempted. Neither party's rights, defenses, Claims, and remedies shall be considered waived, released, or adversely affected by its participation in this process, but this process shall not toll any applicable statutory periods of limitation, duration, or ultimate repose except to the extent that the parties separately agree in writing to toll those periods.

- .1** All reasonable efforts will be made by the Owner's Representative and the Contractor's project manager to resolve any Claims that arise during the Work in a prompt and equitable manner. If they fail

to reach an equitable agreement to resolve a Claim, either party may notify the other party in writing to identify the Claim with known specificity and request a meeting between the Owner's senior executive responsible for the Project and the Contractor's senior executive responsible for the Project.

- .2 The parties' senior executives shall meet at a mutually agreed time and place within ten (10) days of receipt of the written notice and attempt in good faith to negotiate a resolution of the Claim. If within ten (10) days after the meeting the parties have not succeeded in negotiating an agreed-upon resolution of the Claim, then either party may pursue any and all rights and remedies available to it in the Agreement.
- .3 The parties may at any time mutually agree to submit any dispute between them to voluntary mediation under Section 15.3.

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.~~~~[Deleted].~~

~~§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.~~~~[Deleted].~~

~~§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~~~[Deleted].~~

~~§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.~~~~[Deleted].~~

~~§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.~~~~[Deleted].~~

~~§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~~~[Deleted].~~

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~~§ 15.2.8 If a Claim relates to or is the subject of a construction or mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the perfection, foreclosure, or lien notice or filing deadlines. The parties agree to stay any foreclosure action pending resolution of Claims.~~

...

§ 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. ~~[Deleted].~~

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. may mutually agree to engage in mediation.

§ 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. ~~[Deleted].~~

§ 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. ~~[Deleted].~~
~~[Deleted].~~

§ 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.



Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 13:36:27 ET on 03/31/2022 under Order No. 3104236508 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT C

PFAC Report

◆ THE CITY OF ◆
MANZANITA

NEEDS ASSESSMENT
AND CONCEPT DEVELOPMENT

FEBRUARY 28, 2019



SOURCE DIAGRAM

The outlined areas represent the limits of the survey information that has been evaluated for banding in this diagram by date and type of survey by the U.S. Army Corps of Engineers are partially shown on this diagram. Refer to Chapter

SOURCE

A	1960-2010	NOS Surveys	full
B3	1940-1960	NOS Surveys	partial
B4	1900-1939	NOS Surveys	partial
B5	1834-1899	NOS Surveys	partial

February 27, 2019

Mayor Scott and Councilors Galvin, Kozlowski, Nuttall and Tonjes:

We are pleased to present this report of the Public Facilities Advisory Committee (PFAC) for your review. The report represents a year of bi-monthly meetings and numerous “homework” assignments, including individual research and conversations with Manzanita citizens. We have tried to reflect the concerns of all those whose interests have been expressed as we deliberated.

Midway through our year of deliberations, the city engaged the services of Brittell Architecture, represented locally by Jim Fanjoy, to assist with guidance on architectural needs and options. Jim has incorporated most of our work and deliberations in his composite report. In addition to Jim’s program document and spatial needs diagram, we have included ten design options developed by the committee, ranging from lowest cost to an all-inclusive mode, along with possible funding considerations.

We have included the mandate with which we were tasked by you, and our year-long progress reflects the consideration of those tasks. Although our committee was convened to study options for all of the city properties, it is understandable that the majority of our time was concentrated on Underhill Plaza, and the need for City Administration to operation in a safe, secure environment, in a center which is reflective of Manzanita’s values and uniqueness. Results of those discussions are included in appendix E.

Prior to the committee’s appointment, in October of 2017, the city convened a “town hall” to gather opinions from all stakeholders, including not only Manzanita residents, but also second home owners and people from neighboring areas (Neahkahnie, Pine Ridge, etc.) Throughout the year, we referred to what the public had said, in an effort to be sensitive to community needs.

We wish to thank city manager Cynthia Alamillo and Council liaison Scott Galvin for their guidance throughout the year. We are grateful for those dedicated citizens whose regular attendance was a reminder of community needs.

We wish you well in your future deliberations and decisions. We are confident that your combined thinking and action will result in what is best for the city, maintaining Manzanita’s unique small village image while making considered choices for planned growth and development.

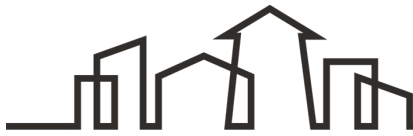
Lee Hiltenbrand

Randy Kugler

Peter Nunn

Leila Salmon

Connie Soper



BRITTELL ARCHITECTURE INC.

LONGVIEW, WA | NEWBERG, OR | NEHALEM, OR | WWW.BRITTELLARCH.COM

February 28, 2019

Cynthia Alamillo, Manzanita City Manager
City of Manzanita
PO Box 129
Manzanita, OR 97130

RE: Final report, Manzanita needs assessment

Dear Cynthia

It is with both pride and pleasure that I present this final report for the new Manzanita community center. It contains a background of the processes and resources used during our work, as well as conclusions and recommendations. Its tangible, objective criteria will be a valuable resource to help guide future design work to appropriately represent the needs of the community.

I would like to acknowledge the participation of several people who have been instrumental in making this report. City staff were enthusiastic and helpful during the information gathering process. The citizen volunteers of the Public Facilities Advisory Committee were generous with their time, experience, and wisdom while dutifully representing the needs of the citizenry- it was a pleasure to work with each of them. Local architect emeritus Tom Bender donated his time and creative vision while generating innovative and thought provoking ideas. It is this diverse group of contributors that gives the report validity in representing the needs of Manzanita.

Finally, I'd like to thank the Mayor and the members of City Council for initiating this project and inviting Brittell Architecture to participate. I am honored to have played a part in crafting the future of our community.

Respectfully,

James M. Fanjoy, Architect



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APPENDICES

- A. Program Document
- B. Relative Spatial Needs Diagram
- C. Design Options
- D. PFAC Mandate
- E. Task Report

Appendices C and E were created by the PFAC and appendix D was created by the City of Manzanita. They are included here for the convenience of the reader.

I. Project Background



In August of 2018 the City of Manzanita retained Brittell Architecture Inc (BAI) to perform space needs assessment and concept development for a new community center, to include city administration and other public facilities. In addition to owning several aging properties scattered throughout the Manzanita, the City had recently purchased the Underhill Plaza property. This property is one of the larger remaining parcels within city limits and is located above the tsunami inundation zone, making it a good candidate for the new community center site. It is currently occupied by a former elementary school and a Quonset hut.

To better understand the needs of the community, Mayor Mike Scott and the City Council assembled a Public Facilities Advisory Committee (PFAC) comprised of five volunteer citizens selected to represent the various stakeholders in the community. This committee was tasked with evaluating the possible uses of the Underhill Plaza property, the current City Hall site, and the old fire station site. They were to then recommend to the City Council which uses should be accommodated and where the various uses should be located, and evaluate and make recommendations on possible funding sources to implement the uses.

After six months of such work, the committee determined that it would be beneficial to hire an architect to guide the final stages of the process, provide technical assistance, and help synthesize the various findings of the committee into a final report.

Public Facilities Advisory Committee 2017-2018

Lee Hiltenbrand

Randy Kugler

Peter Nunn

Leila Salmon

Connie Soper

Scott Galvin (representing City Council)



II. Needs Assessment



“Needs assessment” is the process in which the design team works with the City staff and PFAC to determine the needs of the City in order to build a framework of quantifiable objectives for the design process. When all of the relevant data is collected and processed, the end product is the **Program Document**, which will serve in guiding the design professionals during preliminary cost estimation as well as later design phases.

SCOPE OF WORK

The scope of work assigned to the architectural team is confined specifically to the Underhill Plaza property, the existing City Hall building, and ancillary space needs relating to the police department. Concurrently with this work, the PFAC evaluated other City properties as they impacted potential funding options.

TIMESCALE AND LONGEVITY

In addition to the spatial requirements, we considered the projects’s objectives over time. The materials, finishes, and construction quality of any new facility will affect how long it will serve.

Institutional quality finishes and fixtures add to the longevity of the building, and longer lifecycles reduce overall costs to the community as well as making a positive impact on the environment through reduced carbon emissions and waste. The PFAC evaluated cost models for both institutional grade construction, as well as budget construction with lesser longevity.

In addition to listing current space usage, the Program Document lists immediate space needs, future needs (10 years), and long range needs (20 years). Where possible, it is desirable to design structures for 40+ years of longevity and current City usage indicates that the new community center may be in use for that length of time. The committee determined that it would be largely guesswork to try to predict and program the City’s needs that far into the future.

STAFF INTERVIEWS & FACILITIES SURVEY

During the month of September 2018, the architectural team interviewed City staff members and administrators to determine their current space usage and anticipated needs in the future. Staff were forthcoming about ideas and insights into more efficient arrangement of spaces, as well as ways to economize space and improve workflow in a new facility.

As-built drawings were not available, so the architect measured existing spaces to create the baseline data of current space usage that appears in the first column of the Program Document. In some cases the architect visited and measured spaces the staff thought were effective in other buildings, such as the copy and mailing area in Fire Station 13.

POPULATION GROWTH

By analyzing demographic trends, we can project the size of facility that will be needed 10 and 20 years from now. The City collected population growth data and shared it with the PFAC. Committee member interpreted the data in terms of reported population, actual homes built, and percentage of second home ownership. The committee settled on 10% per decade as a reasonable assumption of growth for the foreseeable future. That factor is used in the 10 and 20 year space needs projections for spaces such as administration, reception, archives/ storage, and a public meeting hall. Other space requirements, such as the City Manager’s office, City

Council dais, and restrooms will not be noticeably affected by population growth.

City of Manzanita						
Number of dwelling units by year						
In City limits				Outside City limits in UGB		
	# of residential			# of residential		
<u>Year</u>	<u>dwelling units</u>	<u>Δ</u>	<u>Year</u>	<u>dwelling units</u>	<u>Δ</u>	
2005	1,129	--	2005	250	--	
2006	1,163	34	2006	266	16	
2007	1,198	35	2007	291	25	
2008	1,206	8	2008	292	1	
2009	1,216	10	2009	297	5	
2010	1,220	4	2010	298	1	
2011	1,225	5	2011	301	3	
2012	1,233	8	2012	306	5	
2013	1,238	5	2013	310	4	
2014	1,245	7	2014	316	6	
2015	1,252	7	2015	315	(1)	
2016	1,266	14	2016	318	3	
2017	1,283	17	2017	327	9	
2018	1,298	15	2018	332	5	
Average		13	Average		6	
<u>Projections</u>						
10 year	2028	1428		395		
20 year	2038	1558		458		

POLICE PRISONER DETENTION

The PFAC explored and rejected the idea of the new police station incorporating a detention area. Incarceration facilities have a similar or lesser structural Risk Category than the other “essential facility” portions of the program. However, they would involve occupants (detainees) who cannot exit the facility on their own, which invokes other code provisions that add undue complexity and cost in terms of egress, life safety, fire suppression, and combustibility. In addition, the police chief informed the committee that holding prisoners overnight would involve a significant shift in police force expenses, due to additional training, paperwork, prisoner food requirements, and the need to have 24-hour staff on site.

NEEDS OF COMMUNITY STAKEHOLDERS

Other community stakeholders were heard through the Public Facilities Advisory Committee. The following were considered:

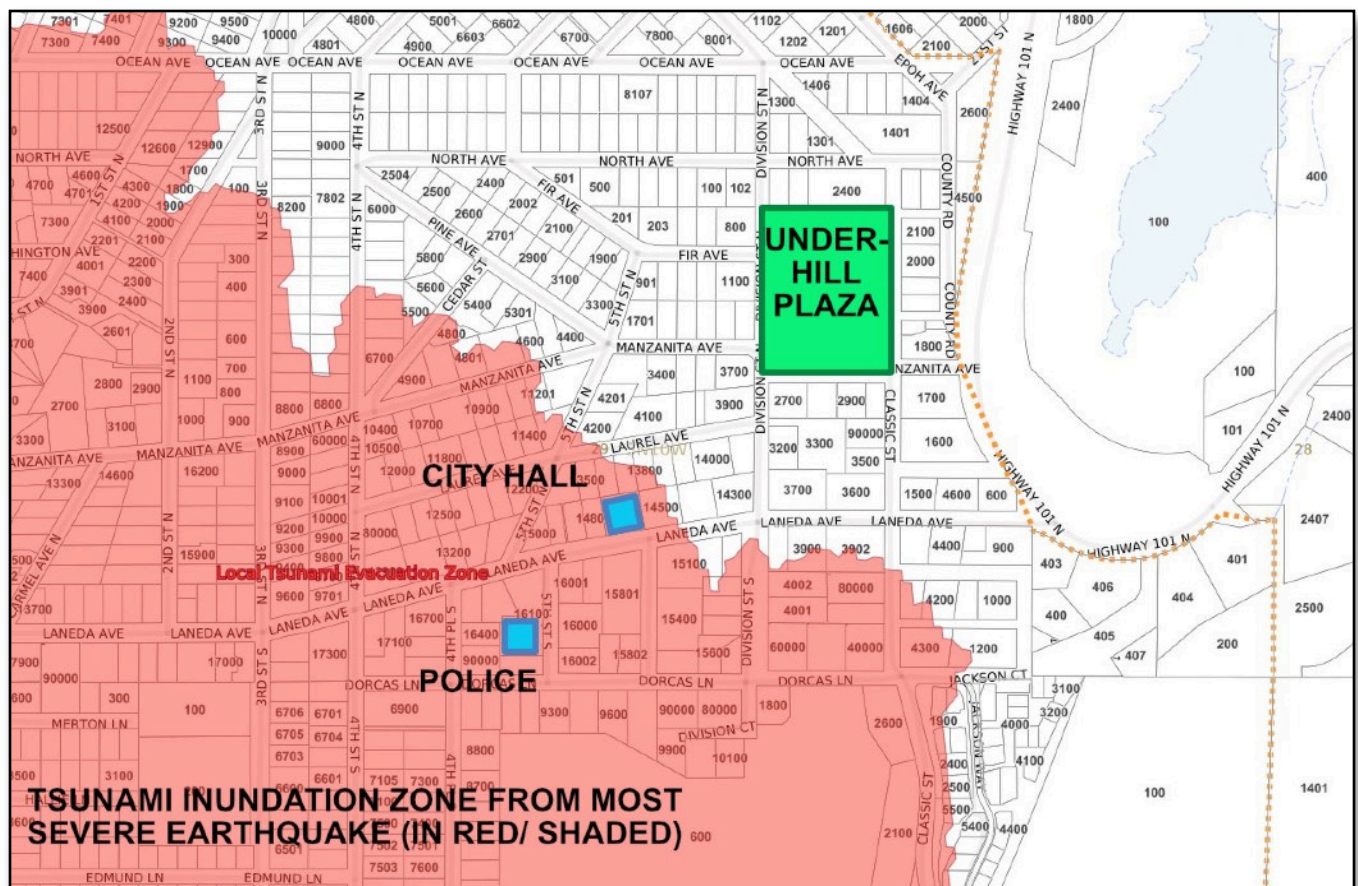
- **Disaster resilience:** Due to the potential for significant damage during a Cascadia subduction event, a new facility should be able to remain functional after an earthquake. Collaboration between the City of Manzanita and the Emergency Volunteer Corps of Nehalem Bay (EVCNB) produced the Underhill Plaza Preparedness Recommendations, which anticipates a “medium” sized earthquake and lists preparedness recommendations. This document is included in the appendix, and presents first phase recommendations with greater needs to be addressed over time. The EVCNB recommendations have been integrated into the Program Document, with the exception of food storage, which was determined by the PFAC to likely be beyond the reach of the initial community center project and could be deferred until additional funding becomes available.
- **Sustainability:** The environmental impact of a new community center should be considered, with particular advocacy for LEED certification. This voluntary third-party

certification is beyond building code requirements, and demonstrates the community's commitment to furthering environmental responsibility and being an example to others. Governor Kate Brown's executive order of September 2017 mandates prioritizing net-zero energy construction and underscores the importance of these issues.

- **Fiscal practicality:** Whatever the conclusion of the needs assessment process, a functional funding plan will be required to make the new community center a reality. Any bond measures must be sized in accordance with the taxpayer's willingness to pay.

TSUNAMI INUNDATION & AFTERMATH

The possibility of a Cascadia subduction tsunami is a clear and present danger to the Manzanita community. Many of the City's properties, including the current city hall and police station, are within the tsunami inundation zone and will likely be destroyed by such an event. The new Underhill Plaza property is above the inundation zone, making it a good candidate for the site of the new community center, and its size would accommodate a significant number of refugees afterwards.



SEISMIC HAZARD

The building code groups structures into Risk Categories, ranging from I to IV, with I being low hazard to human life (such as agricultural buildings) and IV being essential facilities including police stations and designated emergency preparedness facilities.

Risk Category	Building Use	Relevant Examples	Structural Performance in a Seismic Event
I	low hazard to human life in the event of failure	minor storage facilities (sheds)	likely destroyed
II	typical structures (not I, III, or IV)	administration offices with no emergency command and control function	occupants can safely exit the building, but it must be replaced
III	substantial hazard in the event of a failure	incarceration facilities	building can be brought back into use after repairs
IV	essential facilities	police station, emergency shelters, emergency preparedness centers	building can be used normally immediately after the event

Risk categories III and IV invoke additional structural and detailing requirements that increase the cost of the building, approximately 10-20% more than a similar Risk Category II structure. The PFAC explored the idea of grouping and separating the program areas into discrete Risk Categories as a cost control measure, with City administration in a separate facility designed to Risk Category II standards and the other program elements in their own Risk Category IV structure.

SPECIAL SPATIAL RELATIONSHIPS & SECURITY

It is premature at this stage to plan the specific relationships of all spaces within the program, but certain spaces have special requirements that are described in the “notes” column in the Program Document, such as “active files should be accessible to the general office space.” This information will be useful in later stages of design.

Staff needs for security and access will be important to a properly functioning community center, and those have been grouped into a hierarchy of security levels, with subsequent users having access to levels before them.

Level	Access	Example
A: All Hours	open and available anytime	public restrooms, public park
B: Public	public areas during business hours or by special arrangement for authorized community members	public counter, meeting spaces
C: General Staff	all general staff areas	administrative offices, staff restrooms, break room
D: Confidential	confidential areas accessible only to specific staff members	finance office, secure archives, court records
E: City Manager	everything	all building spaces (see police note below)

Police functions fall outside the scope of this hierarchy, and will be accommodated separately based on police department needs.

LONG LIFE, LOOSE FIT

This sustainable design philosophy encourages a center that is built from durable materials and properly detailed for a longer useful life. Such a building is cost effective to maintain, and its extended lifetime means less carbon emissions and lower average cost per year.

“Loose fit” means that spaces are designed to be flexible, so that they can serve different uses over time without requiring extensive remodel. For example, the enclosed administration offices are sized such that they can accommodate a variety of users, such as HR, accounting, or plans review.

OTHER PROGRAMMING CONSTRAINTS

There are other external factors that influence the spaces contained within the Program Document. They include:

- **Statutory requirements:** Building codes impose restrictions and requirements on the design. These include the presence of foyers, mandatory restroom-to-floor-space ratios, accessibility elements, minimum allowable room areas and corridor widths, and so forth.
- **Land use regulations:** Zoning ordinance regulates the amount of parking required, as well as building height, property line setbacks, and other dimensional constraints.
- **Industry standards:** Standard practice and usage provides precedent for the functional amount of space required for many uses. For example, typical offices for upper administration vary from 200-240sf and lower level level managers between 100-150sf, depending on the culture and budget of the organization.
- **Architectural best practice:** Some constraints are borne from decades of practical use; for example, in preliminary design phases it is assumed that 15% of the overall building area will be unassigned, to accommodate the wall thicknesses, mechanical spaces, and other infrastructure that will be further resolved later in the design process.



ADDITIONAL IDEAS AND INPUT

Many ideas were put forth by committee members as well as general public that may not fit within the space allotments of the Program Document, but are nonetheless worth carrying forward into future design phases for additional consideration. They include:

- **Photovoltaics:** Solar panels could be used to generate electricity and improve the carbon footprint of the facility while reducing energy costs. If coupled with an energy storage system, they could provide backup power during a natural disaster or other electrical outage.
- **Solar water heating:** Such a system could provide or supplement domestic hot water and/or space heating, especially during the shoulder season, to reduce carbon footprint and utility bills.
- **Wood cooking & heating:** The committee thought it worth exploring the possibility of using

wood as a backup system for cooking and heating in the case of emergency, increasing community resilience during natural disasters.

- **Bicycle parking/ shelter:** Encouraging bicycle travel is environmentally responsible, and will reduce automobile traffic and parking in Manzanita.
- **Public plaza / greenspace:** Parks and green spaces have a positive aesthetic appeal, encourage community interaction, provide wildlife habitat, and can serve as gathering and sheltering space after a natural disaster. The need for a city park in this area has been on the city facilities list for some time, and reserving space for future city needs is also a valuable priority.
- **Shooting range:** The police department identified the potential for a shooting range as a future need. Due to cost and sound concerns, this was not integrated into the current program but is worth mentioning as a consideration.
- **Workforce housing:** The county has identified a shortage of available housing as a high-priority item, and the PFAC discussed the issue as it related to the development of City property. It was decided that the issue was beyond the scope of the current task, but that space should be left available for this in the future if possible.
- **Salvaged timbers from the Francis Leggett:** The tornado that struck Manzanita in 2016 damaged several properties, including a house that was subsequently demolished. Historical records show that this house was built from timbers salvaged from the 1914 wreck of the Francis Leggett, the worst maritime disaster in Oregon's history. These timbers are currently for sale and the committee discussed purchasing them to be resawn and used as paneling and trim inside the new community center, making a cultural connection to Manzanita's past.



FINAL PROGRAM DOCUMENT

The final Program Document for the City of Manzanita is attached as an Appendix A to this report.

III. Design Options

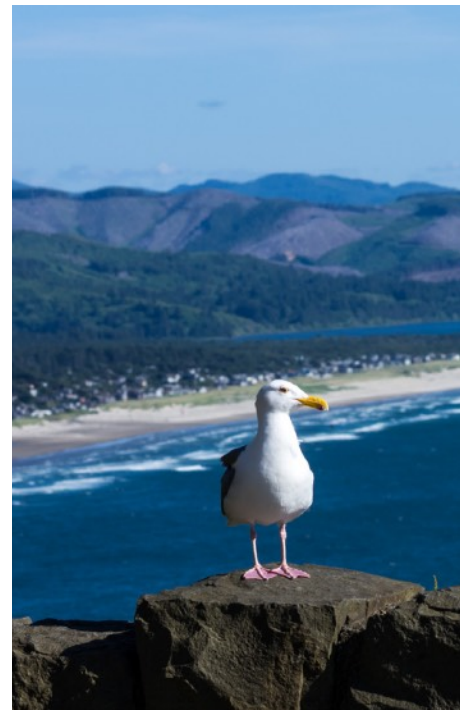


After assessing the projected needs of the City and functional requirements of the various stakeholders (police, emergency services, administration, and so forth), the Public Facilities Advisory Committee worked to refine different concepts for development of the City's properties, identifying the relative merits and costs associated with the design options and the various components contained within them. These are presented in the **Design Options** matrix that appears in Appendix C.

PROGRAM USE GROUPS

The various program elements fall into several use categories that helped the PFAC to visualize big-picture organization and priorities for funding. They are:

- **City Administration:** Office spaces, meeting rooms, and related services and support spaces needed for effective City governance.
- **Police:** Duty rooms and offices, as well as task-specific spaces such as evidence storage and law enforcement computer systems.
- **Emergency Hub:** Command and control space for disaster management and response, as well as storage for immediate-use disaster related supplies. Needs for additional space for long-term food and water supplies, first aid, and shelter have been identified, but will likely be out of the scope of this project and could be funded by other grant sources.
- **Community Use:** Spaces that serve the social and economic/ business development needs of the community. These could include a community meeting hall and related commercial kitchen, visitor services and public restrooms, and possibly leasable space for community-building businesses such as a coffeehouse.



MULTI-USE SPACES

The PFAC focused on identifying spaces that could accommodate multiple uses. Such spaces are economical in terms of both square footage and cost, and several spaces were identified that can serve more than one use. Some spaces can be shared between multiple user groups; for example, both the City administration and police department can share the break room. Other spaces serve different duties depending on how they are configured, such as a council dais that serves as a small meeting space during the day but has a movable wall that can be opened up to a large room for public meetings or municipal court. Many of the spaces needed for the emergency hub serve as City administration spaces during the day, but after hours or during an emergency can be converted to their emergency management configuration.

AVAILABLE SITE AREA

The Underhill Plaza site is approximately 2.7 acres. The various program options analyzed will all fit on the site. However, there is a concern that extra space should be retained if possible to allow for outdoor disaster encampment, greenspace, and possible future uses or an expansion of city facilities as the city grows. Though beyond the scope of this study, it is worth noting that a two-story building would increase usable site area by reducing building footprint and this option should be considered during future design development.



EXISTING STRUCTURES

There are two existing structures on the Underhill Plaza site: a grade school, and a Quonset hut. WRK Engineers investigated the existing buildings and produced their Structural Evaluation & Condition Assessment dated October 22, 2018. This report indicates that each of the structures can be saved, but will require significant work before they can safely and legally be occupied. This work would include structural repairs including reinforcement of the lateral load resisting system and repair of deteriorated foundations, as well as replacement of the antiquated and largely nonfunctional mechanical, electrical, and plumbing systems. Rough order-of-magnitude cost estimates for this work are provided in the WRK report. Asbestos is present in both structures and will need to be abated regardless of whether the buildings are demolished or renovated.

Retaining the existing structures has the cultural benefit of preserving an interesting piece of Manzanita history: the school was built in 1948 in the mid-century Modernist style and was designed by Ebba L Wicks, one of Oregon's first female architects. The Quonset hut has a distinctive form that has been a visual icon in the community for decades and is reminiscent of the remarkable WW2-era blimp hanger in Tillamook. In addition, LEED certification gives credit for the environmental stewardship aspect of reusing an existing structure.

Removing the existing structures has the advantage of allowing a clean, unobstructed design to progress in a way that can fully meet the needs of the city- both in terms of the building

layout, as well the site.

A deciding factor will be the balance between cost and needs. At one end of the spectrum, it would be possible to renovate the existing facilities with the minimum amount of work necessary to occupy the premises, providing the lowest first cost to the city but providing a facility that is not optimally configured to provide the efficiency, comfort, and economy of operation that is expected of a new municipal facility. At the other end, demolishing the existing buildings and building a new structure would fit the program perfectly but require a larger initial financial outlay. If concepts that retain the existing structures are pursued into the design development stage, the architect will need to further consider the relationship between the needed and existing spaces.

It is challenging to accurately predict costs involving remodel work at this stage of a project. The various options presented in the Design Options include viable scenarios that retain the existing structures, demolish them, or relocate the Quonset hut for a secondary use.

DESIGN OPTIONS MATRIX

Appendix C contains the Design Options matrix, which contains the combinations of program and funding sources generated by the PFAC. Please refer to the Section IV, Financial Feasibility, for additional discussion of the financial figures used.

IV. Financial Feasibility



Cost is a reality that determines the feasibility of all projects. Brittell Architects Inc has provided preliminary cost estimating data to the PFAC, as well as suggesting appropriate ways to increase program efficiency to reduce overall cost. The committee also worked separately to identify revenue sources and plan funding scenarios.

ESTIMATED BUILDING COSTS

Cost data provided in the Design Options matrix is for preliminary planning use only. Many variables affect accurate construction cost projections, including:

- **Geographic market differences:** Coastal projects are affected by fewer qualified contractors, greater distance to distributors, and longer travel times.
- **Economic trends:** The last 5 years has seen a steady increase in construction starts, causing a “sellers market” that allows contractors to pick and choose projects and demand a premium for their services.
- **Preliminary nature of the design:** Until the design is more fully resolved, there is not enough information to make precise cost projections, so cost data at this stage will be presented as a range of numbers.

The preliminary cost data used by the committee is provided by our team of construction cost estimators, and is based on the estimator’s experience and data from other “city hall” projects of similar size built in Oregon in the last five years. These projects ranged from \$435 - \$595 per square foot and include:

- Site work such as sidewalks, parking lot, landscaping, and basic utility connections.
- Risk Category IV construction
- Lower tier certification with a sustainability accreditation program such as LEED.

Additional cost data provided in the structural evaluation by WRK Engineers has been used where noted. Budget numbers provided as part of this report are for planning purposes only, and no guarantee is made regarding final construction costs.

OTHER COSTS

The budgetary dollars-per-square-foot costs used in the development concept options include general construction requirements, contractor overhead & profit, design professionals, and generic site development. However, in addition to these costs of the building itself, there are other costs that should be anticipated when budgeting for a new community center.

- Soft costs such as legal counsel, the city’s internal project administration, debt service, insurance, permits & fees are not included.
- Asbestos removal costs were provided by the City of Manzanita.
- Furniture and equipment costs are based on generic industry sources.
- Where the existing Underhill Plaza structures are to be demolished or renovated, cost data was provided by WRK Engineers.
- At this early stage of planning, we recommend a contingency of 20%.

A DISCUSSION ON COSTS AND VALUE

Cost is ultimately determined by two factors: scope and quality. This needs assessment has worked to determine a project **scope** that meets the needs of the City. It is worth noting that the City can exert significant cost control over the project in future design phases by varying the **quality** of the building through thoughtful selection of materials and finishes. A community center with finishes and construction systems similar to those of Nehalem will cost less per square foot than one similar to that of Rockaway, with subsequent tradeoffs in terms of long term maintenance costs.

A quality, institutional center constructed with durable fixtures, materials, and finishes will cost more initially than a similar building of residential or commercial grade construction. However, if carefully designed and specified, such a center will cost significantly less to operate and maintain, yielding a lower cost over the span of its lifetime and providing greater **value** to the taxpayers. This sense of value can mean more than dollars and cents as well: a new community center represents the participatory relationship that citizens have with their government, brings the community together for the common good, and is a source of civic pride. This community center will be the face Manzanita wants to present to the world.

When the project moves into future phases, it will be possible to focus on a price more precisely as the design evolves. We recommend that a cost estimating consultant be retained to perform intermediate cost evaluations at the end of design development and during the construction documents phase, to keep the project budget on track.



FUNDING SOURCES

The PFAC discussed several options to raise funds for the project. Sources that were deemed viable by the committee are shown in the various Design Options (Appendix C) and include:

- **Sale of existing city hall:** the existing city hall property is a prime commercial location on Laneda Ave. If this property is sold as part of the project, then temporary relocation of City employees or a deferment of occupancy by the new owners must be considered.
- **Sale of timber:** the City owns marketable timber on nearby parcels and has already made preliminary preparations to sell a portion of it to raise funds.
- **City expansion fund:** the City has already saved some funds in anticipation of this project.
- **Bond measure:** funds required for the project beyond those raised through other means will come from a bond measure to be voted on by the citizens.
- **Commercial loan:** depending on the option selected, a commercial loan may be sufficient. This would save the city the administrative costs related to the bond measure process.

V. Project Structuring & Timetable



The timetable to completion of a new community center may depend on how revenue is generated.

SCHEDULE WITH BOND MEASURE

March 2019.....select architect for schematic design phase
March 2019..... timber sale (if selected)
April 2019.....schematic design completed
May 2019.....town hall meeting
November 2019bond measure
December 2019select architect for remaining work
July 2020construction documents ready
August 2020.....out to bid
September 2020bid reviewed
October 2020contract awarded/ start of construction
Fall 2021dedication ceremony
Winter 2021sale of existing city hall property

SCHEDULE WITHOUT BOND MEASURE

March 2019 increase savings rate for City Expansion fund
January 2020.....announce presale of lots on Division street
April 2021select architect for remaining work
September 2021construction documents ready
October 2021out to bid
December 2021bid reviewed
December 2021finalize negotiations with lender
January 2022contract awarded/ start of construction
Spring 2023.....dedication ceremony

A. Program Document



Manzanita Community Center

02/08/19

Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
<u>City Administration</u>						
80	150	165	182	B	Public counter	Space for 2+1 semiprivate. Room to lay out drawings. Security arrangement.
0	400	400	400	B	public restrooms	Sized to accommodate public meetings. Includes "family restroom"
0	100	100	100	C	receptionist	shared by all
450	600	660	726	C	general admin office	open plan @150sf/ person. Acoustical control.
0	140	140	140	C	workspace	copier, shredder, counter for assembling mailers, cabinets for office supplies. Adjacent to small meeting room and general admin
40	100	100	100	C	files: on-hand confidential	Active files in locked cabinets (STR, water, court) accessible to general office space
15	50	50	50	C	files: public records w/ general staff access	property files, planning commission and city council minutes
200	240	240	240	E	city manager	Enclosed/ secure. Includes about 8 lineal feet of locking files such as HR, IGAs, MOAs, contracts. 4Lf of files such as operations manuals and historical docs
260	720	720	720	D	enclosed offices	enclosed/ secure, (4) at 180 sf per office.
0	250	250	250	C	meeting space, small	10 person. Admin meetings, interviews, etc (doubles as MOC). HR/personal meetings will happen in enclosed offices.
600	600	600	600	C	council chambers/ court dais	dias only, adjacent and openable to multi-use meeting space for large meetings. Webcast integrated. Includes 50 viewers
48	120	120	120	C	break room	4-6 people, coffee bar and fridge, hot water. Shared w/ police.
60	100	100	100	C	staff restrooms	secure for employees, separated by sex, 50sf ea.
120	150	165	182	C	archives	court records, property/ building permits, permanent archives. Confidential archives (payroll) kept in locked cabinets within same space
864	0	0	0	C	general storage	Lost-and-found, recycling, ready-to-shred, flags, holiday lights, bunny head. Interior and exterior access. Unconditioned?
0	80	80	80	C	IT room	discrete cooling system
2,737	3,800	3,890	3,990 sf	Subtotals		

10.0% demographic growth factored (blue)

A. Program Document



Manzanita Community Center

02/08/19

Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
<u>Police</u>					** police areas are secure from rest of building	
0	50	50	50		foyer	visual access from city receptionist. To prevent visitors from drifting into the officer's confidential materials in the duty room.
384	450	750	825		duty room	w/ small foyer space, bullpen style @150sf/ officer. Includes cupboards for ticket books & evidence bags
192	150	150	150		police chief	Enclosed, includes room for a small meeting table
0	150	150	150		interview room	Secure, with video & surveillance. Doubles as small meeting space
540	300	300	300		training room/ incident command	adjacent to MOC
0	80	80	80		armory	for officer's firearms and equipment
0	80	80	80		evidence processing	next to evidence room, w/ passthrough. Includes a fridge and gun safe.
150	150	150	150		evidence room	secure
0	50	50	50		IT room (L.E.D.S., etc)	separate from rest of City
120	120	120	120		police records	
1,360	350	350	350		secure garage	Occasional secure storage of evidence vehicles. Could be shared w/ city the rest of the time. Also for incidental maintenance.
60	120	120	120		restrooms, sex separated	w/ lockers on one wall
0	50	50	50		decontamination shower	immediately adjacent to restrooms
0	0	0	0		separate rear entrance	

2,806	2,100	2,400	2,475 sf	Subtotals
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Emergency Hub

overlaps Small Meeting Space				B	MOC (Manz. Ops. Center)	collapsible wall tables w/ wall radios, 12 people. Monitors and whiteboards. Glass walls to public area?
0	80	80	80	B	public radio interface room	Adjacent to MOC, with closing cabinet to contain permanent radio equipment.
0	0	0	0	A	white board & pinup space	located in public lobby
0	0	0	0	B	potable water access	conduit from 101 water treatment plant
overlaps Catering Kitchen				B	food prep	with provision for wood cooking
overlaps Meeting Hall				B	indoor shelter space	for inprocessing, medical, vulnerable populations
0	30	30	30	B	storage, staff disaster supplies	cots, blankets, food for staff & volunteers.
0	150	150	150	B	storage, community disaster supplies, first hours	accessible from outside. Includes flashlights, bullhorns, first aid, folding tables, space blankets, rations, water

0	260	260	260	Subtotals
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A. Program Document



Manzanita Community Center

02/08/19

Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
<u>Community Use</u>						
0	400	400	400	A	24-hour public restrooms	including "family restroom"
0	50	50	50	A	visitor arrival/ welcome / info hub	electronic interface for phase 1?
0	2,275	2,503	2,754	B	meeting hall	for community meetings, court, city council, and audits. 325 occupants max, 160 comfortably. Movable partition walls.
0	700	700	700	B	catering kitchen	could overlap with emergency uses. Shell w/ rough in space & MEP, add equipment later phase. 5s/ seat or 25% served, 1000sf avg
0	0	0	?	A	coffee shop / community cafe tenant	
0	0	0	?	A	post office integration	
0	3,425	3,653	3,904 sf	Subtotals		

A. Program Document

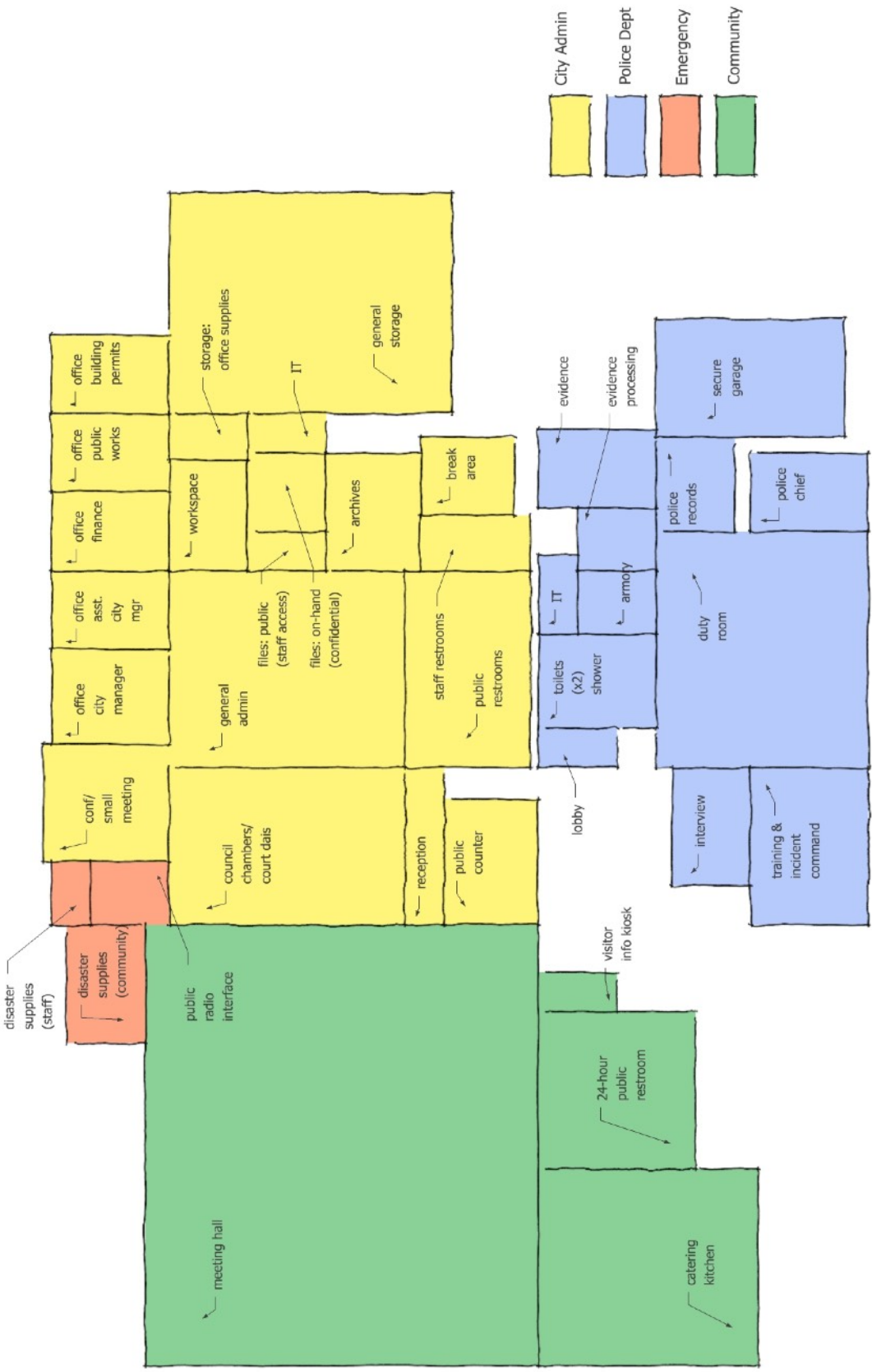


Manzanita Community Center

02/08/19

Current Space	Immediate Needs	Future Needs	Long Range or Bonus	Security	Space	Notes
<u>Site Needs</u>						
	11,023	11,733	12,223		building footprints (from above)	
	1,850	2,035	2,239		supply storage for disaster relief encampment	Separate outbuilding? Containers? Reuse 4000sf Quonset hut?
	300	300	300		standby generator & fuel storage	Or batteries for PV system?
	9,645	10,267	10,695		parking, offices @1 per 400sf	
	6,280	7,254	8,583		parking, assembly @1 per 50sf	including EV infrastructure. Modular parking surfaces to allow phaseout in 20-30 years. Allow 350 sf/ space including circulation.
	992	1,056	1,100		<i>bike shelter</i>	(LEED points), 36sf/bike. @1/400sf
	1,200	1,200	1,200		public pavilion	Overlap with emergency uses. Funded under separate project
	16,075	14,479	12,722		emergency camping area (400 persons, size "M" event)	40Sf/ person +40sf/ person circulation. =32,000sf. <u>Partial overlap w/ parking or public park (subtract that area)</u>
overlap Large Meeting Space					emergency services admin	includes medical and registration areas.
overlap Emergency Camping					emergency gathering space	EVC recommends 20,000sf for initial gathering.
to be determined					emergency waste handling	Emergency manhole toilet space
overlap Public Pavilion					emergency handwashing area	
					greenspace/ plaza/ community park	
					water feature / detention pond	doubles as emergency water source
					land inventory	reserve for future expansion. Can overlap with greenspace, workforce housing
0 47,365 48,324 49,062					Outdoor Totals	(116,300 sf total available in 2.67 acres)

B. Relative Spatial Needs Diagram



this sketch is to show relative size of spaces, and is not indicative of arrangement or proximities





Appendix C: Design Options

PUBLIC FACILITIES ADVISORY COMMITTEE

DESIGN OPTIONS

For discussion, following are a range of 10 options and associated cost estimates for construction of new facilities at Underhill Plaza. The options are:

1. New City Hall and police department, based on a 35% increase in floor space from existing city hall (5,000 sq ft)
2. As (1), based on desirable space for existing functions (6,785 sq ft)
3. As (1), based on 20 year requirements (7,435 sq ft)
4. As (3), plus floor space for emergency hub functions (7,734 sq ft)
5. As (3), plus renovate and relocate quonset building for emergency storage and emergency hub functions (9,885 sq ft)
6. As (4), plus quonset renovated and relocated for community meeting hall (10,184 sq ft)
7. As (4) plus new meeting hall (TBD Sq ft)
8. As (4) plus new meeting hall (TBD Sq ft). Relocate and renovate the quonset building for storage & emergency hub.
9. Renovate existing school building for city administration and police. Relocate and renovate the quonset building for storage and emergency hub. Uses structural engineer's estimate for renovations.
10. Renovate existing school building and add 1,830 sf floor space. Includes 750 sf community space. Renovate (but not relocate) quonset hut. Reduced estimates for mechanical, electrical and plumbing renovations. Two additional options, "Do Nothing" and "Low Cost Modular Construction" were discussed at a workshop with the City Council and discarded, and are not therefore presented here.

Cost estimates contain a 20% contingency.

High range cost per sq ft includes but is not limited to upgraded finishes w/brick, cedar, or stone exterior, tile floors, and durable fixtures & equipment

Low range cost per sq ft includes but is not limited to code minimum for safety and comfort, cement siding, drywall, vinyl flooring, and budget fixtures & equipment

FUNDING OPTIONS

All options contain four funding sources: Sale of existing city hall, sale of timber, city expansion fund and a bond. Proceeds from the sales are estimates, with the same estimates for all options.

Proceeds from the bond is the amount needed for each specific option to approximately cover the option's cost.

Proceeds from the bond is net of transaction costs, which would need to be added for final calculation.

Two additional potential funding sources are identified, but not included in the calculation:

a) When permitted under the terms of the Underhill Property loan in 2022, five 50' x 100' residential lots could be developed. Estimated gross sale revenue is \$100,000 for each lot. Lots would need road, sewer and water to the properties. Estimated net sale is 75% ie \$75,000 each. \$375,000 total.

Alternative: 3 lots along Division or Manzanita Ave. (with street access) @ \$100,000 each by 2022

Alternative: 5 lots pre-sold at \$75,000 each.

b) The old fire and police station could be sold, for an estimated \$650,000. However, this is prime real estate in the center of the city, and could be developed in the future for public use. Once sold, it would not be replaceable.

The fire station and ambulance quarters could potentially be leased and provide significant long term income.

If these additional sources are adopted, the required amount of the bond could be reduced by approx. \$1 million.

For options 9 & 10, renovation of quonset hut could be deferred to later phase, reducing initial funding requirement by \$300,000. Renovation to be done after sale of lots per 2(a)

The high/low ranges for funding sources, except for the net bond income, were not considered by the committee.

1. Existing Needs

SQUARE FOOTAGE

Total sq ft	5,000
City admin (2,600 sq ft plus 15% unassigned) ¹	3,000
Police (1,700 sq ft plus 15% unassigned) ¹	2,000

COSTS

	Low Range @ \$435/sf	High Range @ \$595/sf
City Admin (3,000 sq ft)	\$1,305,000	\$1,785,000
Police (2,000 sq ft)	\$870,000	\$1,190,000
Total	\$2,175,000	\$2,975,000
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$200,000	\$310,000
Furniture (\$15/sf)	\$75,000	\$75,000
Total	\$363,000	\$473,000
20% Contingency	\$507,600	\$689,600
TOTAL PROJECT COST	\$3,045,600	\$4,137,600

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000

Possible funds

Bond (net of transaction costs)	\$2,000,000	\$3,100,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$2,520,000	\$3,620,000

TOTAL FUNDS	\$3,040,000	\$4,140,000
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EXCESS/(DEFICIT)	-\$5,600	\$2,400
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Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$180	\$279
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NOTES:

1 This is a 35% increase in sq ft of existing city hall.

2. Immediate Needs

SQUARE FOOTAGE

Total sq ft	6,785
City admin (3,800 sq ft plus 15% unassigned) ¹	4,370
Police (2,100 sq ft plus 15% unassigned) ¹	2,415

COSTS

	Low Range @ \$435/sf	High Range @ \$595/sf
City Admin (4,370 sq ft)	\$1,900,950	\$2,600,150
Police (2,415 sq ft)	\$1,050,525	\$1,436,925
Total	\$2,951,475	\$4,037,075
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$200,000	\$310,000
Furniture (\$15/sf)	\$101,775	\$101,775
Total	\$389,775	\$499,775
20% Contingency	\$668,250	\$907,370
TOTAL PROJECT COST	\$4,009,500	\$5,444,220

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000

Possible funds

Bond (net of transaction costs)	\$3,000,000	\$4,400,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$3,520,000	\$4,920,000

TOTAL FUNDS	\$4,040,000	\$5,440,000
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EXCESS/(DEFICIT)	\$30,500	(\$4,220)
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Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$270	\$396
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NOTES:

1 - Space is for immediate needs

3. Long Range (20 year) Needs

SQUARE FOOTAGE

Total sq ft	7,435
City admin (3,990 sq ft plus 15% unassigned) ¹	4,589
Police (2,475 sq ft plus 15% unassigned) ¹	2,846

COSTS

	Low Range @ \$435/sf	High Range @ \$595/sf
City Admin (4,589 sq ft)	\$1,996,215	\$2,730,455
Police (2,846 sq ft)	\$1,238,010	\$1,693,370
Total	\$3,234,225	\$4,423,825
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$200,000	\$310,100
Furniture (\$15/sf)	\$111,525	\$111,525
Total	\$399,525	\$509,625
20% Contingency	\$726,750	\$986,690
TOTAL PROJECT COST	\$4,360,500	\$5,920,140

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000

Possible funds

Bond (net of transaction costs)	\$3,400,000	\$4,900,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$3,920,000	\$5,420,000

TOTAL FUNDS **\$4,440,000** **\$5,940,000**

EXCESS/(DEFICIT) \$79,500 \$19,860

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$306	\$442
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NOTES:

¹ This is a 100% increase in sq ft of existing city hall.

4. Long Range (20 Year) needs + Emergency Hub

SQUARE FOOTAGE

Total sq ft	7,734
City admin (3,990 sq ft plus 15% unassigned) ¹	4,589
Police (2,475 sq ft plus 15% unassigned) ¹	2,846
Emergency hub (260 sq ft plus 15% unassigned) ¹	299

COSTS

	Low Range @ \$435/sf	High Range @ \$595/sf
City Admin (4,589 sq ft)	\$1,996,215	\$2,730,455
Police (2,846 sq ft)	\$1,238,010	\$1,693,370
Emergency hub (299 sq ft)	\$130,065	\$177,905
Total	\$3,364,290	\$4,601,730
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$200,000	\$310,100
Furniture (\$15/sf)	\$116,010	\$116,010
Total	\$404,010	\$514,110
20% Contingency	\$753,660	\$1,023,168
TOTAL PROJECT COST	\$4,521,960	\$6,139,008

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000

Possible funds

Bond (net of transaction costs)	\$3,500,000	\$5,100,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$4,020,000	\$5,620,000

TOTAL FUNDS **\$4,540,000** **\$6,140,000**

EXCESS/(DEFICIT) \$18,040 \$992

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$315	\$460
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NOTES:

¹ This is a 100% increase in sq ft of existing city hall.

5. Long Range + Quonset for storage

SQUARE FOOTAGE

Total sq ft	9,885
City admin (3,990 sq ft plus 15% unassigned) ¹	4,589
Police (2,475 sq ft plus 15% unassigned) ¹	2,846
Quonset Relocate and Renovate	2,450

COSTS

	Low Range @ \$435/sf	High Range @ \$595/sf
City Admin (4,589 sq ft)	\$1,996,215	\$2,730,455
Police (2,846 sq ft)	\$1,238,010	\$1,693,370
Quonset Relocate and Renovate for storage	\$403,380	\$403,380
Total	\$3,637,605	\$4,827,205
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$200,000	\$215,600
Furniture (not quonset) (\$15/sf)	\$116,010	\$116,010
Total	\$404,010	\$419,610
20% Contingency	\$808,323	\$1,049,363
TOTAL PROJECT COST	\$4,849,938	\$6,296,178

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000

Possible funds

Bond (net of transaction costs)	\$3,800,000	\$5,300,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$4,320,000	\$5,820,000

TOTAL FUNDS **\$4,840,000** **\$6,340,000**

EXCESS/(DEFICIT) **-\$9,938** \$43,822

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$342	\$478
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NOTES:

¹ This is a 100% increase in sq ft of existing city hall.

6. Long Range + Quonset Renovated for Meeting Hall

SQUARE FOOTAGE

Total sq ft	10,184
City admin (3,990 sq ft plus 15% unassigned) ¹	4,589
Police (2,475 sq ft plus 15% unassigned) ¹	2,846
Emergency hub (260 sq ft plus 15% unassigned) ¹	299
Quonset Relocate and Renovate	2,450

COSTS

	Low Range @ \$435/sf	High Range @ \$595/sf
City Admin (4,589 sq ft)	\$1,996,215	\$2,730,455
Police (2,846 sq ft)	\$1,238,010	\$1,693,370
Emergency hub (299 sq ft)	\$130,065	\$177,905
Quonset Relocate and Renovated for Meeting Hall	\$1,394,889	\$1,394,889
Total	\$4,759,179	\$5,996,619
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$200,000	\$215,600
Furniture (\$15/sf)	\$152,760	\$152,760
Total	\$440,760	\$456,360
20% Contingency	\$1,039,988	\$1,290,596
TOTAL PROJECT COST	\$6,239,927	\$7,743,575

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000

Possible funds

Bond (net of transaction costs)	\$5,200,000	\$6,700,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$5,720,000	\$7,220,000

TOTAL FUNDS **\$6,240,000** **\$7,740,000**

EXCESS/(DEFICIT) \$73 (\$3,575)

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$469	\$604
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NOTES:

¹ This is a 100% increase in sq ft of existing city hall.

7. Long Range + New Meeting Hall

SQUARE FOOTAGE

Total sq ft	11,339
City admin (3,990 sq ft plus 15% unassigned) ¹	4,589
Police (2,475 sq ft plus 15% unassigned) ¹	2,846
New Meeting Hall	3,904

COSTS

	Low Range @ \$435/sf	High Range @ \$595/sf
City Admin (4,589 sq ft)	\$1,996,215	\$2,730,455
Police (2,846 sq ft)	\$1,238,010	\$1,693,370
New Meeting Hall	\$1,984,019	\$1,984,019
Total	\$5,218,244	\$6,407,844
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$200,000	\$310,000
Furniture(\$15/sf)	\$159,435	\$159,435
Total	\$447,435	\$557,435
20% Contingency	\$1,133,136	\$1,393,056
TOTAL PROJECT COST	\$6,798,815	\$8,358,335

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000

Possible funds

Bond (net of transaction costs)	\$5,800,000	\$7,300,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$6,320,000	\$7,820,000

TOTAL FUNDS **\$6,840,000** **\$8,340,000**

EXCESS/(DEFICIT) \$41,185 **(\$18,335)**

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$523	\$658
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NOTES:

¹ This is a 100% increase in sq ft of existing city hall.

8. Long Range + New Meeting Hall + Quonset for storage

SQUARE FOOTAGE

Total sq ft	13,789	
City admin (3,990 sq ft plus 15% unassigned) ¹	4,589	
Police (2,475 sq ft plus 15% unassigned) ¹	2,846	
New Meeting Hall	3,904	
Quonset Relocate and Renovate	2,450	
	Low Range @ \$435/sf	High Range @ \$595/sf
COSTS		
City Admin (4,589 sq ft)	\$1,996,215	\$2,730,455
Police (2,846 sq ft)	\$1,238,010	\$1,693,370
New Meeting Hall	\$1,984,019	\$1,984,019
Quonset Relocate and Renovate for storage	\$403,380	\$403,380
Total	\$5,621,624	\$6,811,224
Asbestos abatement	\$88,000	\$88,000
Demo of existing structures	\$215,600	\$215,600
Furniture (not quonset) (\$15/sf)	\$116,010	\$116,010
Total	\$419,610	\$419,610
20% Contingency	\$1,208,247	\$1,446,167
TOTAL PROJECT COST	\$7,249,481	\$8,677,001

FUNDING SOURCES

Current funds

Timber Sale	\$400,000	\$400,000
City Expansion Fund	\$120,000	\$120,000
Total - current funds	\$520,000	\$520,000
Possible funds		
Bond (net of transaction costs)	\$6,200,000	\$7,600,000
Sell existing City Admin property	\$450,000	\$450,000
Total - possible funds	\$6,720,000	\$8,120,000
TOTAL FUNDS	\$7,240,000	\$8,640,000
EXCESS/(DEFICIT)	(\$9,481)	(\$37,001)

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$559	\$685
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NOTES:

1 This is a 100% increase in sq ft of existing city hall.

9. Renovate existing School Building (no extension)

SQUARE FOOTAGE

Total sq.ft. (1)	7,928
City admin	3,400
Police	2,078
quonset hut relocate and renovate	2,450
Emergency hub could be in quonset hut	

COSTS

City Admin and Police w. Costs Shown in Narrative Document	\$1,606,080
Quonset hut relocate and renovate	\$403,380
Total	\$2,009,460

Asbestos abatement	\$88,000
Demo of existing structures	\$0
Furniture included above	
Total	\$88,000

20% Contingency **\$419,492**

TOTAL PROJECT COST \$2,516,952

FUNDING SOURCES

Current funds

Timber Sale	\$400,000
City Expansion Fund	\$120,000
Total - current funds	\$520,000

Possible funds

Bond (net of transaction costs)	\$1,500,000
Sell existing City Admin property	\$450,000
Total - possible funds	\$1,950,000
TOTAL FUNDS	\$2,470,000

EXCESS/(DEFICIT) **(\$46,952)**

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$135
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NOTES:

1. Existing building is 5,478 sf.
2. Uses estimates per wrk engineers
3. Quonset hut remediation could be deferred to later phase.

10. Renovate School Building + quonset for storage.

Additional 1,830 sf of new floor space

SQUARE FOOTAGE

Total sq.ft.	9,758
City admin	4,058
Police	2,500
Community group meeting/conference space	750
Quonset hut renovate	2,450

COSTS

City admin (4058 sf @ \$235/sf)	\$965,804
Police (2,500 sf @ \$238/sf)	\$595,000
Comm. group meeting/conf. Space (750 sf @ \$238/sf)	\$178,500
Quonset hut (remediation only)	\$260,358
Total	\$1,999,662
Asbestos abatement	\$88,000
Demo of existing structures	\$0
Furniture (\$15/sf)	\$109,620
Total	\$197,620

20% Contingency **\$439,456**

TOTAL PROJECT COST \$2,636,738

FUNDING SOURCES

Current funds

Timber Sale	\$400,000
City Expansion Fund	\$120,000
Total - current funds	\$520,000

Possible funds

Bond (net of transaction costs)	\$1,600,000
Sell existing City Admin property	\$450,000

Total - possible funds **\$2,050,000**

TOTAL FUNDS \$2,570,000

EXCESS/(DEFICIT) **(\$66,738)**

Additional Assumptions:

Annual bond cost to tax payer over 15 years, based on property AV of \$500K	\$144
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NOTES:

1. Includes 1,830 sf of extensions for total 7,308 sf for admin and police.
2. Uses reduced estimates for MEP work.
3. Quonset hut remediation could be deferred to later phase.

Additional Assumptions for Option 9

The reuse of the former school building at the Underhill site has been controversial. The costs provided by WRK Engineering for a retrofit was lacking as a complete statement for having the building ready for occupancy. It seems important and worthwhile to look at a comprehensive picture as we navigate toward a set of recommendations to City Council. The costs provided below in summary are intended to be inclusive of all costs for renovating the existing building. Some of the analysis includes numbers provided by WRK while other costs represent industry standards for the named work.

This should be viewed as an attempt to have a fiscal visual of all opportunities available at the Underhill site. The work is not intended to be fully supportive of this concept as a recommendation.

Costs shown are inclusive of all building elements as well as bringing the building to a ready state for occupancy and necessary exterior work including parking and landscaping.

Estimated Costs for 5,478 sq. ft. Renovation:

WRK (incl. structural strengthening, condition remediation, demolition, margins and adjustments, mechanical, electrical & plumbing)	\$1,322,628
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Wall insulation	2,700 sq. ft. @ \$1.20/ sq. ft.	\$3,240
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Ceiling insulation	5,478 sq. ft. @ \$1.30/ sq. ft.	\$7,121
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Doors	8 ea. @ \$800 installed	\$6,400
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Furniture	\$15/ sq. ft. per Brittell Architecture	\$82,170
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Permits, infrastructure, parking, landscaping @ 10% %	<u>\$146,008</u>
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Total costs for building ready occupancy	\$1,606,080
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Total costs per sq.ft. @ 5,478 sq. ft.....	\$293
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Additional Assumptions for Option 10

The most comparable new build option is #5 Long Range plus Quonset Hut for Storage which requires a projected \$4.7 million dollar Bond.

As documented in the wrk study and elaborated on in my memo last month to the Committee, every system, and visible surface finish will be new and any deficient structural component will be repaired. Fits and finishes will be comparable to what the Committee has described as “high range” including such specific items as tile flooring in publically accessible spaces, Anderson rather than lower cost Millgard windows, solid wood doors throughout, cedar shake exterior etc.

I have priced all of the remodel cost/sq ft for the 7,308 sq ft. for the school at the maximum of my estimated range of \$200 to \$238. The 1,830 sq feet of newly added school space will be considerably less than this but I prefer to err on the high side of what this work will cost.

The Quonset Hut renovation for storage will cost \$312,429 including its 20% contingency. This work can be sent out in the bid package as a bid option and delayed if necessary and completed upon the sale of 3 Underhill lots for \$300,000.

The approximately 300 sq ft. emergency hub space identified as being located in City Hall in the various new build options could be relocated to the Quonset Hut. This would allow for the development of 750 sq ft. of small group meeting space for the various community groups currently utilizing rooms at the school and could also double for conference meeting space for City staff or other official City meeting needs.

Removing the cost of the Quonset Hut renovation from the initial project reduces the needed Bond funds to approximately 1.2 Million. At this level of needed financing, obtaining the needed project funding through an extension of the full faith and credit loan from the lender holding the note on the Underhill property is a more straightforward and cost effective way to finance the project. Removing the uncertainty inherent in a Bond election, eliminating the \$75,000 -\$100,000 cost to take a Bond to market and the potential of starting the project within the next three years without needing ANY additional property tax funding should make this option very appealing to the community.

Prepare preliminary partitions of 3 building lots fronting Division Street by 2020 and announce to local builders, realtors and through other social media outlets that the City is taking reservations by interested parties on the sale of said lots which will then be sold on the earliest date allowable by the lender in 2022. This option eliminates any need for the City to finance any infrastructure (road, water and sewer) improvements as they are already present at street level and potentially allows the City to have the funds in hand for project construction.

Questions to be confirmed by City staff:

1. How much additional funding is the Lender willing to provide the City on say December 1, 2021? By this date, 40% of the original loan has been repaid amounting to \$621,000 which could be applied towards the new loan amount.
2. How much money can the City set aside in the City Hall Expansion Fund for this project during the next 3 Budget years?
3. The goal would be to obtain the necessary additional financing while keeping the City's annual loan repayment in the neighborhood of the \$155,000 that it is now paying.

Preliminary Project Schedule Outline:

The City can complete its design work by May 2021 and be prepared to go out for bids in October 2021. Include a bid option of the remodel of Quonset Hut. Complete review of bids by December 2021 and confirm amount of funds needed for school only or school and Quonset Hut. Complete needed loan details with lender by end of December to have construction funds available for start of construction. Award bid in January 2022 with construction start date of summer 2022.



Manzanita *Listens*

SURVEY RESULTS

Dr. Tom Cocklin, Dr. Mary Marken, Jenny Greenleaf

January 6, 2021



RESEARCH OBJECTIVES

- **To assess public needs and desires around a new public services building for Manzanita**
 - **Demographics: to understand who uses and is impacted by public service buildings in Manzanita (local residents, part-time owners, business owners, others)**
 - **Current usage: to understand how users of different services are contacting the city**
 - **Building factors: to understand the importance and ranking of specific factors considered when planning a new public services building**
 - **Funding options: to understand citizen appetite for various funding mechanisms**
 - **Open comments: to discover other issues related to design and construction of the public services building**



MANZANITA LISTENS PROCESS

- **Start broad, go deep, broaden again:**
 - **Conduct survey, analyze results, and present to council**
 - **Use survey results to develop focus group questions to dive deeper into issues brought up by the survey**
 - **Conduct focus groups, analyze results, and present to council**
 - **Use focus group results to inform larger public meetings to collect more input**



SURVEY SCHEDULE

October	Create and present initial research objectives to the Manzanita Listens team.
Early November	Create first draft of survey.
Mid-November	Pilot first draft survey. Pilot survey was approximately 20 people.
Mid-November	Analyzed feedback on first draft and revised survey.
November 19	Deployed revised survey. City provided outreach through city web site, BBQ, social media, and postcards sent to all water customers.
December 18	Survey closed.
December 19- January 5	Survey analysis.
January 6	Report on survey results to city council.
March	Final written report.



SURVEY HIGHLIGHTS

- **Locals interact with services more than part-timers**
- **Most building aspects important, clear signal that cost is most important**
 - **Emergency services ranked second, but other aspects close**
- **Local voters favored a surcharge on short-term rentals, but are open to other financing mechanisms**
- **Open comments suggested other features and uses**
- **Other open comments show divided opinions (anger and support)**



SURVEY RESPONDENTS

- **516 responses received**
- **445 complete responses**
- **Only respondents who did not finish the survey were eliminated**



SURVEY RESPONDENTS

Which of the following statements best describes you? (Select one)

Answered: 445 Skipped: 0

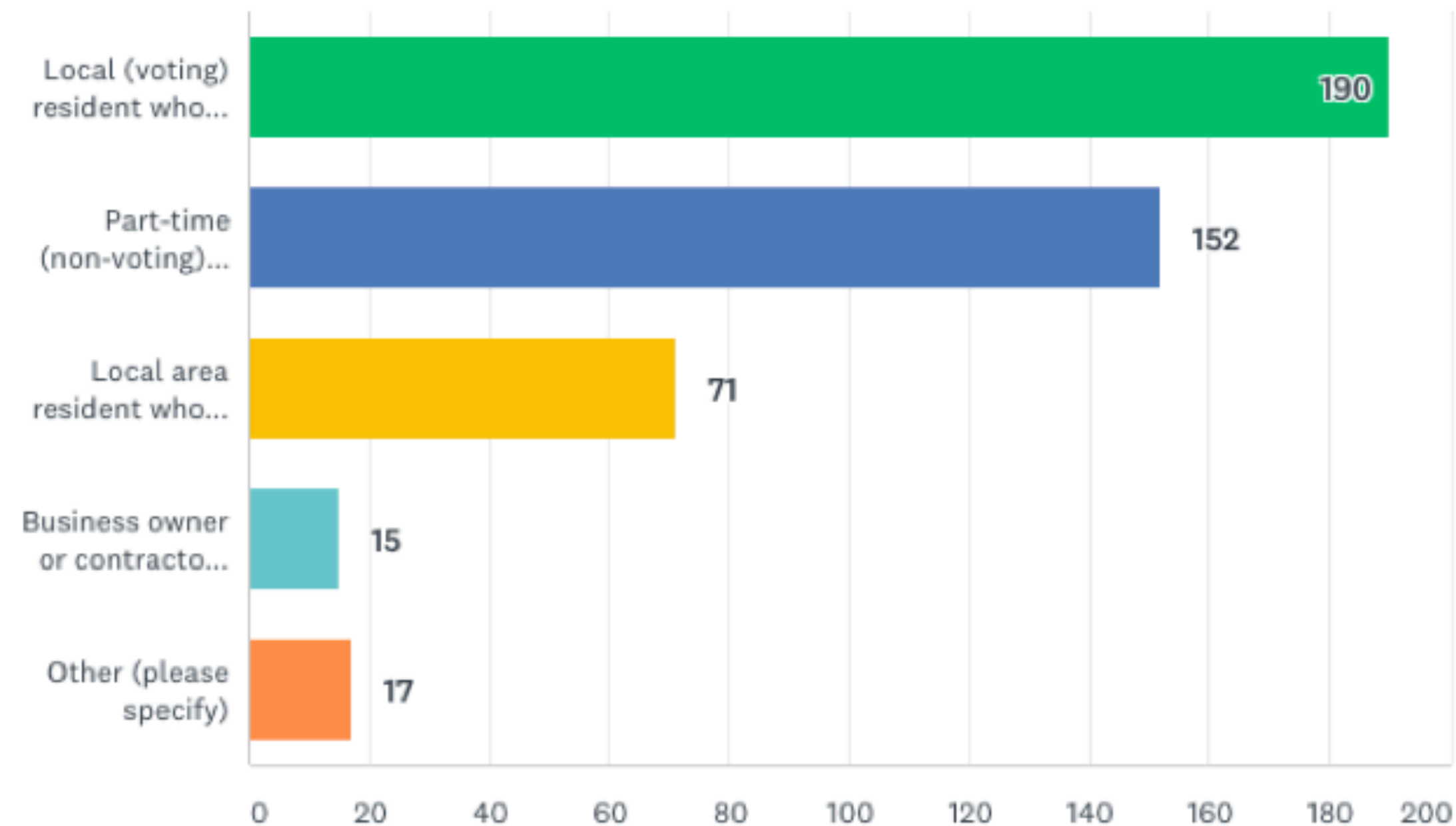
190 Local voting residents

152 Part-time, non-voting

71 Local area resident

15 Manzanita business owner or contractor

17 Other



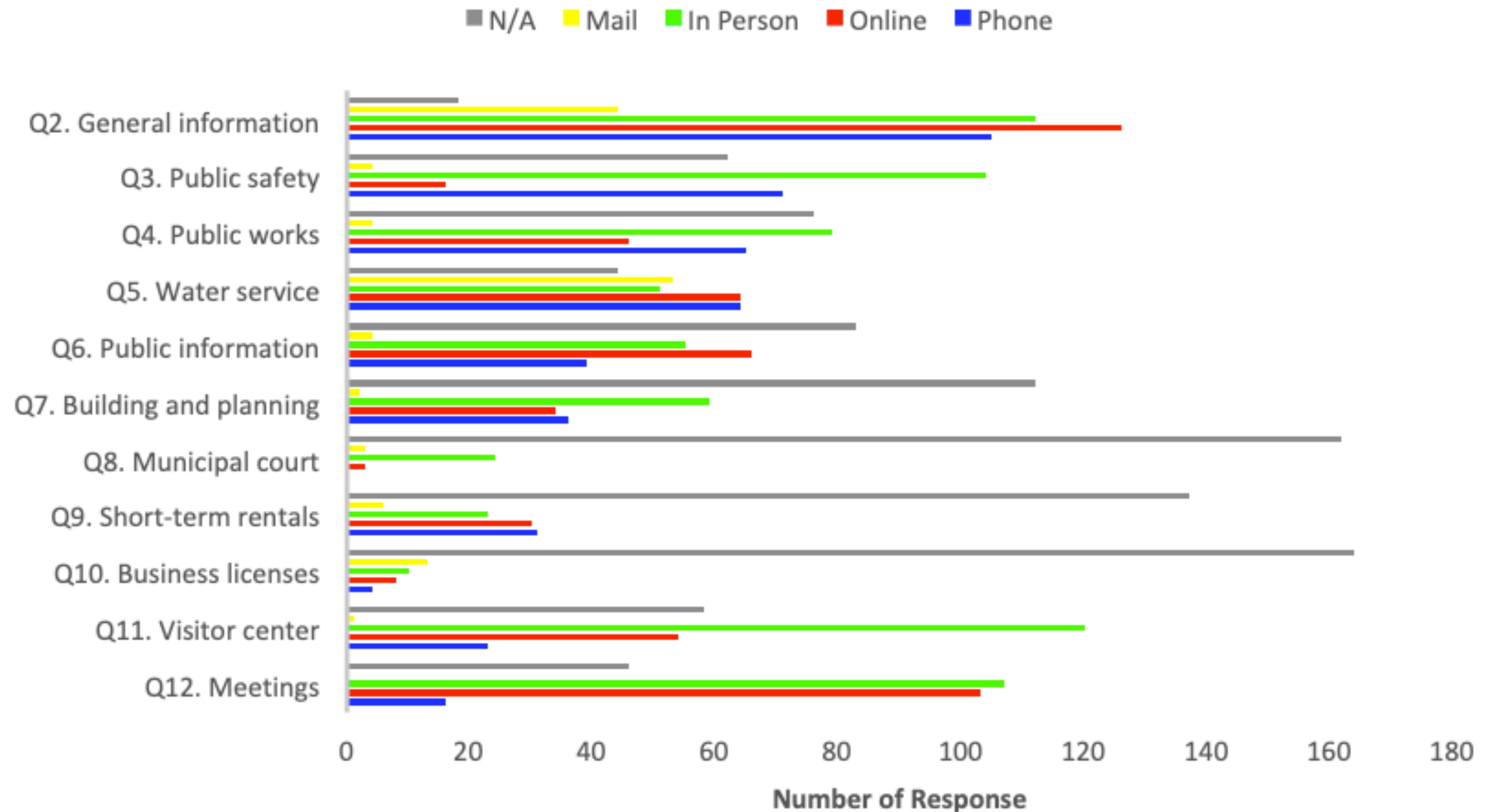


INTERACTION WITH CITY SERVICES

Manzanita residents

Manzanita residents use all forms of communication to interact with city services.

Fewer residents interact with the city about short-term rentals, business licenses, and municipal court.



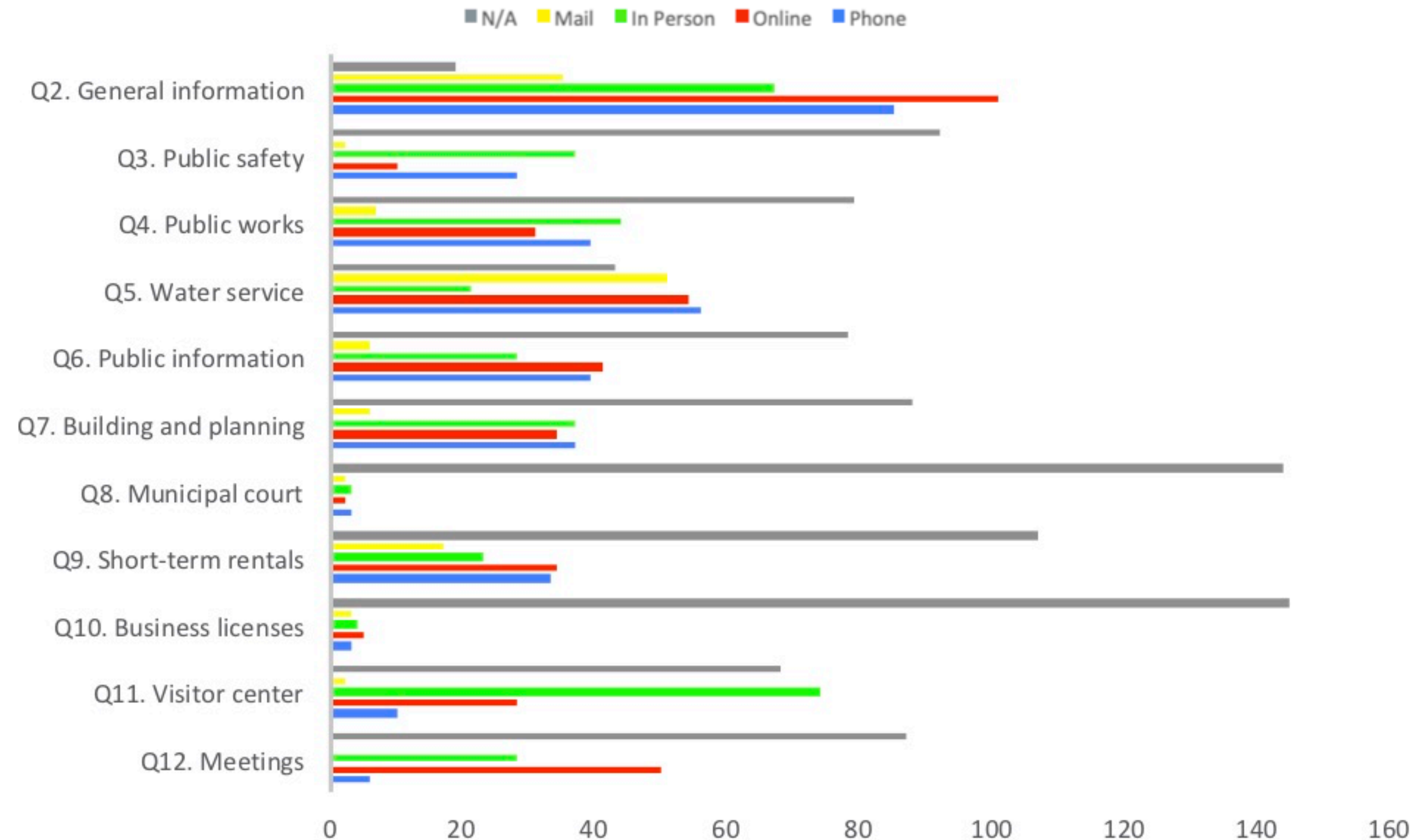


INTERACTION WITH CITY SERVICES

Part-time residents often contact the city for general information, but are less likely to interact with most other city services other than water.

Part-time residents are more likely to visit the Visitor's Center.

Part-time residents

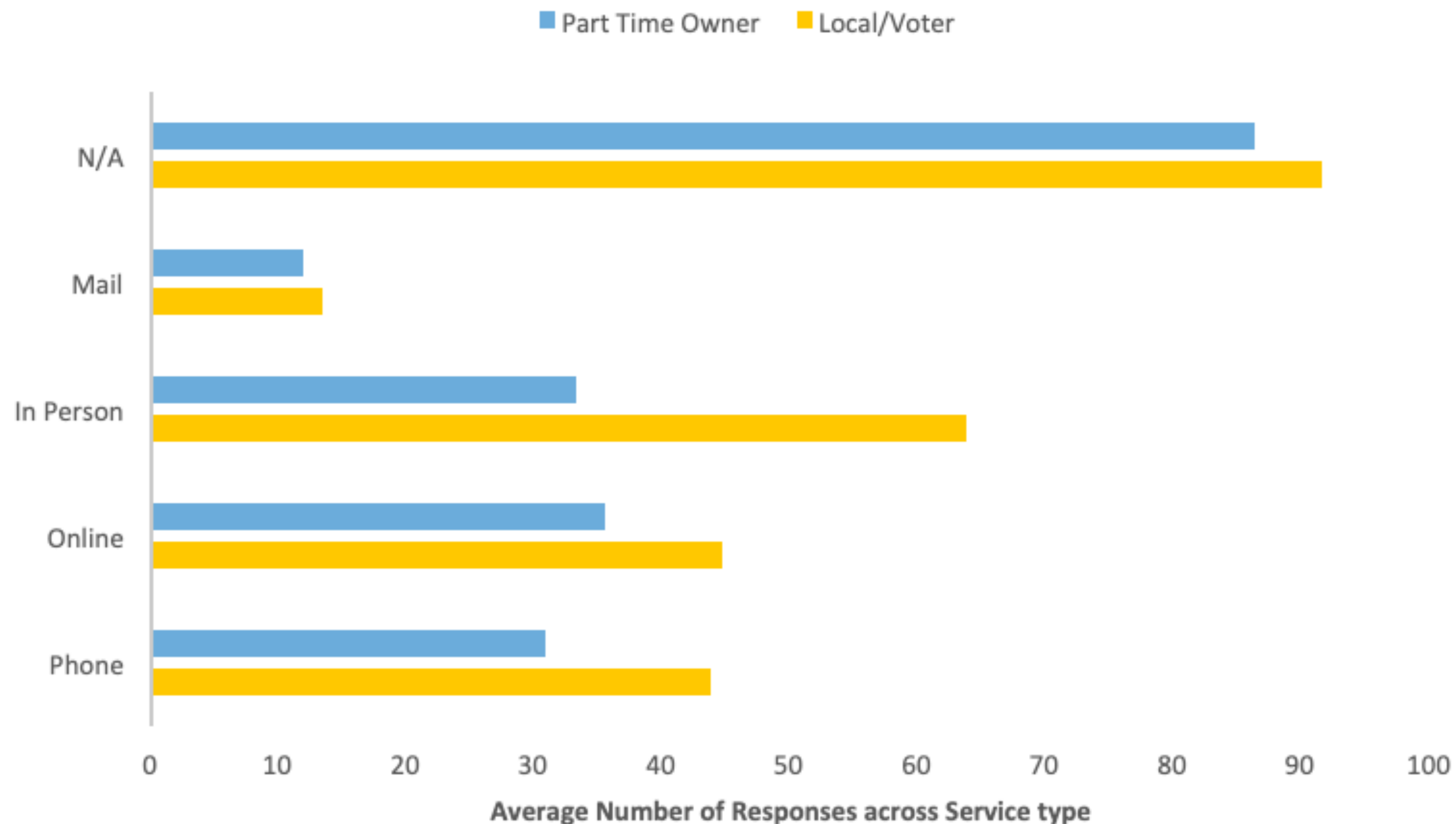




INTERACTION WITH CITY SERVICES

Local vs. part-time residents

Local residents are much more likely to visit city hall to access services.





OPEN COMMENTS

Additional services

- **Large and small meeting rooms**
- **Electric vehicle charging**
- **Disaster preparedness and gathering point**
- **Many suggestions for both inside and outside the building**



OPEN COMMENTS

Additional services suggested

- **Online events/eye toward work at home**
- **Third-party delivery drop site (UPS/FedEx)**
- **Info about indigenous people/historical connection**
- **Tsunami warning alarm**
- **Emergency phone**
- **US Mail drop box**
- **Senior services**
- **Develop a chamber of commerce**
- **Use additional land for affordable housing**
- **Public showers**
- **Services for low-income individuals**
- **Basketball court and outdoor event space**
- **Use parking lot for many things, including overflow**
- **Electric vehicle charging**
- **Farmer's market**
- **Venue for music**
- **Community garden**
- **Arts sharing opportunities**
- **Accessible**
- **Create city revenue stream by renting or leasing space**
- **Respects Pacific Northwest culture**
- **Restrooms**



OPEN COMMENTS

Divisions: areas of disagreement

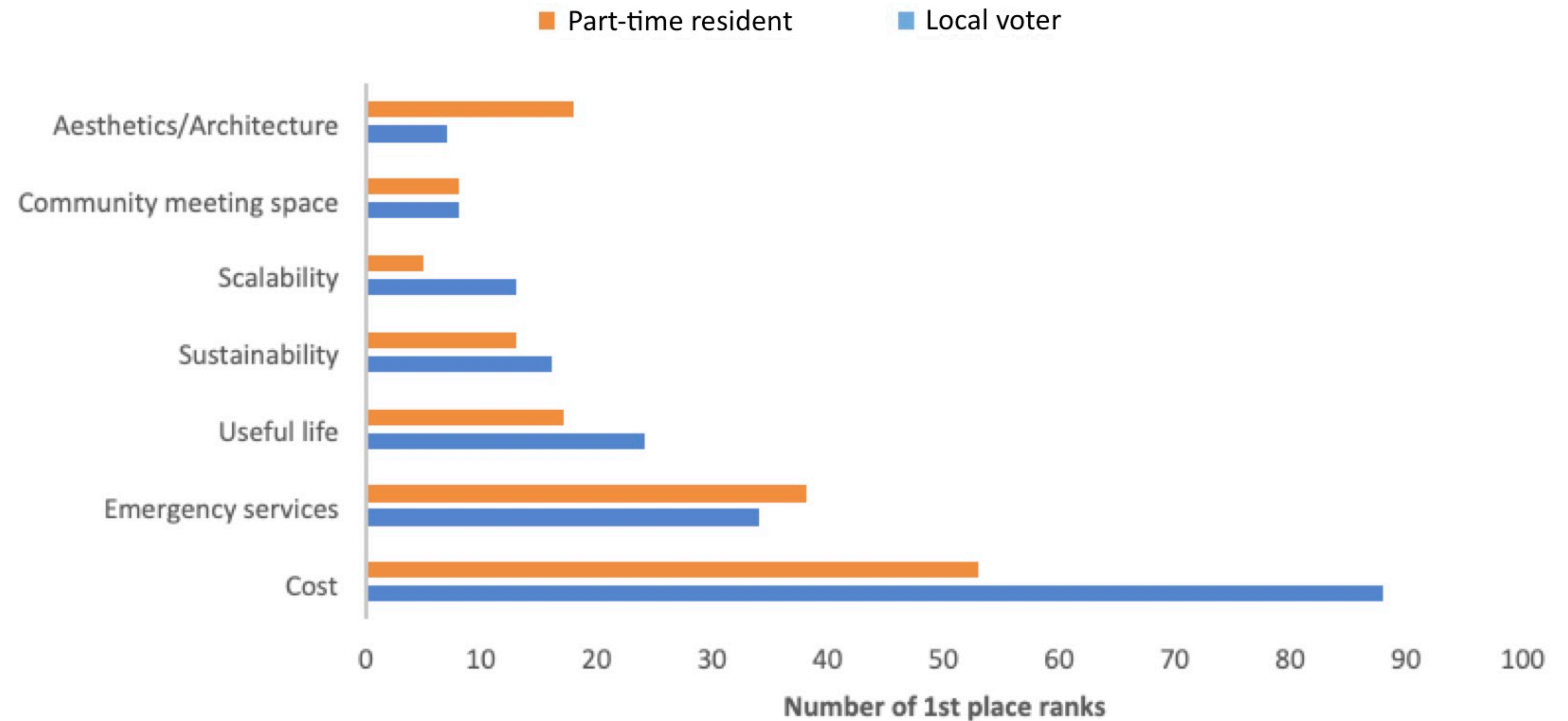
- **Low cost vs. uses and durability**
- **Look (aesthetics) is important vs. look is not important**
- **Emergency preparedness**
 - **Do we try to take care of neighbors and visitors vs. everyone should prepare for themselves**
 - **Preparedness is not important because the fire station is supposed to cover preparedness**
- **Consolidate city departments vs. do not co-locate public safety with city services**
- **Use green/alternative energy sources vs. use conventional energy sources**
- **Remodel the old building at City Plaza vs. do not remodel**
- **Meeting rooms are important vs. meeting rooms are not important**



BUILDING ASPECT RANKING

Local vs. part-time residents

Both local voters and part-time residents rank cost as the most important aspect, followed by emergency services.





OPEN COMMENTS

Building aspects: Ranking

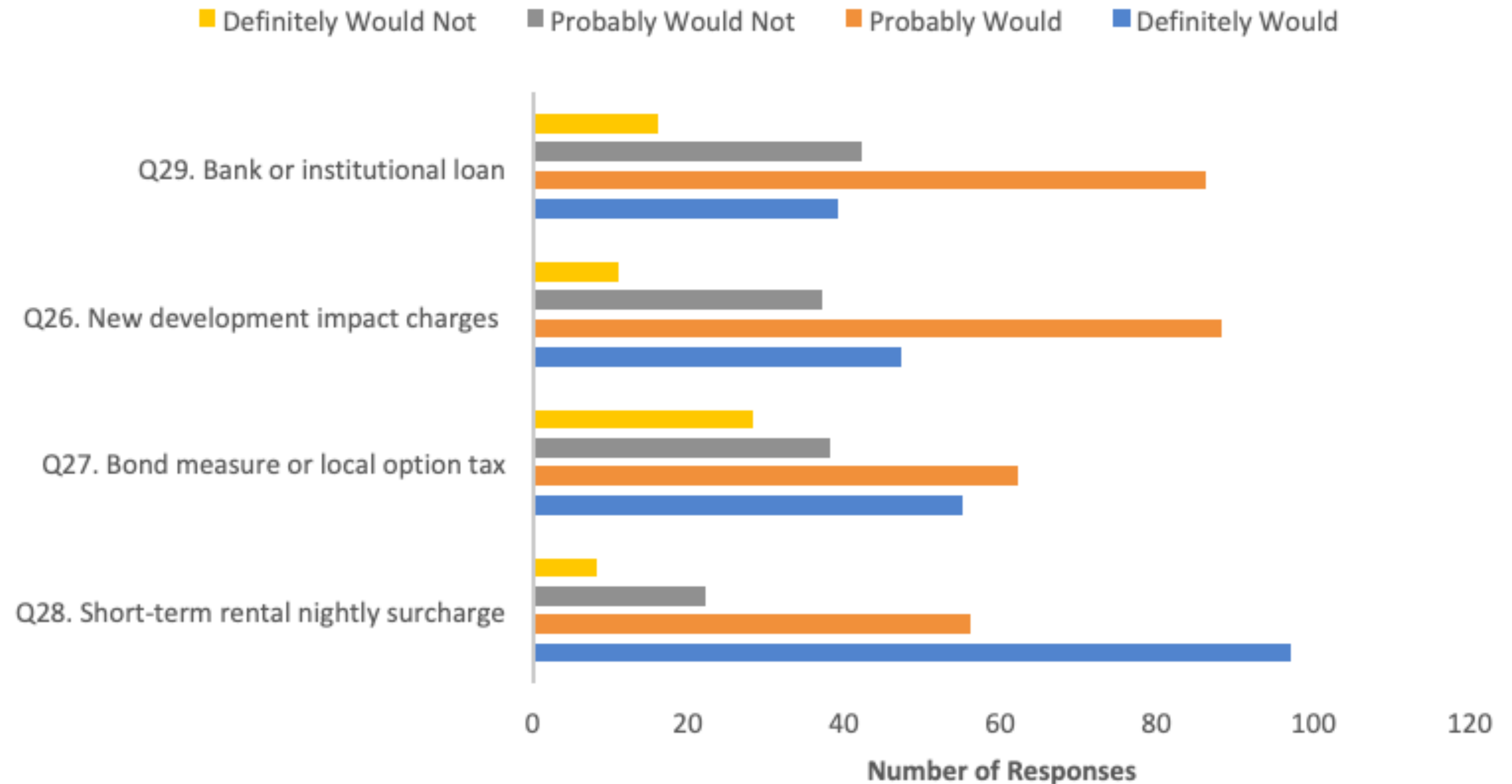
- **Three most important issues: cost, emergency services, and sustainability**
- **Some expressed anger with the Mayor, City Council, and government in general**
- **Responses showed the effects of the Covid pandemic on building plans**



FINANCING METHODS

Local voters only

Local voters are open to several financing options, but favor a surcharge on short-term rentals.





OPEN COMMENTS

General

- **People expressed thanks for the survey**
- **Some people reiterated their desire for a simple, durable, functional, and low-cost building**
- **People offered a range of opinions about funding the building**



OPEN COMMENTS

General

- **Respondents want the building to be safe and comfortable inside for City employees**
- **Participants largely agreed the City Hall would function for preparedness activities**
- **Other responses indicated some of the respondents wanted to hold down costs through scalability**



OPEN COMMENTS

General

- **Some respondents expressed anger with the Mayor and City Council**
- **Some part-time owners said that they felt that their opinions don't matter**

EXHIBIT E

Manzanita Listens Report



MANZANITA LISTENS
CITY HALL PLAZA PROJECT

Manzanita Listens

Public Meeting Report

Prepared by Dr. Margaret
Banyan

April 2021

Project Overview

The City of Manzanita engaged Dr. Margaret Banyan to facilitate the public meeting portion of the engagement effort known as Manzanita Listens. The project deliverables included facilitating meetings, summarizing feedback, and delivering feedback to the Manzanita City Council at the April 7 Workshop and Meeting.

Public Meeting Overview

Advertising and Organization

The public meetings were advertised through a post card that was mailed to all homeowners in the City (see Figure 1 below). An email was sent to individuals signed up on the website, posters were placed in public posting sites and the announcement was prominent on the Manzanita website.

Manzanita Listens public meetings were held over the remote Zoom platform. This allowed for broad participation among residents, property owners, and businesses, regardless of their location.

To manage large numbers of participants in a way that allowed substantive feedback, Dr. Banyan was joined by a team of facilitators. All of the facilitators live outside the Manzanita area and were engaged due to their neutral position on the topic.

A total of five meetings were held, four of which engaged residents and stakeholders in Manzanita. An initial pilot test engaged external stakeholders, defined as those who are not residents of the City, but may have an interest in a new city hall.¹ This report is supplemented with the feedback from the external Manzanita stakeholders separately from the main body of the report (see Appendix C).



Figure 1: Manzanita Listens Postcard Mailing

¹ Capitalization standards: When referring to the formal noun, City of Manzanita, the word “City” is capitalized. When referring to the general term, e.g., new city hall, the term is not capitalized.

Attendee Statistics

A total of 114 Manzanita residents, business owners, and ‘others’ attended the public meetings.²

- March 1 – Pilot utilized External Stakeholders: 15 Participants
- March 11 – Manzanita Residents and Stakeholders 28 participants (27 Residents; 1 Business Owner)
- March 13– Manzanita Residents and Stakeholders; 23 participants (20 Residents; 2 Business Owners; 1 “Other)
- March 16– Manzanita Residents and Stakeholders; 39 Participants (34 Residents; 5 Business Owners)
- March 20– Manzanita Residents and Stakeholders; 24 Participants (22 Residents; 2 Business Owners)

Meeting Organization

Agenda

All of the Manzanita Listens meetings were organized using the following agenda. The agenda below is generalized due to the different start times for each meeting.

- I. Introductions and Information (20 Minutes)
 - Meeting Call to Order
 - Where We Are & What We are Hearing
 - How This Meeting Will Work
- II. Listening (60 minutes)
 - Breakout Rooms (Building Concepts & Financing / Amenity Options)
- III. Where We Go Next (10 Minutes)
 - Facilitator Wrap Up and Next Steps

Break-Out Rooms for Participant Feedback

Following meeting introductions, participants viewed a presentation summarizing the decisions and evolving vision for City Hall (see presentation in Appendix A). Participants were then organized into break-out rooms. Two break-out rooms were planned to focus on Building Concepts and Financing Options/Amenities. All participants gave feedback on both topics, spending approximately half of their time in each break-out room. This structure allowed for large numbers of participants to give meaningful feedback in a smaller setting. The break-out room facilitators took notes on questions and other items not directly related to the discussion.

² The 114 attendees does not include the May 1 pilot.

Break-out rooms were recorded and notes were taken on a platform called Jamboard. A Jamboard is a virtual white board. This allowed participants to see the notes that facilitators were taking in real time (see Figure 2 below).

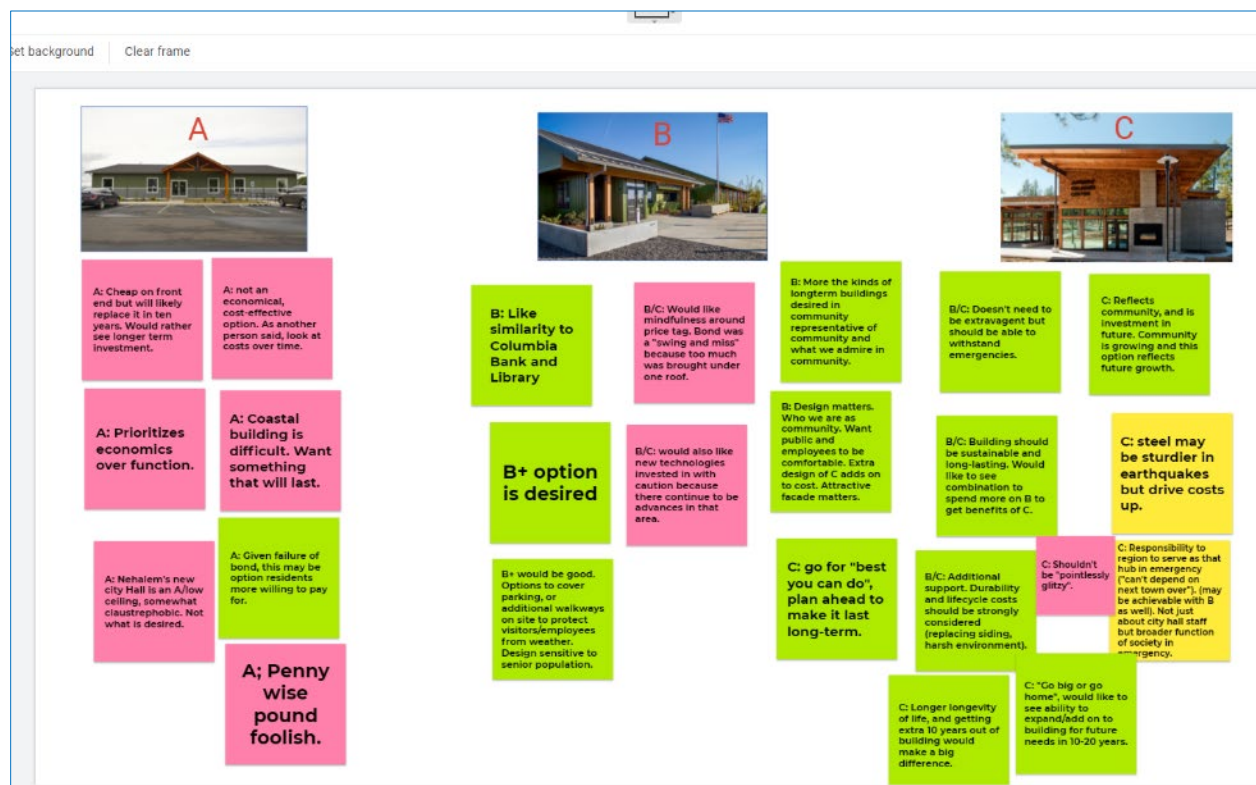


Figure 2: Example of Jamboard Virtual Whiteboard

Facilitators collected feedback structured on the following topics:

- Strengths and Weaknesses (or Pros and Cons) of building concepts. Three building concepts were presented (see Presentation in Appendix A). The building concepts were arrayed into concepts A-C; concept A reflected a lower end modular type building and ranged upward in design features to a building concept C. The purpose of the building concept discussion was to gather feedback regarding what the City Council should consider as it moves towards building design and construction.³
- Strengths and Weaknesses (or Pros and Cons) of different financing options. The purpose of this topic was to gather feedback regarding the 'mix' of financing options that the Council should consider.
- Building amenities desired by participants or those amenities that should be considered by the City Council.
- Other concepts or ideas that were not directly related to building concepts, financing, or amenities.

³ Participants also provided feedback on additional building concepts and options outside a Building A, B, or C. This summary appears throughout this report.

- Questions from participants regarding building concepts, financing, or amenities.

The following discussion summarizes the feedback from those meetings.

Thematic Summary of Meeting

Building Concepts and Building Quality

When asked to consider the different building concepts that were presented, participant feedback was arrayed across a number of considerations. The focus for this discussion was on building quality and characteristics of the different concepts. The discussion yielded important values that Council may consider as it moves forward in the process.

The themes that were prevalent appear in descending order, with the strongest and most recurring themes appearing first. These themes appeared in many of the considerations of the various building concepts. These include building longevity, scalability and flexibility, resiliency, environmental sustainability, consistency with Manzanita culture and community, affordability, functionality and efficiency.

Longevity

Longevity of the building was a very clear and predominant value that was expressed across all public input sessions and all building types. This showed up when discussing financing options as well as the building concepts. Longevity and durability considerations included the ability to withstand coastal conditions, the lifespan of the building, and long-term maintenance costs. Many expressed that durability and longevity was important when considering the City's return on its investment where durability should be balanced with cost. Others did not want to see a building be replaced in a short (20 year) timeframe. The building concept B was considered most often to be reflective of a building that offered the longevity and durability that participants preferred. Others were concerned that the City may underinvest in the short term and therefore preferred the most durable option implied by a building concept C. However, others noted that the higher cost of the building concept C would not necessarily yield a more durable building.

Scalability and Flexibility

Scalability and flexibility were important and often cited considerations. In this dimension of building quality, participants expressed interest in flexibility over time (scalability) and flexibility in use (flexibility). Scalability and flexibility imply that participants place value on using funds in a way to best leverage the investment in a city hall, for now and in the future.

Scalability over time described participant preferences for a building that was designed to be adapted as the community's needs grow. When discussing this concept, several participants favored an initial investment in a smaller, high quality building (quality of materials and design) that could be scaled up, phased in, or expanded at a later date. Scalability was coupled with the idea that a smaller building may be more cost effective in the short term while allowing the options for expansion as the community grows and needs change. It was mentioned that consolidation of policing and administration could be problematic due to the large size that would be required; limiting the ability to scale up construction. There was some sense that a building concept B would offer the most scalability, however, scalability was considered an attribute of a building concept C as well. Participants did not express that a building concept A would be scalable.

Flexibility in use was also strongly preferred by participants while discussing building concepts and building amenities. Participants noted that flex or multi-use spaces would allow for many different uses, e.g., expandable meeting rooms with room dividers. There was some sense that a building concept B would offer the most flexibility, owing to the customization opportunities. Flexibility was considered an attribute of building concept C as well. Participants expressed that a building type A would be most limited. As for the site, flexibility in use also applied to Underhill Plaza, where the parking lot and grounds could host a variety of uses, including farmer's markets, community activities, music events, or an oyster fair.

Resiliency

Resiliency / building safety was another important value that was often discussed by participants. Resiliency was considered in terms of a building that was useable post-disaster as well as one where occupants would be safe during a disaster event. Those that expressed this value believed strongly that safety and resiliency should not be compromised and was more important than aesthetics. Some noted that the new city hall site would likely serve as a gathering location and, therefore, the building would require usability post-disaster. Participants generally agreed that a building concept B or C offered the most advantages for safety and resiliency and that building concept A was least preferred.

Environmental Sustainability

Environmental sustainability was often discussed as participants considered the features and amenities of a new city hall, regardless of building concept. This was an important feature to many participants, some of whom linked sustainable design as an option for building concepts B or C. Some comments considered that a building concept A would offer the fewest options for sustainability features and/or that adding these features would increase the cost considerably.

In addition to the building-related discussion of sustainability, participants also focused on the sustainability features of the site and building. Participants were very interested in seeing smart energy features added to the building and site, including solar, wind, and battery technologies (for energy storage). These features were noted as useful to offset utility costs and support potential emergency uses. The feedback also noted the need for smart design to save energy. Other popular sustainability features included electric charging stations on site for tourists or visitors but noted that residents often had their own charging options. A related topic was the need for healthy buildings where such features as air filtration systems may be included.

Consistency with Manzanita Culture and Community

Participants also provided a good deal of input regarding the 'fit' and character of different building concepts with the community of Manzanita. They discussed fit and character in terms of a building that would communicate community pride, community quality, history, and uniqueness. They noted that design matters and preferred a building that was attractive and a model for the community. While some preferred a higher end building, many others noted that the aesthetic of the building should not be extravagant, 'super fancy', or 'spectacular', especially when balanced with affordability and functionality. Based on the value of consistency, participants considered a building concept A to be 'ugly,' 'unwelcoming,' and inconsistent with the Manzanita community. Participants noted that a building concept of B or C was attractive for its aesthetic contributions to the community.

Value for Investment

The building value for the investment was an important concept discussed across all meetings. Participants were generally concerned that the building cost was critically important but should be balanced with other priorities (durability, resilience, etc.). Value was considered as participants considered the long-term return on investment where the durability and lifespan of the building would be long enough to justify the expense and effort of building. Many participants recognized that a lower cost building would be the most affordable in the short run but may also require replacement sooner (as compared to other building concepts). They also considered that a lower end building would limit any potential future resale value. Coupled with concerns over durability, a lower cost building in the short term may imply higher maintenance costs in the longer term. Participants generally considered that a building concept B or C would offer the most value over a longer term when considering all costs; however, some were concerned that a concept C building would not be supported by the community. Many participants wanted a better understanding of the financial details, including how much each building may cost per square foot and/or whether a remodel or new build would be most cost effective.

Functionality and Efficiency

As participants considered other aspects of the building concepts, functionality and efficiency developed as related themes. Consistent with other feedback, participants were supportive of a functional and efficient building that would meet the City and community's needs. Functionality was often considered in terms of building size (e.g., a building large enough to accommodate City functions) and useability / comfort for staff with breakrooms.

Efficiency was also a priority where many considered the design of the building as important in efficiently delivering services, such as a service counter. Efficiency was also discussed in terms of consolidation of the city functions (e.g., police and administration).

The feedback indicated that a building concept A would restrict internal space and deter functionality and efficiency. Most preferred a building concept B that balanced cost with efficiency but could also be customized to accommodate several functions and include the amenities preferred by the community. Specific community uses, such as an emergency operations center were mentioned if the building developed at the higher end.⁴

Remodel Option

Several participants that joined the Manzanita Listens meeting were in support of a remodel option of the old school house. These participants primarily joined the final meeting on March 20, though the remodel option was discussed in other meetings. Those that support the remodel option were concerned that the public meetings were structured in such a way as to not gather feedback on this option and/or that their comments would be relegated to a footnote. The purpose of this section is to report their feedback.

Those that support the remodel option disagreed with the earlier rebuild assessment conducted by the City. They noted that the old school house was structurally sound, likely has a longer lifespan, and that there is still value left in the building. They also noted that a remodel could be affordable as well as feature higher end design amenities, be beneficial to achieve LEED certification, and utilize repurposed

⁴ Building uses will be discussed later in this document.

lumber. They also noted that there was no guarantee of damage (or not) during a seismic event. Those that supported a remodel option cited a perceived lower cost.

Those that commented on this option noted that the remodel should be seriously discussed by the City Council and be supplemented with additional evaluation / assessments related to the building's viability as a city hall.

Other

Other less noted themes were related to the building concepts. These include that the building concept A may offer some advantages in terms of being quicker to build and acceptable if the building were only to serve city hall. Most considered a building concept B or what some called a B+ building to be more realistic and 'middle of the road.' There were several comments that building concept C would be too extravagant.

Financing Options

The participants were presented with four different approaches to funding a new city hall. The presentation recognized that the funding needed would likely require a combination of funding approaches. The options presented were to borrow funds from a bank with the establishment of a short-term rental fee as a source of revenue, borrow from capital funds with repayment from the establishment of a short-term rental fee, proposing a bond, and selling City property. The following discussion summarizes the feedback with respect to the options presented and includes the discussion related to the short term rental fee and other funding concepts.

Most importantly, the majority of participants noted that the best approach will be to use a combination of sources of funding to support a new city hall. The clear advantage was that it spread the burdens and the risks across different stakeholders. Equity across all stakeholders and a shared burden was an important value to most participants, regardless of which financing option the City uses.

Borrowing Funds from a Bank

Supporters of this option considered this to be safe in that it would not impact current City reserves. They also noted that the current interest rate was low. Others considered this a short-sighted approach and/or were concerned about the City's borrowing capacity. Some advised that the City should consider whether there would or would not be an early payoff fee.

Borrowing from Capital Funds

Participants expressed tepid support for borrowing from the City's own capital funds. Those that did support this option noted that any interest that would be paid would go back to the City itself. However, many questioned whether there would be projects that would not get accomplished, if there would be a future need for those funds, and if there would be an impact on rates paid by users (e.g., water rates).

Bond

Participants were somewhat divided on the City using funds from a bond for construction. Those that supported a bond noted its ease of collection, stability, fairness to all property owners, ability to spread costs over a longer term, and was less expensive than other options. Those that supported this approach commented that it is the most viable option. Supporters commented that a bond could pass if the design of the building was good and if the bond were lower (e.g., \$2 million). Supporters also noted that the current property tax was relatively low. There were fewer attendees who explicitly did not support a bond. These noted that it would increase the cost of home ownership and that some people were on a fixed income.

There were a number of concerns expressed about a bond. The concerns were primarily related to the previous failure of the bond with questions as to whether it could pass again in the future. Some noted that the previous bond proposal lacked sufficient public input prior to the vote and that increased communication would help. The cost of the previous bond was also cited as a consideration for its failure and that a smaller or shorter-term bond may be more viable. Some noted that there are equity issues related to who can vote. A few others said they would support a bond if certain conditions were met, such as remodeling, or the Quonset hut was taken off the table.

Property Sale(s)

The final option presented for feedback was the sale of City property. Property sale was largely supported by participants for its simplicity and that it could help defray costs. There were additional thoughts offered about other properties that could be sold, such as the old City Hall, public safety building, old fire department, Pine Grove Community House, Historical Society, and parcels of the Underhill Plaza site itself. Selling other City properties was thought to be viable if those functions (e.g., police) were to be moved into the new city hall. There were other concerns related to selling City property, including the limited revenue, time on the market, and whether or not the revenues from the sale would have a higher purpose (other than funding a building). One participant cautioned that selling City property has some risk in that once it was sold, it would be gone.

Short Term Rentals

There was considerable discussion related to the use of short term rental (STR) fees to support some revenues for a new city hall. Notably, there were lots of questions about the fee itself with some assumptions that the City already imposed a fee (it does not). Supporters of the fee considered that a STR was imposed on tourists, who impact the City and its operations. They believed that tourists should share the burden for a new facility. Those that did not support the STR believed that tourists did not use City services at the same level and that they should not have additional fees imposed. Some worried that the STR fee as a revenue source would create pressure to increase rental licensing overall.⁵ They were also concerned that it would create difficulties in renting properties in the City. Other concerns were expressed that a STR fee was not a stable funding source.

Other Related Financing Options

Several other financing options were proposed. These included programs and grants that may be available for small town development, revenues that could be developed through renting space at Underhill Plaza or other existing City properties, public-private partnerships to develop property, and refinancing the current loan on Underhill Plaza.

Other Feedback

There was a range of other feedback during the listening sessions that may be helpful as the City moves through the process of making decisions now and in the future. This information is summarized in Appendix B. For ease of reading, this is organized into building related, financial related, and other related comments.

⁵ Some participants desired a cap on STR licenses in the City.

Amenities

The next section of this report turns to participant feedback on building amenities. Participants were asked to give feedback on the most preferred additions to a new building. This discussion was separated from the building concepts in order to better understand what uses and features would be most supported. The feedback ranged from considering building uses (e.g., what uses should be housed in city hall) to the building features (e.g. sustainability). As discussed above, many noted that the building amenities would increase costs of construction. However, some features would decrease operating costs as well as increase flexibility in financing or grants. The building uses and amenities should be balanced with the values articulated earlier in this document.

Building Uses

Uses for the city hall and site focused primarily on consolidated City functions and emergency operations. As discussed above in the functionality section, building uses drives form and other design considerations. For example, if the building is used as an emergency operations center, it will require additional features. Similarly, if used for police functions, the building would require higher seismic considerations. Other site uses are also reported below.

Consolidated City Functions

Participants discussed whether consolidating City functions in one city hall building would be beneficial. Consolidation would offer some efficiency advantages and allow the City to sell off unused property. There appeared to be little debate about consolidating City functions other than policing. Some noted that if police were housed in the building it would require dedicated parking, evidence rooms, interview spaces, and secure areas. The consolidation of police with City administration may limit financing options and/or the ability to phase in construction.

Emergency Operations Center

Meeting participants spent some time discussing using the city hall as an emergency operations center and/or an emergency refuge site post-disaster. It is clear that emergency preparedness is an important value in the community. There was some support to use the building as emergency operations center. If that is the case, participants noted that the building would require space and equipment for energy generation (generators or solar power), communications equipment (emergency antenna or 2-way radios), storage areas (e.g., water, food, tents, etc.), kitchen facilities, and space to accommodate emergency operations staff and displaced people (visitors/residents). This use implies that the building would require increased seismic resiliency features. Not all participants were sold on the idea of an emergency operations center and advised to not to duplicate other appropriate emergency locations. Finally, participants noted that if the building and site will be used for emergency operations or a refuge, the City should look to the Emergency Volunteer Core of Nehalem Bay (EVCNB) for its previous work on design.

Other Building Uses

Several participants noted the opportunity to consolidate other functions, such as a visitor center, museum of Manzanita history, and historical society. Others noted that the new city hall could serve as a business center.

Building Amenities

Building amenities is linked to the uses of the building but describes what kinds of features are important to be considered in the interior. Many participants noted that community meeting rooms are needed. Some noted that the meeting rooms should be designed to be flexible in size and use, such as accommodating meetings rooms with the dual purpose of an emergency operations center or council meeting chamber. Others desired kitchen facilities that could be used for community events. Some also noted the need for community amenities, such as free Wi-Fi or resources to assist people with lower incomes. Innovative technologies in the building were discussed as a way to save time and money, if possible.

Participants also noted that employees were important to consider, and they should have welcoming, safe, pleasant, healthy, and efficient workspaces with separate bathrooms and break rooms.

Site Uses

Participants also discussed uses for the Underhill Plaza site. There was considerable support for outdoor and community space that would support civic engagement and community activities. These activities included parks, farmers' market, open space for gathering, and the flexibility to use parking areas for festivals or fairs. Some participants were interested in seeing the site being used for affordable and/or workforce housing. Others noted opportunities for public-private partnerships that could help to offset City revenues and/or reduce the cost of building. Some participants wanted the site to be considered for extra parking. Another noted the option of selling Underhill Plaza and building elsewhere.

Site and property amenities

There was a good deal of discussion regarding building and site amenities and features. These included designing the building with community and placemaking in mind with quality landscaping, green spaces, water features, public art, covered parking or walkways, public restrooms, bike parking, and access to biking and walking opportunities. ADA accessibility and design for seniors was also important. Participants desired a look and feel to the building and site that is inviting, safe, quiet, modern, and compatible with the neighborhood (e.g., not creating traffic or trash). Participants were interested in seeing unique features on site, such as a Manzanita bush in front of the building.

Environmental Sustainability

In addition to the building-related discussion of sustainability, participants also focused on the sustainability features of the site and building. Rather than repeating this here, the sustainability considerations were reported earlier in this document.

Summary of Public Input

The quality of the input in the Manzanita Listens public meetings was very thoughtful, and participants considered a great deal of variables. The challenge for any data collection effort is how to consider the diversity of opinion and feedback that eventually arises. In the Manzanita Listen sessions, there were clear themes and values that were revealed. The City Council may choose to consider these values as it moves forward in the process. One strategy may be to evaluate how to balance the building options and expense relative to the most prevalent themes of longevity, scalability, resiliency, sustainability, consistency with Manzanita culture and community, value for investment, and functionality and efficiency.

Appendix A: Meeting Presentation



Meeting Agenda

- I. Introductions and Information (20 Minutes)
 - Meeting Call to Order
 - Where We Are & What We are Hearing
 - How This Meeting Will Work
- II. Listening (60 minutes)
 - Breakout Rooms (Building Concepts & Financing / Amenity Options)
- III. Where We Go Next (10 Minutes)
 - Facilitator Wrap Up and Next Steps

What We are Hearing: An Evolving Vision for a New City Hall

City Hall should...

- ..be a point of pride that reflects our community
- ..serve as the heartbeat of the City - where our community goes for resources and assistance - information, bill pay, and emergencies
- ..be safe and out of the inundation zone
- ..offer efficient and effective consolidation of City functions
- ... provide a secure and adequate space for staff to work
- ..the best sized building for our community's needs
- ..effective, durable, functional, usable and sustainable
- ..embrace opportunities for innovative use of technology

Where We Are

Why We Need a New City Hall

- Old City Hall vacated February 2020 due to hazardous conditions
- Old City Hall was too small and
- Old City Hall in tsunami evacuation zone
- Temporary City Hall has less than 1/3 of the space of Old City Hall

What Decisions Have Been Made

- Former Underhill Plaza purchased in 2017 for new City Hall
- City Council Resolution 20 -21 August 2020
 - Remove existing structure on the Underhill Plaza site
 - Build a new facility
 - Consolidate City departments including Administration and Public Safety
 - Develop Community Outreach plan to seek input
 - No decision has been made on Quanset Hut

How This Meeting Will Work

Brief Facilitator Introductions

Break out rooms

Meeting Facilitation

Wrap Up and Next Steps

Break Out Rooms



Building
Concepts



Financing
Options &
Amenities



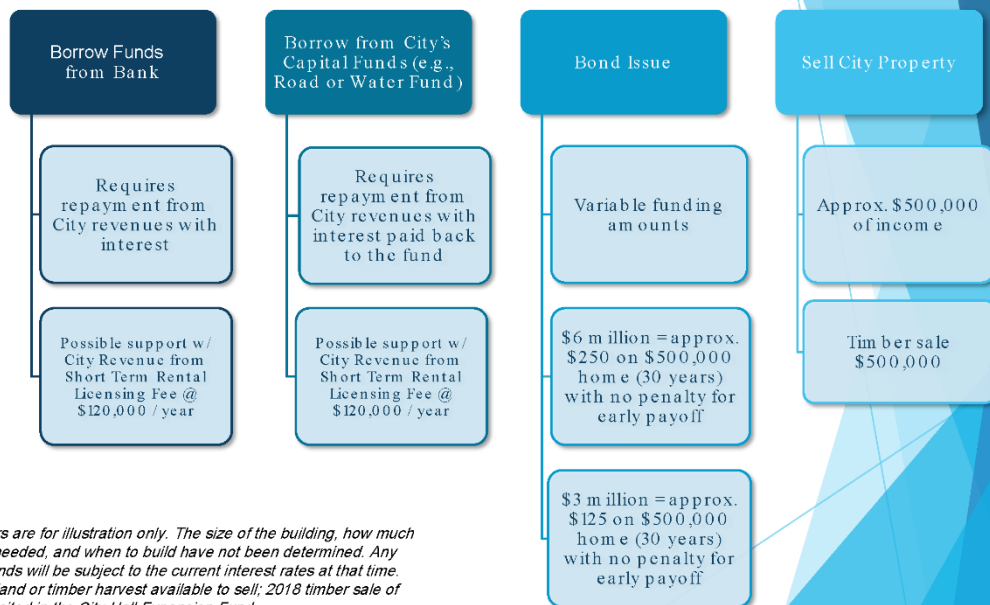
Concept Summary



	A	B	C
Construction Type	Limited choice	Wider choices	Widest choice
Material Finishes	Lower quality/durability	Commercial quality/durability	High quality/durability
Design Considerations	Very limited (e.g., low ceilings, fixed floor plan)	Less limited (e.g., increased flexibility for floor plans, building layout)	Few limits (e.g., totally flexible floor plans, flexible ceiling height)
Seismic Preparedness & post-disaster replacement*	Least resilient –likely will require replacement	Moderate –may require replacement	Most resilient –usable post disaster
Sustainability	Code minimum	Code minimum w/some features	Code minimum w/features
Lifespan	Approx. 20 –25 years	Approx. 40+ years	Approx. 50+ years
Cost	Lowest cost (varies)	Approx. 1.5 - 2 x Cost of A	Approx. 2 -2.5 x Cost of A

*All buildings used for public safety are required to meet higher seismic requirements, regardless of building concept

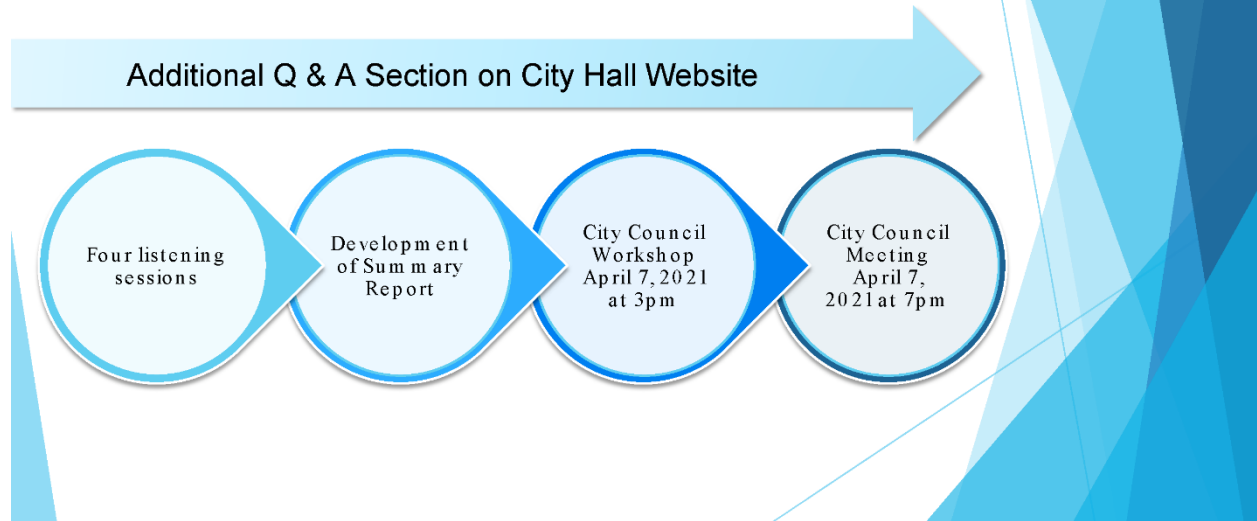
Financing Options



Notes:

*These numbers are for illustration only. The size of the building, how much money will be needed, and when to build have not been determined. Any borrowing of funds will be subject to the current interest rates at that time.
 *No additional land or timber harvest available to sell; 2018 timber sale of \$500,000 deposited in the City Hall Expansion Fund.

Wrap Up & Next Steps



Appendix B

Additional Building Related Comments

- Emergency housing is not needed in new city hall
- Consider whether growth projections and population estimates are too high
- Use local resources and contribute to local economy
- Availability of local builders may be limited
- A/B could be done by local builders to keep cost down
- Local builders may have difficulty building a high end (option C)
- Columbia Bank and Library are examples of supported buildings
- Baseline standard for new buildings is to last 50+ years, not just for Building C
- Aesthetics more important to P-T residents
- Building should be inclusive of part-time, full-time, and visitors
- Concern about glass features during hurricane
- Multiple levels / stories not needed
- Septic systems, portable showers, water purification systems are important
- Desire to get developer involved - some argue that was went wrong last time
- Consider companies that could assess cost, efficiency, timing of modular approach
- Cost should be as low as possible
- Consider hybrid building (e.g., combination of A/B/C and/or remodel)
- Use of mass timber to offset cost & improve durability; can go higher on design
- Complete building all at once (no phased construction)
- Quality is best with old-growth wood

Additional Financial Related Comments

- Repurpose timber (existing building) to keep costs down
- Other villages benefit from City Hall - they should contribute
- Renters contribute to City via certificate and taxes
- City should have established budget after buying property

Additional Other Comments

- Consider Council communication strategy with people that do not participate
- Consider other tools are available for congruent information streams
- Go bags must be encouraged by the City
- ADA Accessibility is important
- Preference for city hall to be on Main Street
- Liked old City Hall; desire for it to still be viable

Appendix C May 1 Pilot Results

Building Concepts and Building Quality

Longevity

Longevity and durability considerations included the ability to withstand coastal conditions, the lifespan of the building, and long-term maintenance costs. Many expressed that durability and longevity was important when considering the City's return on its investment. The building should not have to be replaced in a short (20 year) timeframe.

Supported in May 1 pilot.

Scalability and Flexibility

Scalability and flexibility were important and often cited considerations. In this dimension of building quality, participants expressed interest in flexibility over time (scalability) and flexibility in use (flexibility). Scalability and flexibility imply that participants place value on using funds in a way that leverage the investment in a city hall, showing sustained benefits to a wide variety of stakeholders.

Supported in May 1 pilot.

Resiliency

Resiliency / building safety was another important value that was often discussed by participants. Resiliency was considered in terms of a building that was useable post-disaster as well as one where occupants would be safe during a disaster event.

Supported in May 1 pilot

Environmental Sustainability

Less of a focus in May 1 pilot

Consistency with Manzanita Culture and Community

"Fit" and character of different building concepts with the community of Manzanita was strongly supported. Participants described this as an opportunity for Manzanita to make a statement. Fit and character was also described in terms of a building that would communicate community pride, community quality, history, and uniqueness.

Supported in May 1 pilot.

Value for Investment

Participants were generally concerned that the building cost was important but should be balanced with other priorities (durability, resilience, etc.).

Supported in May 1 pilot.

Functionality and Efficiency

Consistent with other feedback, participants were supportive of a functional and efficient building that would meet the City and community's needs. Functionality was often considered in terms of building size (e.g., a building large enough to accommodate City functions).

Supported in May 1 pilot.

Financing Options

General feedback was that a combination of options for financing should be considered. Participants also noted that many who live outside the community, but are served by Manzanita would likely be willing to financially support the new city hall.

Borrowing Funds from a Bank

Supporters of this option considered this to be safe in that it would not impact current City reserves. They also noted that the current interest rate was low. Others considered this a short-sighted approach and/or were concerned about the City's borrowing capacity.

Supported in May 1 pilot.

Borrowing from Capital Funds

Participants expressed tepid support for borrowing from the City's own capital funds. Those that did support this option noted that any interest that would be paid would go back to the City itself.

Supported in May 1 pilot.

Bond

Those that supported a bond noted that the cost seems reasonable and was less expensive than other options. Those that supported this approach commented that it is the most viable option. There were some who noted that the cost for the bond falls on homeowners.

Supported in May 1 pilot

Property Sale(s)

The final option presented for feedback was the sale of City property. Property sale was largely supported by participants for its simplicity and that it could help defray costs.

Supported in May 1 pilot

Short Term Rentals

Supporters of the fee considered that a STR was imposed on tourists, who impact the City and its operations. Concern over the STR fee as a sole revenue source and STR rentals are limited due to licensing. Some thought that a STR fee was a dedicated and stable funding source.

Supported in May 1 pilot